UNITED STATES DISTRICT COURT

Southern District of Indiana

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Alison M. Chestovich, Chief Deputy Clerk

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& U.S. Courthouse
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Indianapolis, IN 46204
(317) 229-3700

104 U.S. Courthouse
921 Ohio Street
Terre Haute, IN 47807
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121 West Spring Street
New Albany, IN 47150
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September 16, 2019

N O T I C E

TO: THE PUBLIC AND MEMBERS OF THE PRACTICING BAR FOR THE SOUTHERN DISTRICT OF INDIANA

Pursuant to 28 U.S.C. § 2071, Rule 83 of the Federal Rules of Civil Procedure, and Rule 57 of the Federal Rules of Criminal Procedure, the United States District Court for the Southern District of Indiana hereby gives public notice of the following:

The Local Rules Advisory Committee for the Southern District of Indiana has recommended, and the District Court has authorized release for a period of **public comment through October 16, 2019**, the revision of certain Local Rules of the United States District Court for the Southern District of Indiana. Unless otherwise indicated, as seen in this Notice redline text is added and ~~struck~~ text is deleted. The proposed revisions are as follows:

A. **Subparagraph (b) of Local Rule 1-1 - Scope of the Rules** shall be **amended** as follows:

(a) Title and Citation. The local rules of the United States District Court for the Southern District of Indiana may be cited as "S.D. Ind. L.R."

(b) Effective Date and Scope of Rules. These rules, as amended from time to time, take effect February 1, 1992. They govern all civil ~~and criminal~~ cases on or after that date. They also govern all criminal cases except where they are inconsistent with the local criminal rules. However, in cases pending when ~~the rules take~~ an amendment takes effect, the court may apply the former local rules~~ if it finds that applying ~~these rules~~the amendment would not be feasible or would be unjust.

(c) Modification or Suspension of Rules. The court may, on its own motion or at the request of a party, suspend or modify any rule in a particular case in the interest of justice.

B. Subparagraph (c) of Local Rule 5-7 – Signatures in Cases Filed Electronically shall be **amended** as follows:

(a) Form of Electronic Signature. A document that is converted directly from a word processing application to .pdf (as opposed to scanning) must be signed in accordance with Fed. R. Civ. P. 5(d)(3)(C).

(b) Other Documents. A signature on a document other than a document filed as provided under subdivision (a) must be an original handwritten signature and must be scanned into .pdf format for electronic filing.

~~**(c) Documents with Multiple Attorneys' Signatures.** A document signed by more than one attorney and electronically filed must:~~

~~**(1)** include a representation on the signature lines where the handwritten signatures of the non-filing attorneys would otherwise appear that the non-filing attorneys consent to the document;~~

~~**(2)** identify in the signature block the non-filing attorneys whose signatures are required and be followed by notices of endorsement filed by the other attorneys within three business days after the original document is filed; or~~

~~**(3)** include a scanned document containing all necessary signatures.~~

~~**(d)**~~**(c) Unauthorized Use of ECF Log-in and Password.** No one may knowingly allow anyone other than a filer's authorized agent to use the filer's ECF log-in and password.

C. Local Rule 41-1 – Dismissal of Actions for Failure to Prosecute shall be **rescinded** to enhance judicial discretion pursuant to the court's inherent power as recognized in case precedent. *See, e.g.*, *Link v. Wasbash R. Co.*, 370 U.S. 626 (1962).

~~**Local Rule 41-1 – Dismissal of Actions for Failure to Prosecute**~~

~~The court may dismiss a civil case with judgment for costs if:~~

~~**(a)** the plaintiff has not taken any action for 6 months;~~

~~**(b)** the judicial officer assigned to the case or the clerk has given notice to the parties that the case will be dismissed for failure to prosecute it; and~~

~~**(c)** at least 28 days have passed since the notice was given.~~

D. **Local Rule 83-7 – Appearance and Withdrawal of Appearance** shall be **amended** as follows:

Local Rule 83-7 ~~–~~ – Appearance~~, and~~ Withdrawal of Appearance, and Substitution of Counsel

(a) Appearance.

(1) General. Every attorney who represents a party or who files a document on a party's behalf must first file an appearance for that party or a Notice of Substitution of Counsel under section (c). Only those attorneys who have filed an appearance or a Notice of Substitution of Counsel in a pending action are entitled to be served with case documents under Fed. R. Civ. P. 5~~(a)~~.

(2) Removed and Transferred Cases. Attorneys whose names do not appear on the court's docket after a case has been removed from state court or transferred from another district court must file an appearance or a copy of the appearance they previously filed in state or district court. An attorney of record who is not admitted to practice before this court must either comply with this court's admission policy (see S.D. Ind. L.R. 83-5 and 83-6), or withdraw his or her appearance (see subdivision (b) of this rule) within 21 days after the case is removed or transferred to the court.

(b) Withdrawal of Appearance.

