

**RULES OF
PRACTICE AND PROCEDURE
of the
UNITED STATES
DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF NORTH CAROLINA**

Effective June ~~21~~, 202~~1~~2

LR 1.1 SCOPE AND PURPOSE OF RULES

These local rules govern practice in the District Court for the Middle District of North Carolina consistent with the Federal Rules of Civil Procedure. These rules shall be interpreted and applied to foster civility in the practice of law before this Court, and to promote the just and prompt determination of all proceedings.

LR 5.1 ADDITIONAL COPIES FOR COURT USE

~~Because the official record is the electronic docket, additional paper copies of documents are required only as required by the presiding Judge as set out on the Judicial Preferences page of the Court's website at <https://www.ncmd.uscourts.gov/judicial-preferences-summary> or when directed by the Court in a particular case. Unless a Judge has specified otherwise, a paper copy of the following documents shall be delivered or mailed to the clerk for use by the Court within two business days after the original is filed:~~

- ~~(1) — a brief;~~
- ~~(2) — proposed findings of fact and conclusions of law;~~
- ~~(3) — requests for jury instructions; and~~
- ~~— (4) — any pleading which has an appendix and/or tabs.~~

LR 5.2 FILINGS WITHIN THREE DAYS OF SCHEDULED HEARINGS

A party who files documents which relate to a matter noticed for hearing within the next three business days shall so advise the clerk.

LR 5.3 ELECTRONIC FILING OF DOCUMENTS

(a) Electronic Filing Required. Except as expressly provided by this rule or in the exceptional circumstances preventing electronic filing, all documents shall be filed electronically.

- (1) The following are exempted from the requirement of electronic filing:
 - (a) Sealed and Qui Tam Cases;
 - (b) Pretrial hearing and trial exhibits;
 - (c) Consent to Proceed before Magistrate Judge;
 - (d) All pleadings and documents filed by pro se litigants (prisoner and non-prisoner);

LR 83.6 CLAIM OF UNCONSTITUTIONALITY; THREE-JUDGE COURTS

(a) **Notification.** If at any time prior to the trial of an action to which (1) neither the United States nor any of its officers, agencies, or employees is a party and a party draws in question the constitutionality of an act of Congress affecting the public interest, or (2) neither the state nor any of its agencies, officers, or employees is a party and a party draws in question the constitutionality of any statute of that state affecting the public interest, that party, to enable the Court to comply with 28 U.S.C. §§ 2403, shall notify the Court. The notice shall be in writing, stating the title of the action, the statute in question, and the respects in which it is claimed the statute is unconstitutional, and a copy shall be served upon the Attorney General of the United States and the United States Attorney in this district or the North Carolina Attorney General, as applicable.

(b) **Additional Copies.** In any action or proceeding required by act of Congress to be heard and determined by a district court of three judges, all pleadings, papers, and documents filed subsequent to the designation of the Court, as provided in 28 U.S.C. §§ 2284(a), shall be filed in triplicate, original and two copies, with the clerk. The clerk shall make timely distribution of these documents to the designated judges.

LR 83.7 PHOTOGRAPHS, RECORDINGS, AND BROADCASTS

Radio, television, Internet broadcasting and the use of photographic, electronic, or mechanical reproduction or recording equipment is prohibited in courtrooms or their environs. "Environs" is defined to mean the courtrooms, the offices of the Judges, Clerk, probation officers, or any corridor connecting or adjacent thereto, and the corridor or lobby on the main or street floor constituting an entrance area to the building in which is located any elevator door/or elevators leading from such entrance of the building to any such floor. Ceremonial proceedings such as the administration of oaths of office to appointed officials of the Court, naturalization, and presentation of portraits, may be photographed in or broadcast from the courtroom under the supervision of the Court. Pursuant to Standing Order No. 2, attorneys may request Court permission to bring certain electronic devices into courtrooms or their environs by obtaining an Electronic Device Request and Acknowledgment Form from the clerk's office. However, attorneys may not use such devices to photograph, audio record, verbatim reproduce or broadcast any proceedings. Nothing in the Local Rule shall prohibit any Judge from entering any order in connection with a particular proceeding.

