PRACTICE AND PROCEDURE MANUAL
FOR JUDGES AND MAGISTRATE JUDGES
FOR THE MIDDLE DISTRICT OF TENNESSEE
(Magistrate Judge Joe B. Brown)

I. BRIEF BIOGRAPHY OF MAGISTRATE JUDGE JOE B. BROWN

Magistrate Judge Brown was appointed United States Magistrate Judge in August 1998. He graduated from Vanderbilt University in 1962 and from Vanderbilt University Law School in 1965. He was Legislation Editor of the Law Review and a member of the Order of the Coif. Upon graduation, he entered the United States Army and served in active duty for six years as a Legal Assistance Officer, trial and defense counsel, Chief of Military Justice at Fort Gordon, Georgia, and Military Judge at Fort Knox, Kentucky. He then joined the United States Attorney's Office in Nashville, where he served as an Assistant and First Assistant from 1971 until 1981 when he was appointed United States Attorney of the Middle District of Tennessee. The majority of his work was in criminal law. In 1991, Magistrate Judge Brown was appointed Special Assistant United States Trustee and was the National Coordinator for Bankruptcy Fraud for the United States Trustee Program, Department of Justice.

II. PRELIMINARY GENERAL MATTERS

This Practice and Procedure Manual was compiled by the Federal Court Committee of the Nashville Bar Association. The Committee expresses thanks to all of the Judges and Magistrate Judges, and to the Clerk of the Court, for all of the input and guidance they provided in gathering this information.

In preparing the Manual, efforts were taken to avoid repeating or characterizing rules otherwise contained in the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Local Rules of Court, the Local Rules Governing Duties of and Proceedings before Magistrate Judges, or the Administrative Practices and Procedures for Electronic Case Filing. The Manual does not attempt to be an exhaustive guide for the practice of law. It is intended to provide information about judicial practices and preferences in this District that are not necessarily addressed in any set of rules.

To the extent that there is any conflict between this Manual and these other applicable rules, practices and procedures, the other applicable rules, practices and procedures control.

A. Scheduling

Magistrate Judge Brown's courtroom deputy is at (615) 736-5097. His courtroom deputy handles items scheduled in the courtroom and trial settings. For telephone conferences, contact his secretary, at (615) 736-2119.

B. Correspondence with the Court

Correspondence with the Court is discouraged. Written communication with the Court should be in the form of pleadings, motions, notices, memoranda, and briefs, as provided for in the Federal Rules of Civil Procedure and the Local Rules. When correspondence with the Court is permitted, directed or invited by the Court, a copy of the correspondence shall be served on opposing counsel, and all such correspondence may be filed with the Clerk of Court and is a matter of

public record, unless otherwise directed by the Court as in the case of confidential settlement conference statements.

C. Telephone Conferences with the Court

Magistrate Judge Brown, upon request, generally will attempt to accommodate out-of-town counsel or other circumstances unique to the case by permitting joint telephone conferences with the Court. Magistrate Judge Brown will entertain telephone conferences regarding discovery disputes that arise during depositions.

Magistrate Judge Brown requires the use of joint statements of issues and telephone conferences with the Court to resolve discovery disputes and related matters.

D. Telephone Conference with Law Clerks

Magistrate Judge Brown allows telephone communications with his law clerk and staff to discuss administrative matters.

E. *Pro Se* Litigants

Generally, *pro se* litigants are expected to follow the Local Rules and these guidelines, as are all parties represented by counsel.

Magistrate Judge Brown will often use a Fed. R. Civ. P. 16 hearing either in court or by telephone to try to flesh out the complaint and issues, especially where the *pro se* complaint is difficult to comprehend. Typically, he will enter a *pro se* Scheduling Order [see Forms] after the answer or other responsive pleading has been filed.

F. Chamber Copies of Filings

Magistrate Judge Brown does not want chamber copies unless requested.

III. PRETRIAL MATTERS FOR CIVIL CASES

A. Case Management Conferences and Orders

Magistrate Judge Brown sets cases he has on consent for trial early in the case and allows rescheduling only in cases of real need. For cases he handles for the district judges he will either secure a trial date during the conference or recommend a trial date to the trial judge.