(1) An attorney must file a written motion to withdraw his or her appearance.

(2) The motion must fix a date for the withdrawal and must contain satisfactory evidence that the attorney provided the client with written notice of his or her intent to withdraw at least 7 days before the withdrawal date.

(3) If an attorney's withdrawal will leave a party without counsel, the motion must also include the party's contact information, including a current address and telephone number.

(4) The requirements of subparagraphs (2)-(3) do not apply when another attorney has appeared or substituted as counsel and remains counsel of record for that party.

(c) Substitution of Counsel.

When one attorney seeks to replace another attorney from the same firm, agency, organization, or office as counsel of record on behalf of a party, a Notice of Substitution of Counsel may be filed in lieu of an appearance and motion to withdraw under sections (a) and (b) above.

E. **Local Criminal Rule 1-1 – Bail in Criminal Cases** shall be **deleted** in its entirety.

~~**Local Criminal Rule 1-1 Bail in Criminal Cases**~~

~~**(a)** The conditions of release of defendants and material witnesses are set forth in 18 U.S.C. § 3141, *et seq.*, and Rule 46, Federal Rules of Criminal Procedure.~~

~~**(b)** When the appearance of a person in a criminal case is required by the Court to be secured by a surety,~~

~~**(1)** every surety except a corporate surety must own fee simple title to real estate, unencumbered except for current taxes and the lien of a first mortgage. The surety's equity in such property shall have a fair market value at least double the penalty of said bond; provided, however, that a proposed surety whose real estate is then subject to an existing appearance bond in this Court or in any other Court in this district, including, state, county or municipal Courts, shall not be accepted as a surety; and~~

~~**(2)** a corporate surety must hold a certificate of authority from the Secretary of the Treasury and must act through a bondsman registered with the Clerk of this Court.~~

~~**(c)** No person who executes appearance bonds for a fee, price or other valuable consideration shall be eligible as a surety on any appearance bond unless such person be a corporate surety which is approved as provided by law.~~

F. **Local Criminal Rule 2-1 – Standard Orders in Criminal Cases** shall be **renumbered to 7-1** and **amended** as follows:

Local Criminal Rule ~~2-1~~ 7-1 - Standard Orders in Criminal Cases

The court may issue a standard order in a criminal case which may contain provisions for a plea of not guilty, a change of plea, trial date, attorney appearances, pretrial discovery, pretrial motions, plea agreement, and other matters. When such a standard order is issued, it ~~shall~~ will be served on the defendant with the indictment or information. ~~Copies of the form standard order are available from the Clerk of the Court.~~

G. **Local Criminal Rule 3-1 - Provisions for Special Orders in Appropriate Cases -** shall be **renumbered to 53-1** and **amended** as follows:

Local Criminal Rule ~~3-1~~ 53-1 - Provisions for Special Orders in Appropriate Cases

(a) Unless otherwise permitted by law and ordered by the court, all criminal proceedings will be held in open court and will be available for attendance and observation by the public.

(b)~~(a)~~ On motion of any party or on its own motion, when the court deems it necessary, to preserve decorum and to maintain the integrity of the trial, the court may issue a special order governing such matters as extra-judicial statements by parties and witnesses likely to interfere with the rights of any party to a fair trial, the seating and conduct in the courtroom of parties, attorneys and their staff, spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the court may deem appropriate for inclusion in such an order. Such special order may be addressed to some or all, but not limited to the following subjects:

(1) A restriction on ~~proscription of~~ extra-judicial statements by participants in the trial, including lawyers and their staff, parties, witnesses, jurors, and court officials, which might divulge prejudicial matter not of public record in the case.

(2) Specific directives regarding the clearing of entrances to and hallways in the courthouse and respecting the management of the jury and witnesses during the course of the trial to avoid their mingling with or being in the proximity of reporters, photographers, parties, lawyers,

and others, both in entering and leaving the courtroom and courthouse, and during recesses in the trial.

(3) A specific direction that the jurors refrain from reading, listening to, or watching news reports concerning the case, and that they similarly refrain from discussing the case with anyone during the trial and from communicating with others in any manner during their deliberations.

(4) Sequestration of the jury on motion of any party or the court, without disclosure of the identity of the movant.

(5) Direction that the names and addresses of the jurors or prospective jurors not be publicly released except as required by statute, and that no photograph be taken or sketch made of any juror within the courthouse~~environs of the Court~~.

(6) Restriction on ~~Insulation of~~ witnesses participating in ~~from~~ news interviews during the trial ~~period~~.

(7) Specific provisions regarding the seating of parties, attorneys and their staff, spectators and members ~~representatives~~ of the news media.

