

# Federal v. State Court Practice

Presented By:

**United States Magistrate Judge**  
**Michael John Aloï**

U.S. District Court for the Northern  
District of West Virginia  
Clarksburg and Elkins

*Former State Circuit Court Judge for Marion County*

**United States Magistrate Judge**  
**Omar J. Aboulhosn**

U.S. District Court for the Southern  
District of West Virginia  
Beckley and Bluefield

*Former State Circuit Court Judge for Mercer County*





**The Honorable  
Joanna I. Tabit  
Judge of the Circuit Court  
Of Kanawha County**

March 15, 1961

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September 29, 2023

# U.S. Federal District Court

Federal courts are courts of limited jurisdiction.



The subject matter of the court's jurisdiction extends to (*primarily*)

Federal crimes<sup>1</sup>

The court of original jurisdiction for most cases decided by the federal courts.

Civil disputes arising under federal law<sup>2</sup>

There are 94 US District Courts – at least one in each state

Civil disputes between citizens of different states where the claims exceed \$75,000<sup>3</sup>

<sup>1</sup> See 18 U.S. Code § 3231 (“The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.”)

<sup>2</sup> See 28 U.S.C. § 1331 (Federal Question Jurisdiction).

<sup>3</sup> See 28 U.S.C. § 1332 (Diversity Jurisdiction). See also 28 U.S.C. § 1367 (Supplemental Jurisdiction).

# Northern District of West Virginia

Attorneys must first be admitted to practice in the Northern District of West Virginia.<sup>1</sup>

The Local Rules for the Northern District of West Virginia can be found on the court's website.<sup>2</sup>

## Clarksburg

- U.S. District Judge Thomas S. Kleeh
- U.S. Magistrate Judge Michael J. Aloï

## Elkins

- U.S. District Judge Thomas S. Kleeh
- U.S. Magistrate Judge Michael J. Aloï

## Martinsburg

- U.S. District Judge Gina M. Groh (Chief Judge)
- U.S. Magistrate Judge Robert W. Trumble

## Wheeling

- U.S. District Judge John P. Bailey
- U.S. Magistrate Judge James P. Mazzone

## Bankruptcy Court<sup>3</sup>

- U.S. Bankruptcy Judge David L. Bissett

## Clerk of Court

- Cheryl Dean Riley

<sup>1</sup> For information about admission, please visit: <https://www.wvnd.uscourts.gov/attorney-info>.

<sup>2</sup> Please visit <https://www.wvnd.uscourts.gov/>, then select "Local Rules" in the upper left corner.

<sup>3</sup> For information regarding bankruptcy court, please visit <https://www.wvnb.uscourts.gov/>.



**UNITED STATES DISTRICT COURT  
FOR THE**



**NORTHERN DISTRICT OF WEST VIRGINIA**

**LOCAL RULES**

EFFECTIVE: MARCH, 2018

# Southern District of West Virginia

Attorneys must first be admitted to practice in the Southern District of West Virginia.<sup>1</sup>

The Local Rules for the Northern District of West Virginia can be found on the court's website.<sup>2</sup>

## Bluefield

- Senior U.S. District Judge David A. Faber
- U.S. Magistrate Judge Omar J. Aboulhosn

## Charleston

- U.S. District Judge Thomas E. Johnston (Chief Judge)
- U.S. District Judge Joseph R. Goodwin
- U.S. District Judge Irene C. Berger
- U.S. District Judge Frank W. Volk
- Senior U.S. District Judge John T. Copenhaver, Jr.
- U.S. Magistrate Judge Dwane L. Tinsley
- U.S. Magistrate Judge Omar J. Aboulhosn

## Huntington

- U.S. District Judge Robert C. Chambers
- U.S. Magistrate Judge Cheryl A. Eifert

## Beckley

- U.S. District Judge Frank W. Volk
- U.S. Magistrate Judge Omar J. Aboulhosn

## Bankruptcy Court<sup>3</sup>

- U.S. Bankruptcy Judge B. McKay Mignault

## Clerk of Court

- Roy L. Perry

<sup>1</sup> For information about admission, please visit: <https://www.wvsd.uscourts.gov/attorney-info>.