B. Agreed Orders, Continuances, and Extensions

For Magistrate Judge Brown, case management orders should set reasonable deadlines for each stage of discovery as appropriate. If an agreed order for extension of discovery or other deadlines is submitted, it should include a concomitant extension of all other affected deadlines. Reasonable requests will be granted, though the parties should keep in mind that Local Rule

11(d)(2)(f) requires that no dispositive motion deadline (*i.e.*, the last briefing on such motion) shall be later than **90 days** before the target trial date. Proposals to delay proceedings indefinitely will not be considered absent extraordinary circumstances.

Any motion to modify the case management order or any case management deadline shall be filed at least **seven days** before the earliest affected deadline. If the parties agree, the motion may be filed up to the earliest affected deadline. The motion must include a statement confirming that counsel for the moving party has discussed the requested modification or extension with opposing counsel and whether there is any objection to the motion. The motion (even if a joint motion) must also include: (i) all deadlines, even unaffected deadlines, so that it will not be necessary for the Court to review previous case management orders in consideration of the motion, and (ii) a statement that the requested extension will still conform to the requirements of Local Rule 16.01(d)(2)(f) that no dispositive motion, including response and replies, be filed later than **90 days** in advance of the target trial date.

C. Pretrial Motions

1. Referral to Magistrate Judge

The district judges, other than Judge Trauger, normally refer all civil matters to the magistrate judges for case management. Judge Trauger normally does her own case management, although she may refer individual motions to the magistrate judges for disposition.

Magistrate Judge Brown will attempt to resolve the motions as expeditiously as possible and may schedule a telephone conference to discuss the motion.

2. Dispositive Motions

The district judges, with the exception of cases decided on an administrative record and *pro se* cases, normally resolve dispositive motions without reference to a magistrate judge. District judges may refer specific dispositive motions to a magistrate judge for a report and recommendation.

3. Briefs

Absent unusual circumstances, memorandums in support of a motion and responses thereto should comply with the Local Rule limit of **25 pages**. Magistrate Judge Brown will restrict replies to **five pages**, absent unusual circumstances. Surreplies are strongly disfavored. Generally speaking, a concise, well-written brief will be more persuasive than a wordy pleading full of string cites. A short brief and reply on unusual aspects of a case are appreciated.

4. Oral Argument

Magistrate Judge Brown will grant oral argument when he feels it would assist in deciding a motion. He will give serious consideration to a request by counsel for oral argument.

D. Discovery

Magistrate Judge Brown, in cases not involving experts, finds **six months** generally sufficient for discovery. In cases involving experts, an additional **four months** may be allowed.

1. Interrogatories

Magistrate Judge Brown believes that if the needs of a case dictate more than **25** interrogatories, such issues should be raised at a case management conference or, if that is not practical, by motion. The use of boilerplate definitions, instructions, and overly broad requests and objections are strongly condemned. F.R.C.P. 34(b) should be followed.

2. Telephone Depositions

Magistrate Judge Brown encourages telephone depositions.

3. Discovery Disputes

The judges agree that every effort should be made by the attorneys to resolve discovery disputes before bringing them to the Court's attention. For those cases assigned to a magistrate judge, discovery disputes will be decided by the magistrate judge.

For Magistrate Judge Brown, the case management order should require that the parties schedule and conduct a telephone conference with Magistrate Judge Brown before filing motions concerning discovery disputes. In extreme cases of abuse in the taking of deposition, Magistrate Judge Brown will require the deposition to be video or audio taped and even taken in his courtroom. As a general rule, all the judges in the Middle District favor full discovery and, unless the matter involves privilege, liberal discovery will be permitted. However, counsel should be aware of the cost and burden of unnecessary discovery and should try to place reasonable limits on their request. Abuses are normally evident and do not reflect well on counsel. Better prepared counsel tend to have focused discovery and avoid unnecessary disputes. Requests for shortened deadlines or other relief will be considered on a case-by-case basis. Counsel should keep in mind that discovery must be **relevant and proportional** to the needs of the case Fed. R. Civ. P. 26 (b) (1).