~~**(b)** Unless otherwise permitted by law and ordered by the Court, all preliminary criminal proceedings, including preliminary examinations and hearings on pretrial motions, shall be held in open Court and shall be available for attendance and observation by the public.~~

~~If the Court orders closure of a pretrial hearing pursuant to this Rule, it shall cite for the record its specific findings that compel the need for same.~~

H. Local Criminal Rule 4-1 – Release of Information by Court Supporting Personnel shall be **renumbered to 53-2** and **amended** as follows:

Local Criminal Rule ~~4-1~~ 53-2 - Release of Information by Court Supporting Personnel

All court supporting personnel, including among others, Marshals, Deputy Marshals, Court Clerks, Deputy Court Clerks, Bailiffs, and Court or Grand Jury reporters and their employees or subcontractors, are prohibited from disclosing to any person, without authorization by the court, information relating to a grand jury or pending criminal case that is not part of the public records of the court. This Rule ~~shall be~~is applicable also to divulgence of information concerning grand jury proceedings, arguments, hearings held in chambers or otherwise outside the presence of the public.

I. Local Criminal Rule 5-1 – Release of Information by Attorneys in Criminal Cases shall be **renumbered to 53-3** and **amended** as follows:

Local Criminal Rule ~~5-1~~ 53-3 - Release of Information by Attorneys in Criminal Cases

It is the duty of the attorneys for the government and the defense, including the law firm, not to release or authorize the release of information or opinion ~~which a reasonable person would expect to be disseminated by any means of public communication,~~ in connection with pending or imminent criminal litigation with which a lawyer or a law firm is associated, if such dissemination poses a serious and imminent threat of interference with the fair administration of justice.

The following actions ~~will presumptively~~may be deemed to pose a serious and imminent threat of interference with the fair administration of justice:

(a) With respect to a grand jury or other pending investigation of any criminal matter, the release, by a government lawyer participating in or associated with the investigation, of any extra-judicial statement, ~~which a reasonable person would expect to be disseminated by any means of public communication,~~ that goes beyond the public record or that is not necessary to inform the public that the investigation is under way, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers or otherwise to aid in the investigation.

(b) From the time ~~of arrest, issuance of an arrest warrant or the filing of a complaint, information, or indictment in any criminal matter~~a criminal matter is initiated until the commencement of trial or disposition without a trial, the release or giving of authority to release by a lawyer or law firm associated with the prosecution or defense, of any extra-judicial statement ~~, which a reasonable person would expect to be disseminated,~~ by any means of public communication, relating to that matter and concerning:

(1) the prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except a factual statement of the accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, the release by a lawyer associated with the prosecution of any information necessary to aid in the apprehension of the accused or to warn the public of any dangers he/she may present;

(2) the existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(3) the performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(4) the identity, testimony, or credibility of prospective witnesses, except announcement of the identity of the victim if the announcement is not otherwise prohibited by law;

(5) the possibility of a plea of guilty to the offense charged or a lesser offense;

(6) any opinion as to the accused's guilt or innocence or the evidence in the case.

The foregoing ~~shall~~will not be construed to preclude the lawyer or law firm during this period, in the proper discharge of their ~~his/her or its~~ official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against them ~~him/her~~ and stating without elaboration the general nature of the defense.

(c) During a trial of any criminal matter, or any other proceeding that could result in incarceration, including a period of selection of the jury, the release or giving authority to release by a lawyer associated with the prosecution or defense, of any extra-judicial statement or interview, relating to the trial or the parties or issues in the trial~~, which a reasonable person would expect to be disseminated by any means of public communication~~, other than a quotation from or reference without comment to public records of the court in the case.

Nothing in this Rule is intended to preclude the formulation or application of more restrictive Rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative

bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against ~~–~~them ~~him~~.

J. Local Criminal Rule 6-0 – Petition for Habeas Corpus Motions Pursuant to 28 U.S.C. Sections 2254 and 2255 by Persons in Custody shall be **renumbered to 38-1** and **amended** as follows:

Local Criminal Rule ~~6-0~~ 38-1 - Petitions for Habeas Corpus Motions Pursuant to 28 U.S.C. Sections 2241, 2254 and 2255 by Persons in Custody

Petitions for writs of habeas corpus and motions filed pursuant to 28 U.S.C. Sections 2241, 2254 and 2255 by persons in custody ~~shall~~ must be in writing and signed under the penalty of perjury. If filed pro se, s~~S~~uch petitions and motions ~~shall~~ should be on the form ~~adopted by general order of the Court~~ prescribed by the Administrative Office of the United States Courts or otherwise directed by the court, copies of which may be obtained from the clerk of court or on the Court's website. ~~contained in the Rules following 28 U.S.C. Section 2254, in the case of a person in state custody, or 28 U.S.C. Section 2255, in the case of a person in federal custody, or on forms adopted by general order of this Court, copies of which may be obtained from the Clerk of the Court.~~