LR 83.8 COURTROOM SECURITY

(a) The United States Marshal or a Court Security Officer shall be present at all proceedings held in open court, unless otherwise ordered by the Court.

PART TWO

LOCAL RULES OF CRIMINAL PRACTICE

CITE THE LOCAL CRIMINAL RULES AS:

LCrR (e.g., LCrR12.1)

Effective ~~April 16, 2018~~ June 1, 2022

LCrR16.2 LIMITATIONS CONCERNING CRIMINAL DISCOVERY

The practice in this District between the United States and defense counsel is “open file.” In that the Court, pursuant to Federal Rule of Criminal Procedure 16(d)(1), may for good cause restrict discovery, the following limitations on “open file” discovery are hereby established:

(a) Any discovery materials (defined as all information contained within discovery, regardless of whether such materials are defined as discovery under Rule 16) that are provided by the United States to the defendant shall not be further disseminated by the defendant or his or her counsel to any individuals, organizations, or other entities, except to the following degree:

- (1) To members of the defense team (the defendant, counsel, paralegals, investigators, litigation support personnel, and legal support staff);
- (2) To any experts or consultants retained to assist in the preparation of the defense; and
- (3) To the Court.

Upon dissemination of discovery materials to any of the parties identified above, except the Court, defense counsel shall inform the recipient of the confidentiality requirements imposed by this local rule.

(b) Discovery materials are to be used by the defendant and his or her counsel solely for the purpose of allowing the defendant to prepare the defense. The defendant, his or her counsel, and other members of the defense team shall not disseminate, disclose, or provide such discovery materials to anyone who is not necessary to the preparation of the defense. In the event the defense team desires to disseminate, disclose or provide such discovery materials to a party not permitted by this local rule, the United States must first be so advised and the parties must seek to reach an agreement on the matter. If an agreement cannot be reached, defense counsel shall apply to the Court for relief.

(c) The defense team may display copies of discovery materials to non-expert witnesses if it is determined that such is necessary for the purpose of preparing the defense, and the defense team may do so without notice to the United States. However, the defense team may display copies of discovery materials to such witnesses only in the presence of the defense team and only if such witnesses agree to the confidentiality requirements set out in this rule. Further, witnesses shall not be permitted to maintain copies of discovery materials after inspection.

(d) The defendant shall not be given copies of any “sensitive materials.” “Sensitive materials” are defined as discovery containing HIPPA information, dates of

birth, home addresses, Social Security numbers, financial information, ~~and~~ wiretapped phone calls, and the name or any other information concerning a child as defined by 18 U.S.C. § 3509(a)(2). “Sensitive materials” shall be reviewed with the defendant in the presence of the defense team and the defense team shall maintain custody and control of such materials. Likewise, the defendant shall not be given copies of Jencks material, to include reports of interviews, transcripts of Grand Jury testimony, and recorded or written statements or reports of statements taken by law enforcement officers of potential witnesses. The defendant may, however, have unfettered access to any “sensitive materials” which contain only his personal information, and any other materials which contain only the defendant’s own statements.

(e) At the conclusion of any case involving criminal discovery, and after the time for all direct appeals and post-conviction motions have been exhausted, defense counsel shall return all copies of discovery materials to the United States or, in the alternative, certify that all discovery materials have been destroyed. In cases involving digitally downloaded discovery files, in lieu of physical destruction defense counsel may certify that such files have been deleted from any server, PC, hard drive, or other electronic storage device to which they have been downloaded and that those files have been emptied from the device’s recycle bin. Provided further, defense counsel shall be permitted to maintain a file copy in their case file which shall continue to be subject to this Rule.

(f) The local rule solely governs the defendant’s and the defense team’s use of documents produced from the United States. This rule affects in no way the defendant’s and the defense team’s use of documents that they already possess prior to receiving discovery or might obtain through other means.