Magistrate Judge Brown believes that every effort should be made by the attorneys to resolve discovery disputes before bringing them to the Court's attention. He is available to hear discovery disputes, after the parties have conferred in good faith as required by Local Rule 37.01, during case management conferences, specially set hearings, by motions without hearings or, if necessary and practical, by telephone conference calls.

4. Motions to Compel/Rule 37 Sanctions

For Magistrate Judge Brown, sanctions motions should be rare and filed only when fully justified by the facts. However, repeated failure to respond or to comply with orders to compel, or other orders of the Court, can and will result in sanctions. Where warranted, he will not

hesitate to impose sanctions. Counsel who abuse discovery and who ignore deadlines and other court orders will be sanctioned. The magistrate judges have both civil and criminal contempt authority under 28 U.S.C. § 636e, in civil cases where they are proceeding by consent, and in criminal cases within their jurisdiction. In other matters, the magistrate judges may submit a report and recommendation for contempt to the district judge. They also can refer matters to the Tennessee Board of Professional Responsibility for investigation. In all cases, the magistrate judges have the authority to impose sanctions for violation of rules that can include costs, striking of pleadings, or defenses.

E. Confidentiality Agreements, Protective Orders, and Motions to Seal

Magistrate Judge Brown considers them on a case-by-case basis. While mindful of public policy concerns, confidentiality agreements are usually accepted for good cause by Magistrate Judge Brown.

Any party requesting that documents or portions of documents be sealed must demonstrate compelling reasons to seal the documents and that the sealing is narrowly tailored to those reasons. The motion to seal, even if unopposed, must "analyze in detail, document by document, the propriety of secrecy, providing reasons and legal citations.'" *Beauchamp v. Federal Home Loan Mortgage Co.*, No. 15-6067, 2016 WL 3671629 at *4 (6th Cir. Jul. 11 2016) (quoting *Shane Grp., Inc. v. Blue Cross Blue Shield of Michigan*,825 F.3d 299, 305-06 (6th Cir. 2016)). Protective orders should not provide that documents produced in discovery and designated as "confidential" will automatically be sealed upon filing or use at trial. Any such language in a proposed protective order will be stricken and may result in denial of the motion to enter the protective order.

F. Expert Witnesses

Magistrate Judge Brown will use the procedure outlined in Local Rule 12(c)(6)(c), unless both parties request that they be allowed to proceed with a standard question and answer format.

G. Settlement Conferences

1. Who Presides

All judges handle settlement conferences for each other. Most settlement conferences are done by magistrate judges who are not assigned to the case as case manager, although parties may request the case manager to preside. The selection of a judge to preside over a settlement conference is viewed as an appropriate use of forum shopping.

2. Procedure

The general procedure for settlement conferences in non-jury cases is as follows: The settlement judge will issue an order setting forth his or her requirements for a judicial settlement conference. Normally, the parties will be required to provide the settlement judge with a

confidential evaluation of their case and their demands. These confidential statements should be submitted directly to the settlement judge's courtroom deputy and not filed with the Court. They do not become part of the case file.

This submission should include a description of the case, the amount of the offer, the party's evaluation of the case, the cost of litigation, and representation that these matters have been discussed with the client. Any information that is not to be communicated to the other side needs to be designated as such. All individual parties must be present with full settlement authority, and all corporate parties must be present with representatives having full settlement authority unless prior approval is otherwise obtained. The attorneys are requested to give a short opening statement in the courtroom with everyone present.

The settlement judge then meets with the parties separately, and will meet with the attorneys individually, out of the presence of their clients. If settlement is reached, it is preferred that a settlement agreement be executed before the parties leave the courthouse.

H. Pretrial Briefs

Magistrate Judge Brown, in a non-jury case, prefers to have pretrial briefs submitted prior to trial, although a short version may be submitted pretrial and a full version submitted after trial. Magistrate Judge Brown likes to rule as soon as possible after the trial is completed. In any trial brief, a clear statement of the facts is critical. A one-sided statement of the facts should be avoided at all cost.