K. Local Criminal Rule 7-1 – Continuance in Criminal Cases shall be **renumbered to 12-1** and **amended** as follows:

Local Criminal Rule ~~7-1~~ 12-1 - Continuance in Criminal Cases

A motion for continuance in a criminal case ~~will be granted only if the moving party demonstrates~~ must set forth its conformity with the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*, including, if applicable, a demonstration that~~that~~ the ends of justice ~~served by a continuance~~ outweigh the best interest of the public and the defendant to a speedy trial, as provided by 18 U.S.C. § 3161(h)(7~~8), or that the continuance will not violate the Speedy Trial Act deadlines for trial because of some other reason~~). The moving party ~~shall~~ must submit with the motion a proposed entry setting out the findings as to these ends of justice, if applicable, or such other reasons why the continuance ~~will not violate~~complies with the Speedy Trial Act~~, 18 U.S.C §3151 *et seq*.~~.

L. **Local Criminal Rule 8-1 – Assignment of Related Cases** shall be **renumbered to 12-2** and **amended** as follows:

Local Criminal Rule ~~8-1~~ 12-2 - Assignment of Related Cases

(a) Conditions for Reassignment. A criminal case may be reassigned to another judge if it is found to be related to a lower-numbered criminal case assigned to that judge and each of the following criteria is met:

(1) all defendants in each of the cases are the same, or if the defendants are not all the same but at least one is the same, the cases are based upon the same set of facts, events or offenses;

(2) the handling of both cases by the same judge is likely to result in an overall saving of judicial resources; and

(3) neither case has progressed to the point where reassigning a case would likely delay substantially the proceedings in either case, or the court finds that the assignment of the cases to the same judge would promote consistency in resolution of the cases or otherwise be in the interest of justice.

(b) Motion to Reassign. A motion for reassignment based on relatedness may be filed by any party to a case. The motion must be filed with~~,~~ and will be decided by the judge to whom the lowest numbered case of the claimed related set is assigned for trial or other final disposition. If the set includes both felony cases, and one or more misdemeanors assigned to a magistrate judge, then the motion must be filed with, and will be decided by the district judge assigned to the lowest numbered felony case in the set. Copies of the motion must be served on all parties and on the judges for all of the affected cases. The motion must:

(1) set forth the points of commonality of the cases in sufficient detail to indicate that the cases are related within the meaning of subsection (a), and

(2) indicate the extent to which the conditions required by subsection (a) will be met if the cases are found to be related.

Any objection to the motion must be filed within 7 days of the filing of the motion.

(c) Order. The judge must enter an order finding whether or not the cases are related, and, if they are, whether the higher numbered case or cases should be reassigned to that judge. Where the judge finds that reassignment should occur, the ~~Clerk of Court~~ clerk must reassign the higher numbered

case or cases to the judge deciding the motion and to whom the lowest numbered case is assigned. A copy of any finding on relatedness and whether or not reassignment should take place must be sent to each of the judges before whom any of the higher numbered cases are pending.

(d) Scope of Reassignment Order. An order under this rule reassigning cases as related does not constitute a joinder order under Fed. R. Crim. P. 13.

M. Local Criminal Rule 9-1 – Processing of Cases in Division Without a Resident Judge shall be **deleted** in its entirety.

~~**Local Criminal Rule 9-1 Processing of Cases in Division Without a Resident Judge**~~

~~**(a)** In any criminal case presided over by a Judge to whom such case was not regularly assigned upon its filing, in which there is more than one defendant and in which one or more but not all of the defendants enter a plea of guilty, the Judge taking such plea shall retain control over the defendant or defendants making such plea and proceed toward final disposition of the case in so far as it concerns such defendants. The Judge may then elect to retain the case in his/her control for purposes of trial and final disposition as to the remaining defendants or may refer the case back to the Judge to whom such case was originally assigned.~~

~~**(b)** In any criminal case in which a defendant enters a plea of guilty or is found guilty upon trial, the Judge taking such plea or presiding at trial, as the case may be, shall retain control of such case for disposition and sentencing.~~

N. Local Criminal Rule 10-1 – The Grand Jury shall be **renumbered to 6-1** and **amended** as follows:

Local Criminal Rule ~~10-1~~ 6-1 - The Grand Jury

~~**(a)** A regular session of the grand jury shall be called on the second Monday of February and August in each year, and shall serve for a six-month term. Each Indianapolis-based Judge shall in rotation impanel the grand jury.~~

~~**(c)**~~**(a) Grand Jury Miscellaneous Case**. The clerk will assign ~~E~~each newly impaneled grand jury ~~shall be assigned~~ a miscellaneous case number ~~on the miscellaneous docket.~~and will maintain the grand jury miscellaneous case under seal. ~~All motions, orders, and other filings pertaining to matters before that grand jury shall bear that particular docket number and shall be maintained by the Clerk under seal, without the necessity for a motion to seal~~

~~or order.~~

(b) Extension of Session. A petition to extend the session of an impaneled grand jury must be filed in the grand jury miscellaneous case.~~impaneled pursuant to this Rule shall be made to and decided by the Judge who impaneled that grand jury, the Motions Judge, or the Chief Judge.~~

~~(d)~~(c) Pre-Indictment Challenge to a Grand Jury Subpoena or Proceeding.

