

UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN AND WESTERN DISTRICTS OF KENTUCKY

**JOINT GENERAL ORDER No. 17-02**

**IN RE: AMENDMENTS TO JOINT LOCAL RULES**

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Pursuant to LR 83.14 and LCrR 57.7 of the Joint Local Rules of the Eastern and Western Districts of Kentucky, and pursuant to the authority granted by Rule 83 of the Federal Rules of Civil Procedure and Rule 57 of the Federal Rules of Criminal Procedure, upon recommendation of the Joint Local Rules Commission, and in consideration of multiple comments received, the Judges of the Eastern and Western Districts hereby ORDER that the following amendments be made to the Joint Local Rules:

- A. LR 5.5 – Service of Documents by Electronic Means** – is 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 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** – are adopted as follows in order to provide rules for subpoenas in criminal matters:

**LCrR 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.

## **LCrR 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.

The amendments reflected in this Joint General Order shall be incorporated into the Courts' Joint Local Rules published on the Courts' respective websites. Copies of this Order shall be made available to the public on the Courts' respective websites and made available to the various publishing companies that publish the Joint Local Rules of the Eastern and Western Districts of Kentucky. The amendments noted in this Order shall take effect upon entry of this Order.

IT IS SO ORDERED:

s/Karen K. Caldwell  
Hon. Karen K. Caldwell  
Chief Judge, United States District  
Court, Eastern District of Kentucky

s/Joseph H. McKinley, Jr.  
Hon. Joseph H. McKinley, Jr.  
Chief Judge, United States District  
Court, Western District of Kentucky