I. Pretrial Orders

Unless ordered otherwise, an agreed proposed pretrial order should be jointly prepared by the parties and submitted to the Court no later than the time of the pretrial conference. The proposed order should contain a short summary of plaintiff's theory; a short summary of defendant's theory; the issues to be submitted to the judge or jury; any procedural issues; a statement that the pleadings are amended to conform to the pretrial order and that the order supplants the pleadings; and a statement that counsel have complied with the requirements regarding the exchange of witness lists, exhibit lists, expert witness statements, depositions which are expected to be offered into evidence, etc.

If the pretrial order is agreed upon and no disagreements remain as to requested stipulations or authenticity of exhibits, plaintiff's counsel shall state within the pretrial order that no pretrial conference is necessary and submit it to the Court prior to the pretrial conference date. The pretrial conference then may be stricken from the Court's calendar.

J. Pretrial Conference

Magistrate Judge Brown usually holds a final pretrial conference on all of his cases and uses a standard order, but, in simple cases in which the proposed pretrial order is clear, may forgo the final pretrial conference or conduct it by telephone.

K. Temporary Restraining Orders

The Clerk will notify the assigned judge when a TRO is being requested at the time the complaint is filed. The Court will want to know what efforts have been made to contact the other side. Hearings, if any, will be scheduled through the courtroom deputy of the district judge to whom the case is assigned. The assignment of the TRO application and the assignment of the case are separate matters. The judge who decides the TRO application may or may not be the judge who has been assigned to the case.

If a TRO matter is filed other than at the initiation of the case, counsel should advise the secretary of the presiding judge.

Requests for expedited discovery will be considered upon written motions if good cause is shown.

IV. PRETRIAL MATTERS FOR CRIMINAL CASES

A. Initial Appearances, Detention Hearings and Preliminary Hearings

When a person is arrested on federal charges, the person ordinarily must be taken before a magistrate judge without unnecessary delay. Prior to this initial appearance, a pretrial services officer will provide the client with a financial affidavit if the defendant is seeking appointment of counsel, and will also provide a form called "Important Notice to Defendant and Explanation of Rights and Proceedings." At the initial appearance, the magistrate judge will review these documents, the charges, and the statutory maximum penalties with the defendant. Fed. R. Crim. P. 5 sets forth the requirements for initial appearances.

In addition to the initial appearance, a magistrate judge will conduct the Arraignments, Detention Hearings, and Preliminary Hearings when the defendant has been arrested pursuant to a complaint. See Fed. R. Crim. P. 5.1 (Preliminary Hearings); Fed. R. Crim. P. 10 (Arraignments); 18 U.S.C. § 3142 (Bail Reform Act).

In felony cases where a defendant has been indicted, the defendant may submit a written "Waiver of Personal Appearance at Arraignment and Entry of Plea of Not Guilty," in lieu of an in-court arraignment.

In cases involving non-English speaking defendants, the Court will provide an interpreter to interpret during the court proceedings. If defense counsel requires an interpreter to converse with the client before the Initial Appearance, counsel should contact the interpreter directly to arrange the meeting. The name and phone number for the interpreter can be obtained from the Clerk's Office at (615) 736-5498.

B. Discovery and Pretrial Motions

In felony cases, the practice in the Middle District is for the district judges to hear all pretrial matters, such as admissibility of confessions, suppression of evidence, motions to dismiss, etc. If a particular matter is referred to a magistrate judge, it will be handled on an expedited basis. For petty offenses, which do not require consent, and for misdemeanors where consent to proceed before the magistrate judge has been granted, the magistrate judge will conduct all pretrial matters.

All judges will schedule suppression hearings when necessary in a particular case. Generally, the judges will try to schedule suppression hearings well in advance of trial.

C. Status Conferences and Pretrial Conferences

Magistrate Judge Brown has no applicable comments regarding this section.