(1) Any ~~All~~ pre-indictment challenge~~s~~ to a grand jury subpoena~~s~~ or a grand jury proceeding~~sshall~~ must be made in writing and filed on paper with the ~~C~~clerk. The clerk will assign the pre-indictment challenge a miscellaneous case number and will maintain the matter under seal. ~~, and shall recite all pertinent facts including the grand jury number, the date of service of the subpoena, the appearance or production date of the subpoena, and the law. Such matters shall be ruled on by the District Judge who impaneled the grand jury, or, in his/her absence, the Motions Judge or the Chief Judge.~~

(2) ~~**(e)** M~~A motion~~s~~ to quash the appearance of a witness or the production of records commanded by a grand jury subpoena ~~shall~~ must ~~attach the challenged subpoena as an exhibit and~~ be filed and served upon the United States no later than 48 hours prior to the appearance or production date unless good cause exists for a later filing. The challenged subpoena must be attached as an exhibit to the motion.

~~**(f)** Upon the filing of any objection to a grand jury subpoena, the appropriate District Judge will endeavor to rule upon the motion on or prior to the return date of the subpoena.~~

O. Local Criminal Rule 11-1 – Records Relating to Presentence Reports and Probation Supervision shall be **renumbered to 32-1** and **amended** as follows:

Local Criminal Rule ~~11-1~~ 32-1 - Records Relating to Presentence Reports and Probation Supervision

(a) Records maintained by the p~~P~~robation ~~O~~office of this court relating to the preparation of presentence investigation reports are ~~considered to be~~ confidential. Such information may be released only by Order of the court. Requests for the release of presentence investigation reports~~such information in a presentence report being released~~ ~~shall~~ will be made by written ~~petition~~

motion establishing, with particularity, the need for the specific information contained in such reports.

(b) ~~When a demand by way of subpoena or other judicial process is made of the probation officer either for testimony concerning information contained in such presentence reports or for copies of the presentence reports, the probation officer may petition the Court for instructions.~~ The probation officer ~~shall~~ will neither disclose the information contained in the presentence report nor provide the presentence report or copies of the presentence report except on Order of this court or as provided in Rule 32~~(b)(3)~~ (e)(1) of the Federal Rules of Criminal Procedure.

(c) Supervision records on persons under probation supervision are considered to be confidential. The occasional need to release information on probationers to governmental agencies is recognized as being conducive to the rehabilitative process. In those infrequent cases, the Chief U.S. Probation Officer has in his/her discretion the authority to release or not release the requested information.

~~Note: Subsection (d) deleted effective January 1, 2002.~~

P. **Local Criminal Rule 13-1 – Sentencing Procedure** shall be **renumbered to 32-2** and **amended** as follows:

Local Criminal Rule ~~13-1~~ 32-2 - Sentencing Procedure

(a) The sentencing hearing in each criminal case will be scheduled by the court ~~in accordance with the~~ following ~~timetable, which commences with either~~ the filing of a petition to enter a plea of guilty, plea agreement, the entry of a guilty plea, or a verdict of guilty. ~~In the event there is an intent on the part of the defendant to plead guilty, but no written plea agreement is filed, the parties shall file a petition to enter a plea of guilty.~~

(b) If the defendant is a cooperator and is petitioning to plead guilty, counsel for the defendant must file, under seal in the *individual defendant's* case, a Motion to Exclude Cooperator Information, which specifically references the Presentence Investigation Report ("PSR"). If the defendant is potentially eligible for relief from a mandatory minimum sentence, by way of the "Safety Valve" provision of 18 U.S.C. § 3553(f) (United States Sentencing Guidelines ("U.S.S.G.)§ 5C1.2(a)(1)-(5)), counsel may also request, in the same motion, that narrative concerning the Defendant's qualification for the Safety Valve reduction be excluded from the PSR, and request that only a reference to U.S.S.G. § 2D1.1(b)(17) be made (in order to accurately calculate the sentencing guideline range). Defense counsel should file such motion

contemporaneously with the actions in subsection (a) above. In the event of a guilty verdict, defense counsel will have 14 days within which to file the Motion to Exclude Cooperator Information, and Safety Valve narrative, from the presentence report.

(c) Within 14 days after the commencement of one of the actions in subsection (a) above, counsel for the government and counsel for the defendant must submit in writing their respective versions of the facts pertaining to the instant offense to the probation officer of the court for inclusion in the Presentence Investigation Report. In lieu of such submission, a party may notify the probation officer that its version of the facts is adequately captured in another specific document(s) already available to the probation officer. Before or at the time of providing such submission or notification to the probation officer, a party must provide the submission or notification to the other party.

