

May 19, 2017

NOTICE

**TO: THE PUBLIC AND MEMBERS OF THE PRACTICING BAR FOR THE
EASTERN AND WESTERN DISTRICTS OF KENTUCKY**

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 Courts for the Eastern and Western Districts of Kentucky hereby give public notice of the following:

The Joint Local Rules Commission for the Eastern and Western Districts of Kentucky has recommended, and the District Court has authorized for release for a period of public comment through August 31, 2017, the revision of certain Joint Local Rules of Civil Practice and Joint Local Rules of Criminal Practice. The proposed amendments are as follows:

- A. LR 5.5 – Service of Documents by Electronic Means** – will be amended as follows in order correct a previous clerical error:

LR 5.5 Service of Documents by Electronic Means

Documents shall be served through the court’s transmission facilities by electronic means to the extent and in the manner authorized by ~~further~~ General Order 05-03 of the Court. Transmission of the Notice of Electronic Filing (NEF), with a hyperlink to the electronically filed document, constitutes service of the filed document upon each party in the case who is registered as an electronic case filing user with the Clerk. Any other party or parties shall be served documents according to these Local Rules and the Federal Rules of Civil Procedure.

- B. LCrR 17.1 and 17.2 – Subpoena to Testify in a Criminal Case; Subpoena for Production of Books, Documents, or Objects in Advance of Trial or Hearing** – will be adopted as follows in order to provide rules for subpoenas in criminal matters:

17.1 Subpoena to Testify in a Criminal Case

(a) **Forms.** A party seeking to compel the appearance of a witness to testify at a criminal proceeding pursuant to Rule 17(a) or (b) of the Federal Rules of Criminal Procedure, or a party seeking to compel the appearance of a witness to testify and bring documents to a criminal proceeding pursuant to Rule 17(c), must use AO Form 89 “Subpoena to Testify at a Hearing or Trial in Criminal Case.”

(b) **Return Date of Subpoena.** All subpoenas issued in criminal cases shall be made returnable to the place, date, and time of trial or hearing, unless otherwise ordered by the Court.

(c) **Waiver of Personal Appearance.** If the subpoena names an official records custodian, the subpoena may advise that the recipient, instead of appearing personally, may elect to produce the items designated directly to the issuing attorney, with an appropriate certification, in advance of the date specified in the subpoena. If the subpoena includes that option, such advance production eliminates the requirement of a personal appearance by the custodian.

(d) **Discovery.** It shall be the duty of counsel for any party to disclose in discovery to opposing counsel any books, papers, documents, data, or other objects produced pursuant to a trial subpoena consistent with Rule 16 of the Federal Rules of Criminal Procedure and any reciprocal order of discovery entered by the Court.

17.2 Subpoenas for Production of Books, Papers, Documents, Data, or Objects in Advance of Trial or Hearing

(a) **Forms.** A party seeking to compel only the production of books, papers, documents, data, or other objects pursuant to Rule 17(c), in advance of the trial, hearing or proceeding at which the items are to be offered in evidence, must use AO Form 89B “Subpoena to Produce Documents or Objects in a Criminal Case” including all instructions.

(b) **Return Date of Subpoena.** No subpoena in a criminal case may compel or require the production of books, papers, documents, data, or other objects in advance of the trial, hearing or proceeding at which those items are to be offered in evidence, unless the Court has entered an order pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure.

(c) **Motions for Pre-Proceeding Document Production.** Motions for the issuance of a subpoena *duces tecum* to compel production before a trial or evidentiary proceeding under Rule 17(c) of the Federal Rules of Criminal Procedure must be made to the Court.

(1) A party moving for issuance of a subpoena *duces tecum* for production in advance of trial or hearing must support the request in the motion by specifying the facts supporting the issuance of the subpoena. Notice of filing shall be given to opposing counsel unless the Court, for good cause shown, authorizes the filing of an *ex parte* motion without notice to the opposing party.

(2) The Court will determine whether the material sought should be produced, the place, date, time, and method of production, and may place limits on the scope of the requested subpoena *duces tecum*.

(d) **Discovery.** It shall be the duty of counsel for any party to disclose in discovery to opposing counsel any books, papers, documents, data, or other objects produced pursuant to a trial subpoena consistent with Rule 16 of the Federal Rules of Criminal Procedure and any reciprocal order of discovery entered by the Court.

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Comments concerning the proposed rule amendments are welcome. Comments must be submitted in writing or via email on or before August 31, 2017 and should be sent to:

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