D. Locating Incarcerated Clients

There are no federal detention facilities currently located in the Middle District of Tennessee. The United States Marshals Service contracts for space with a number of local detention facilities in Tennessee and Kentucky. If a defendant is detained pending trial, defense counsel may contact the United States Marshals Service Office at (615) 736-5417 to find out where their client is located. Defense counsel should then contact the facility directly concerning visitation and other rules of the particular facility where the client is located.

E. Service of Subpoenas for Criminal Proceedings

If defense counsel has been appointed by the Court, the United States Marshals Service will serve subpoenas on behalf of the defendant. Defense counsel must obtain an order from the district court judge that directs the United States Marshals Service to serve the subpoenas. This order should be obtained, and the list of subpoenas should be provided to the United States Marshal Service, well in advance of the criminal proceedings where the witnesses shall appear.

F. Requests for Continuances of Trials in Criminal Matters

Most judges require that a Waiver of Speedy Trial Rights, signed by the defendant, be filed along with a motion to continue a criminal trial.

Counsel should not assume that a trial will be continued automatically upon request of the parties. Further, each judge has different procedures and deadlines for filing motions to continue trials.

G. Guilty Pleas

The Court has standard plea petition forms that must be completed and submitted by the defendant in felony and misdemeanor cases. These form petitions are available on the Court's

website. Even in cases where the defendant has entered a plea agreement with the United States Attorney, the standard plea petition must be submitted as well.

V. TRIAL PROCEDURES

A. Scheduling

Jury trials in Nashville usually begin on Tuesdays at 9:00 a.m. and continue until concluded. The court day generally runs from 9:00 a.m. to 5:00–5:30 p.m. with a one-hour lunch break. However, counsel should be prepared to arrive early or stay late in order to discuss matters outside the presence of the jury or when the jury wishes to deliberate past normal working hours.

B. Out-of-Town Parties, Witnesses, or Attorneys

The judges will attempt to accommodate out-of-town parties, witnesses and attorneys to the extent possible, although local counsel is expected to be ready to try the case. In attempting to accommodate out-of-town parties, witnesses and attorneys, the judges take into consideration potential hardship to other cases and the efficient administration of justice.

C. Motions *in Limine*

All of the judges encourage motions *in limine*. They alert the judges to evidentiary issues that will arise at trial and, when appropriate, may help narrow issues for trial. If a motion *in limine* is not decided until trial, the non-moving party should be careful to not go into a matter that is the subject of a motion *in limine*, whether in opening statements or with a witness, until a ruling has been made. Excessive use of *in limine* motions is strongly discouraged.

Magistrate Judge Brown makes every effort to decide motions *in limine* far enough in advance of trial so the parties may plan the presentation of their case.

D. *Voir Dire* and Jury Selection

All of the judges permit reasonable *voir dire* by the attorneys after initial questions by the Court. Counsel will not be permitted to argue their case or get too personal with the jury. Beyond this, there is some variation among the judges regarding how they handle *voir dire* as discussed below.

For jury selection enough jurors will be seated, after challenges for cause, to take care of all strikes and each side will pass in their strikes at the same time.

E. Note-Taking and Questions by Jurors

Note-Taking. All of the judges allow jurors to take notes and to take their notes into the jury room during deliberation. All of the judges instruct the jury regarding the use of notes.

Questions. Magistrate Judge Brown may allow jurors to ask questions where the parties consent to that procedure. Jurors will be instructed that as triers of the facts, they are permitted to ask questions, but that they should assume the attorneys know more about their cases than anyone else and should not ask questions unless necessary to clear up an important point, after both sides have finished questioning a witness. Questions will be submitted to the Court, shown to both sides for any objection, and then put to the witness by either the Court or one of the parties selected by the Court. If the question is objectionable, the Court will tell the jury why it will not be asked. The Court will not tell the jurors which party objected to the question. If questions get out of hand the Court will cut them off.

F. Opening Statements

1. Length

Although the judges may consider a time limit on a case-by-case basis for good cause, there is no set time limit for opening statement by any of the judges. Also, the judges agree that opening statements should be direct and not contain arguments of counsel. Subject to the caveat that the judges all may make case-by-case determinations for good cause, some of the judges have provided additional guidelines regarding the expected length of opening statements.