(d) The Presentence Investigation Report, including guideline computations, will be completed and disclosed to the parties as early as feasible. If a Motion to Exclude Cooperator~~ion~~ Information is granted, information regarding cooperation will be kept confidential and excluded from the presentence report. The presentence report will be deemed to have been disclosed when the document is electronically served upon counsel through the court's CM/ECF system. ~~or, if an attorney is not registered to receive electronic service, 3 days after a notice of the report~~'s availability is ~~mailed to the attorney.~~ The probation office will also mail a disclosure letter to the defendant advising that the presentence report has been made available to both parties. The sentence recommendation provided to the court by the probation office will not be disclosed except to the court.

(e) Within 14 days following disclosure of the presentence report, unless the court determines otherwise, all counsel must file in writing with the probation officer and serve on each other all objections or corrections they may have as to any material information, sentencing classifications, sentencing guideline calculations, and policy statements contained in or omitted from the Report.

(f) After receiving counsels' objections or corrections, if any, the probation officer will conduct any further investigation and make any necessary revisions to the Presentence Investigation Report. The officer may require counsel for both parties to meet with the officer in person or by telephone to discuss unresolved factual and legal issues. It is the obligation of an objecting party to seek administrative resolution of disputed factors or facts through consultation with opposing counsel and the probation officer prior to the sentencing hearing.

(g) The probation officer will submit the Presentence Investigation Report to the sentencing judge immediately after the receipt and processing of objections but no later than 7 days before the sentencing date. The probation officer will notify the court immediately if additional time is necessary to investigate and resolve disputed issues raised by the attorneys and the defendant during the review period. The Report will be accompanied by an addendum setting forth any objections or corrections any counsel may have asserted that have not been resolved, together with the officer's comments thereon. The probation officer will certify that the contents of the Report, including any revisions thereof, have been disclosed to the defendant and to counsel for the defendant and counsel for the government, and that the addendum fairly summarizes any remaining objections or corrections.

(h) Any party objecting to the Presentence Investigation Report, the guidelines, computations, or commentary will have a reasonable opportunity, usually at the sentencing hearing, but in any event in advance of imposition of the sentence, to present evidence or argument to the court regarding disputed factors or facts. The court may consider any reliable information presented by the probation officer, the defendant, or the government. The manner and form of such presentations are committed to the discretion of each sentencing judge on a case by case basis.

(i) The presentence report will be disclosed to the defendant's counsel and the government's counsel by the probation officer. Defense counsel will be responsible for making the necessary arrangements for review of the report by defendants within the schedules set out by the sentencing court. The unauthorized disclosure of the information contained in the presentence report, statements, and other attachments may be considered a contempt and punished accordingly. The presentence report will be filed under seal with the clerk of court and retained as part of the case file for whatever further judicial purposes may occur or be necessary.

Notes: July 1, 2017, amendment inserting (b) and technical amendment of (d) to clarify the means to request that cooperator information be excluded from a presentence investigation report. The amendment comes, in part, based on the actions of the Committee on Court Administration and Case Management of the Judicial Conference of the United States, which is examining means to control the use of court documents to identify, threaten, and harm cooperators.

~~August 7, 2015, amendment to (a) clarifies that the filing of a plea agreement can trigger the scheduling provisions of the rule. It also clarifies that if no plea agreement is filed, a petition to enter a plea of guilty must be filed.~~

~~January 1, 2011, amendment to allow electronic service of presentence report and reflect previously adopted practice of defense counsel providing report to defendant rather than probation officer.~~

~~December 1, 2009, stylistic amendment and technical amendment to (b) to achieve consistency in time counting format with the Federal Rules of Civil Procedure.~~

Q. Subparagraph (c) of Local Criminal Rule 49-1 – Filing of Documents shall be **amended** as follows:

(a) Electronic Filing. Electronic filing of documents is generally required pursuant to Fed. R. Crim. P. 49(b)(3)(A).

(b) Documents Exempt from Electronic Filing. Any document that is exempt from electronic filing must be filed with the clerk and served on other parties in the case as required by Fed. R. Crim. P. 49(a)(4) and Fed. R. Crim. P. 49(b) as they relate to the service of non-electronic documents. Original documents consisting of more than one page must be fastened by paperclip or binder clip and may not be stapled. Copies for service on other parties must be stapled in the top left corner. Only the following documents are exempt from the electronic filing requirements of Fed. R. Crim. P. 49(b)(3):

(1) any case initiating document resulting in the assignment of a criminal or magistrate case number and/or any charging instrument, initiating or superseding, and accompanying documents;

(2) documents requiring the oath or affirmation of a law enforcement officer in the presence of a judge or magistrate;

(3) documents filed in open court;

(4) documents filed by *pro se* defendants;

(5) exhibits in a format that does not readily permit electronic filing (such as videos and large maps and charts);

(6) documents that are illegible when scanned into .pdf format;

(7) documents filed in cases not maintained on the ECF system; and

(8) any other documents that the court or these rules specifically allow to be filed directly with the clerk.