<sup>2</sup> Please visit <https://www.wvsd.uscourts.gov/>, then select "Local Rules" in the upper left corner.

<sup>3</sup> For information regarding bankruptcy court, please visit <https://www.wvsb.uscourts.gov/>.



UNITED STATES DISTRICT COURT  
FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA



LOCAL RULES OF PROCEDURE  
effective December 1, 2009  
amended February 1, 2011  
amended June 30, 2011  
amended November 18, 2013  
amended June 8, 2017

# Practice Note

## Federal **versus** State Difference



Please note that U.S. Magistrate Judges are not the federal equivalent of a state magistrate. U.S. Magistrate Judges are referred to as “Judge” or “Your Honor.”

State magistrates have jurisdiction of amounts in dispute of less than \$10,000. No such limit exists for a U.S. Magistrate Judges; jurisdiction is provided by 28 U.S.C. § 636.

Under West Virginia law, no education beyond a high school diploma is required to serve as a state magistrate. W. VA. CODE § 50-1-4. Whereas, a U.S. Magistrate Judge must generally be a member in good standing of the bar of the highest court of a State or territory of the United States for at least five years prior to appointment to serve the federal courts. 28 U.S.C. § 631. Please see the pamphlets provided by Judge Aloï for information regarding the duties of a U.S. Magistrate Judge.



# Practice Note

**ALL COURTS** – Federal and State



Judicial Assistants, Term Law Clerks, Career Law Clerks, Courtroom Clerks, and Court Reporters play an essential role in the management of a judge's chambers. These individuals act under the authority of the judge, and attorneys must conduct themselves in an appropriate and respectful manner when communicating with support staff in both state and federal court.

# U.S. Court of Appeals for the Fourth Circuit

Includes Maryland, West Virginia, Virginia, North Carolina, and South Carolina.<sup>1</sup>

Fifteen active circuit judges and two senior judges, including the following judges from West Virginia:

- **Fourth Circuit Court of Appeals Judge Robert B. King**
- **Fourth Circuit Court of Appeals Judge Stephanie D. Thacker**

<sup>1</sup> See <https://www.ca4.uscourts.gov/home>.



# CRIMINAL CASES IN FEDERAL COURT

- **OPPORTUNITIES FOR LAWYERS**

- CJA PANEL ATTORNEYS
- FEDERAL PUBLIC DEFENDERS
- ASSISTANT UNITED STATES ATTORNEYS
- UNITED STATES PROBATION OFFICERS

- **SIMILARITIES TO STATE COURT**

- **PREDOMINATE CASES:**
  - DRUGS
  - PORNOGRAPHY
  - INTERNET SEX CRIMES
  - GUNS
- **SPEEDY TRIAL**
- **LOCAL RULES**

- Biggest Differences between State and Federal Court Practice
  - State Court has larger case load
    - Therefore, less able to move things through system faster
  - Federal Court is much more rigid on time frames
    - Don't assume just because both sides agree to continue, that the case will be continued.
      - My experience as a Judge in State Court was that I would be able to move cases
  - Local rules are strictly followed.
  - Not all motions will get hearings. Many motions will be decided on the pleadings.
  - Time frames to respond to motions are contained in the local rules and are strictly followed by the Court. You can't assume that your pleading will be considered if you file it late.
  - Page limits are also strictly followed unless you get leave to exceed the page limits.
  - Sanctions For Discovery disputes!!!

# Letters to a Young Lawyer by Alan Dershowitz... Chapter 7

7

## ■ Don't Limit Your Options by Making a Lot of Money

There is a disturbing phenomenon that I have observed over the years among friends and former students. All their lives they aspire toward a particular dream job, say a judgeship or a professorship or a job as a top prosecutor. In the meantime, they go to work in a law firm, achieving partnership and a high salary.