2. Use of Exhibits

Counsel that wish to use exhibits or demonstrative evidence in opening statement should consult with opposing counsel in advance and attempt to work out any objections. Counsel should also request permission from the judge to use exhibits or demonstrative evidence in opening statements. As a general rule, exhibits to which no counsel has an objection will be allowed during opening statement, and contested exhibits will not be allowed without prior Court approval.

G. Courtroom Decorum and Witness Examination

Attorneys shall stand when speaking, all objections and comments thereon shall be addressed to the Court. There shall be no oral confrontation between opposing counsel, and neither counsel nor parties may leave the courtroom without prior approval of the judge.

There is some variation among the judges regarding where counsel should stand in the courtroom and regarding how documents are passed. Except as noted below, it is generally expected that counsel will remain behind, or within an arm's length, of the podium, ask permission to approach a witness, and that the judge's clerk or a courtroom officer will pass exhibits to the witness. Attorneys should introduce their witnesses with the background information referred to in Local Rule 12(c)(2) and avoid time-consuming questions on that

subject. Attorneys shall make their objections without speeches or coaching the witness. Attorneys should not repeat or attempt to recharacterize a witness's answers during an examination.

Magistrate Judge Brown has not used interim commentary and would have to have a strong reason to do so.

For case management conferences with magistrate judges, it is acceptable for counsel to remain seated.

H. Side Bar Conferences

Side bar conferences are allowed, but requests for them should be kept to a minimum and used only for matters that can be resolved quickly. One of the reasons to keep side bar conferences to a minimum is that, due to the size of some of the courtrooms, it is not always possible to prevent the jury from hearing such conversations.

I. Videotaped or Audiotaped Testimony

Videotaped or audiotaped testimony is allowed. Attorneys should edit the tape to remove irrelevant and objectionable material. Opposing counsel should be allowed to view the tape before it is presented. The use of videotaped testimony should be discussed at the pretrial conference so appropriate equipment can be made available at the trial.

J. Deposition Reading

Reading a deposition into the record is allowed. Depositions read at trial should be edited so that only testimony relating to the witness's background, the issues in the case and credibility is read. It is permissible to have co-counsel or a paralegal read the answers of the witness from the witness box when a deposition is to be read at trial.

If a transcript is lengthy and it is a nonjury trial, counsel may ask the Court if it would prefer to just have the transcript submitted rather than read into the record.

K. Exhibits

When introducing an exhibit, counsel should always show it to opposing counsel first and have an extra copy available for the Court. Copies of each party's exhibit list and witness list shall be provided to the Court, the courtroom deputy, court reporter and opposing counsel on the first day of trial.

Premarked: Magistrate Judge Brown wants exhibits to be premarked.

Multiple copies of exhibits: Magistrate Judge Brown requires a minimum of **four copies** of exhibits and neither discourages nor requires an exhibit book for the jurors. The original is for the Clerk, a copy for each counsel, a copy for the judge, and a copy for the jury.

Copies of exhibits for each juror: Magistrate Judge Brown will allow a copy of the exhibits to be given to each juror, provided counsel has supplied sufficient copies. Counsel may use a jury exhibit book.

Stipulation as to admissibility and authenticity: The parties should stipulate as to the admissibility and authenticity of as many exhibits as possible prior to trial.

L. Witness Lists

Witness lists should be provided to the Court, the courtroom deputy, the court reporter and opposing counsel at the beginning of the trial.

M. Courtroom Technology

Use of courtroom evidence presenter with camera and screen/visual aids: All of the courtrooms have wireless internet connectivity. All judges expect counsel that plan to use courtroom technology to learn how to use it prior to trial so they can accomplish what is intended without assistance from the courtroom staff. Any request for equipment not in a courtroom should be coordinated through the Clerk's office.

N. Motions for Judgment as a Matter of Law

If a party can anticipate this motion, it should give the Court advance notice and file a brief in support of the motion. Otherwise, it will be heard on oral motion and argument. In many cases a ruling will be delayed until after a jury verdict.