(c) Documents Requiring Hand Signatures. Waivers, plea agreements and other documents that require a defendant's signature or the signature of a person other than an attorney of record must be signed by hand and scanned into .pdf format for electronic filing, pursuant to Local Rule 5-7(b). ~~All hand-signed documents that contain the signature of the defendant must be maintained in the custody of the filing attorney.~~

Note: Amended December 1, 2018, for consistency with amendments to Fed. R. Crim. P. 49, which become effective on December 1, 2018. Amended Fed. R. Crim. P. 49 addresses what papers must be served, service through the court's electronic-filing system and by other electronic means, and when certificates of service are required. The amended Rule largely parallels the amendments to the Civil Rules on each of these subjects.

R. Subparagraph (c) of Local Criminal Rule 49.1-2 – Filing Under Seal shall be **amended** as follows:

Local Criminal Rule 49.1-2 - Filing Under Seal

(a) Maintaining Cases Under Seal. There is a presumption upon the initial appearance of a defendant on a sealed charging instrument that the entire case, including a multi-defendant case in which the defendant is the first to appear, should be unsealed. To maintain a case under seal, no later than at the time of the initial appearance, a party must file a motion and brief in support establishing good cause why the court should maintain the case under seal following the procedures set forth in subsections (d) and (e). The clerk will maintain a seal on the case until the court rules on the motion. If the court denies the motion, the clerk will unseal the case 21 days after service of the Order, absent Fed. R. Crim. P. 59(a) objection, motion to reconsider, notice by a party of an intent to file an interlocutory appeal, or further court order.

(b) Filing Documents Under Seal - General Rule. Unless authorized in subsection (c), other rule, statute or court order, the clerk may not maintain under seal any document. Once a document is sealed, the clerk may not, without a court order, allow anyone to see it other than:

(1) the court and its staff;

(2) the clerk's staff; and

(3) the attorney(s) who has/have appeared or been appointed on appeal in the individual defendant's case to which the document pertains.

(c) No Separate Motion Necessary. The following documents may be filed under seal without motion or further order of the court, provided counsel has a good faith belief that sealing is required to ensure the safety, privacy or cooperation of a person or entity, or to otherwise protect a substantial public interest:

(1) charging instruments (e.g., complaint, information, indictment) and accompanying documents (prior to the initial appearance of the defendant as set forth above in subsection (a);

(2) warrant-type applications (e.g., arrest warrants, search warrants, pen registers, trap and trace devices, tracking orders, cell site orders, and wiretaps under 18 U.S.C. §§ 2516 and 2703);

(3) motions for tax return information pursuant to 26 U.S.C. § 6103;

(4) documents filed in grand jury proceedings;

(5) documents filed in juvenile proceedings;

(6) plea agreements that reference a defendant's cooperation and related documents, whether filed by the government or the defendant;

(7) motions for sentence variance filed pursuant to Fed. R. Crim. P. 35(b), 18 U.S.C. § 3553(e), or U.S.S.G. § 5K1.1, and supporting or related documents, including motions for temporary custody and sentencing memoranda;

(8) motions for competency evaluation and related documents, filed under the provisions of Fed. R. Crim. P. 12.2 and 18 U.S.C. § 4241.

With the exception of charging documents addressed in subsection (c)(1), such documents ~~shall~~will remain under seal subject to further order of the court.

(d) Separate Motion Necessary - Filing Documents Under Seal - Procedure.

(1) To file a document under seal, a party must file it electronically as required under section 18 of the *ECF Policies and Procedures Manual* unless excused from electronic filing under S.D. Ind. L.R. 5-2(a) and 5-3(e). In either case, the party must include a cover sheet as the first page for each document being filed under seal that must include:

(A) the case caption;

(B) the title of the document, or an appropriate name to identify it on the public docket if the title cannot be publicly disclosed; and

(C) the name, address, and telephone number of the person filing the document.

(2) Except as provided under subsection (c), a party filing a document under seal must contemporaneously:

(A) file a Motion to Maintain Document(s) Under Seal, and

(i) if the filing party designated the subject information confidential, *e.g.*, a trade secret, proprietary information, or a business practice or procedure, a Brief in Support that complies with the requirements of subsection (e); and/or

(ii) if the filing party did not designate the subject information confidential, an identification of the designating party(ies); and

(B) unless the motion is to be considered *ex parte,* in which case no service is required, serve an unredacted and complete version of the sealed document upon all counsel and *pro se* parties.

(3) The designating party(ies) identified according to subsection (2)(A)(ii) must, within 14 days of service of the Motion to Maintain Document(s) under Seal, file a Statement Authorizing Unsealing of Document (or specific portions thereof), or a Brief in Support that complies with the requirements of subsection (e). If the designating party fails to file such Statement or Brief, then the filing party must notify the court of that failure. The court may summarily rule on the (d)(2)(A) motion to seal if the designating party does not file the required Statement or Brief.

(e) Brief in Support. A Brief in Support must not exceed 10 pages in length and must include:

(1) identification of the case and/or each specific document or portion(s) thereof that the party contends should remain under seal;

(2) the reasons demonstrating good cause to maintain the case and/or document, or portion(s) thereof, under seal including:

(A) why less restrictive alternatives to sealing, such as redaction, will not afford adequate protection; and

(B) how the case and/or document satisfies applicable authority for it to be maintained under seal; and

(C) the time period for which the case and/or document should remain sealed; and

(3) a statement as to whether maintenance of the case and/or document under seal is opposed by any party or why such party's position is unknown; and

(4) a proposed order as an attachment.

(f) Opposition to Maintenance Under Seal. The filing of an Opposition to a Motion to Maintain Case or Document(s) Under Seal is governed by S.D. Ind. L.R. 7-1, but the time for response is triggered by the filing of the Brief in Support. Any Brief in Opposition must not exceed 10 pages in length.

(g) Denial of Motion to Maintain Under Seal. If the court denies the motion, the clerk will unseal the document(s) 21 days after service of the Order, absent Fed. R. Crim. P. 59(a)

objection, motion to reconsider, notice by a party of an intent to file an interlocutory appeal, or further court order.

~~**Local Rules Advisory Committee Comments**~~
~~**Re: 2015 New Rule**~~

~~New Local Criminal Rule 49.1-2 replaces Local Rule 5-11 for filing cases and/or documents under seal in criminal matters and includes a list of documents that may be filed under seal without a motion and a detailed procedure for obtaining permission from the court to maintain cases and filed documents under seal. Whenever practical, the parties should confer regarding redaction in lieu of filing sealed documents. In addition, the rule encourages the parties to follow Seventh Circuit guidance on the legal parameters for maintaining cases and documents under seal.~~

~~Note: Adopted effective January 1, 2015.~~

S. Reference to Local Criminal Rule 57-1 – Public Access to Criminal Case Information – Rule deleted effective December 1, 2007, shall be **removed** in its entirety.

~~**Local Criminal Rule 57-1 – Public Access to Criminal Case Information – Rule deleted effective December 1, 2007**~~

~~Note: The Local Rule was deleted effective December 1, 2007, as the enactment of Fed. R. Crim. P. 49.1, "Privacy Protection For Filings Made with the Court" - rendered Local Criminal Rule 57-1 duplicative and/or inconsistent.~~

T. Local Criminal Rule 58-1 – Authority of United States Magistrate Judges in Criminal Matters shall be **amended** as follows:

Local Criminal Rule 58-1 - Authority of United States Magistrate Judges in Criminal Matters

(a) Authority of Magistrate Judges. The authority of United States magistrate judges in criminal misdemeanor matters is governed by 18 U.S.C. § 3401 et seq., 28 U.S.C. § 636(a), and this Rule.

(b) Class A Misdemeanors.

i. **Special designation; Order of Reference.** The magistrate judges are hereby specially designated to try persons accused of, and sentence persons convicted of, Class A misdemeanor offenses. A magistrate judge may exercise this jurisdiction following an Order of Reference issued by the district judge.

ii. **Consent.** Both parties seeking an Order of Reference ~~shall~~ must file, jointly or severally, their respective consents to proceed before the magistrate judge. The district judge may issue the Order of Reference in the judge's discretion.

iii. **Procedure.** The magistrate judge must advise the defendant of his/her right to trial, judgment and sentencing by the district judge, conduct all other proceedings required by 18 U.S.C. § 3401(b), and obtain the defendant's informed consent on the record.

(c) Petty Offenses (Class B and C Misdemeanors and infractions). The magistrate judge is ~~authorized by statute and this Rule~~ hereby specially designated to conduct all proceedings relating to petty offenses without necessity of consent by the defendant or Order of Reference.

~~**Local Rules Advisory Committee Comment Re: 2016 Amendment**~~

~~**Renumbering Explanatory Note:** This is technical amendment. Local Rules are generally numbered consistently with the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, when practical. Fed. R. Crim. P. 12 applies to Pleadings and Motions. Consequently, this Rule is renumbered to become Local Criminal Rule 58-1, which achieves consistency with Fed. R. Crim. P. 58, Petty Offenses and Other Misdemeanors.~~

Comments concerning the proposed rule amendments are welcome. Comments must be submitted in writing or via email on or before **October 16, 2019,** and should be sent to:

Laura A. Briggs, Clerk of Court
United States District Court
Birch Bayh Federal Building and U.S. Courthouse
46 East Ohio Street, Room 105
Indianapolis, IN 46204
or via email: LocalRules@insd.uscourts.gov