O. Proposed Jury Instructions and Verdict Forms

In addition to the requirements of Local Rule 12(f) for Magistrate Judge Brown, proposed jury instructions will be required before the trial starts. Supplementary instructions may be requested during trial, if necessary. A proposed verdict form should be submitted in complicated cases.

P. Proposed Findings of Fact and Conclusions of Law

For Magistrate Judge Brown, proposed findings of fact and conclusions of law may be submitted before or after trial, as the parties desire. If possible, Magistrate Judge Brown would like a copy of them on computer disk in Word Perfect or Word format. Magistrate Judge Brown will try to give a preliminary ruling from the bench, wherever possible, at the conclusion of the trial.

Q. Offers of Proof

Offers of proof are allowed. Most frequently, they will take place outside the presence of the jury, usually during a break, at lunch or at the end of the day.

R. Closing Argument

Counsel may not express personal opinions or beliefs (such as statements that begin with "I believe . . .") or make personal references to other lawyers. Counsel may argue any inferences from the proof that are logical and supported by the evidence. There is no set length for closing argument.

S. Jury Deliberation

1. Copy of Instructions

A copy of the jury instructions is sent to the jury room with the jurors when they retire to consider their verdict.

2. Access to Exhibits

Absent any objections, and subject to Item 3 below, jurors are given access to exhibits admitted at trial. Exhibits are sent to the jury room at the beginning of deliberation.

3. Access to Transcript of Testimony or Videotaped Testimony

Due to the concern that access tends to give undue emphasis to testimony which is transcribed or videotaped, this is discouraged and not frequently allowed.

Magistrate Judge Brown will consider making these available to the jury. There will be a caution not to give undue weight to the part considered, and in some cases the Court may require the other parts of testimony to go with the requested part.

4. Availability of Counsel

Counsel will not be required to remain at the courthouse during jury deliberations, but they must advise the courtroom deputy of a telephone number where they can be reached on short notice. Counsel must be available to appear in court without unreasonable delay while the jury is deliberating.

5. Taking the Verdict and Special Interrogatories

The judges will read the verdict form and special interrogatories.

6. Polling the Jury

Magistrate Judge Brown will poll the jury in every case.

7. Interviewing the Jury

Local Rule 12(h) controls requests for post-verdict interviewing of jurors.

T. Requests for Attorneys' Fees

All requests for attorney's fees should be made by filing an application in writing supported by detailed affidavits and time records.

VI. SENTENCING IN CRIMINAL CASES

LCrR 32.01 sets forth the timetable to be followed before a sentencing hearing. The Court will schedule a sentencing hearing at least **80 days** after a finding of guilt by a jury, or after the submission of a guilty plea by a defendant.

Shortly after the finding of guilt or submission of guilty plea, a probation officer will contact defense counsel to arrange a presentence interview with the defendant and counsel.

Both parties are expected to confer with the probation officer during the presentence investigation process with a view toward resolving any disputed facts or factors.

Fed. R. Crim. P. 32 requires the probation office to disclose the presentence report to the defendant at least **35 days** before sentencing. LCrR 32.01 then requires both parties, within **14 days** of receiving the presentence report, to provide written objections concerning the contents of the presentence report. The objections should be provided both to the probation office and opposing counsel.

Within **seven days** of receiving the parties' objections, the probation office must disclose any changes or unresolved factual disputes or objections that remain in the presentence report.

At least **seven days** prior to sentencing, the parties shall file with the Clerk, and with a copy to probation and opposing counsel, a pleading entitled "Position of the (Government or Defendant) With Respect to Sentencing Factors" containing only unresolved matters previously raised with all parties in writing.

With consent of the parties or when the interests of justice require the Court may on a case-by-case basis modify the requirements set forth in LCrR 32.01 in order to carry out prompt and fair sentencing.

VII. MEDIA COMMUNICATIONS

The Court speaks through its orders and memorandum opinions.

Magistrate Judge Brown, in rare cases, will discuss purely procedural matters with the media.