Now, finally, they are offered their dream job. But they feel that they now have to decline it because they “can’t afford” the salary cut. Ten years earlier, when they were making much less money, they could have afforded their dream job and they would have taken it immediately if it had been offered. Had they accepted the job *then*, they would now have *less* money in the bank. Now they have *more* money in the bank, but they can’t afford to fulfill their life’s dream, because they have become accustomed to a high standard of living.

If wealth is measured, at least in part, by one’s ability to afford certain desirable objects, then the irony is that my friends who turned down judgeships or other dream jobs were richer when they had less money and poorer when they had more.

It is crazy to let wealth stand in the way of your dreams. Of course, economists talk about “opportunity costs” and in that sense, it “costs” more to accept a \$150,000-a-year judgeship when you’re earning \$500,000 than it was when you were earning \$175,000. But even back then — when you would have taken the judgeship — you would have been foregoing the opportunity to earn the \$500,000 you are now making. So then from a purely economic perspective you are better off today accepting the judgeship *after* having earned a lot more money in the intervening years. The difference is largely psychological or lifestyle. Now that you have gotten used to the \$500,000-a-year lifestyle, it’s a lot harder to go back to \$150,000 (plus the income from what you’ve saved). Your dream job may look different now, because you’re older and more mature. That’s OK. But if it looks different only because of the money, there’s something wrong. And are you sure that you can really tell the difference?

Unless you prefer your incrementally higher lifestyle over your dream job, don’t let your wealth make you unable to afford what you could have afforded when you were poorer. That’s just nuts!

letters to a young lawyer

This is part of the much larger question of why lawyers — at least elite big-firm lawyers — make so much money. I’m not begrudging them their phenomenally high incomes — except in comparison with other professionals (like schoolteachers, nurses, psychologists, social workers) who do so much good and are paid so little. We live in a market-driven economy where supply and demand determine compensation. My focus here is not on the fairness of the system, but rather on its impact on career choices. Money distorts priorities. Don’t get me wrong. Money matters, and there’s nothing wrong with wanting to live a comfortable, even financially independent life. But too many rich people I know end up living financially *dependent* lives. Their choices are too often determined by the need to make more and more money. I notice that in our vacation spot on Martha’s Vineyard, the wealthiest people tend to have the shortest vacations, because every day away from *their* work costs them more money than it costs the rest of us. When money enslaves rather than liberates, something is wrong.

## Rule 37(a)(5) *Payment of Expenses; Protective Orders.*

- (A) **If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing)**. If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court **must**, after giving an opportunity to be heard, **require** the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both **to pay** the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court **must not** order this payment if:
  - (i) the movant filed the motion **before attempting in good faith** to obtain the disclosure or discovery without court action;
  - (ii) the opposing party's nondisclosure, response, or objection was **substantially justified**; or
  - (iii) other circumstances **make an award of expenses unjust**.

## Rule 37(a)(5) *Payment of Expenses; Protective Orders.*

- (B) **If the Motion Is Denied.** If the motion is denied, the court may issue any protective order authorized under Rule 26(c) and **must**, after giving an opportunity to be heard, **require** the movant, the attorney filing the motion, or both **to pay** the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the court **must not** order this payment if the motion was **substantially justified** or other circumstances **make an award of expenses unjust.**

## Rule 37(a)(5) *Payment of Expenses; Protective Orders.*

- (C) **If the Motion Is Granted in Part and Denied in Part.** If the motion is granted in part and denied in part, the court **may** issue any protective order authorized under Rule 26(c) and **may**, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.



# Hints for successful Discovery Conferences

- 1. REMEMBER WHO YOUR AUDIENCE WILL BE!!!
  - When sending emails/letters to opposing counsel, ALWAYS assume that the communication will be read by the Judge!!
  - Being uncivil to opposing counsel will not play well with the Judge.
  - Making ABSOLUTE assumptions about how the Court will rule on a matter will not play well with the Judge.
- 2. You must have a meaningful GOOD FAITH attempt at resolution of the dispute BEFORE coming to Court.
  - Judges will hold both sides responsible for failing to do this.
  - Document, Document, DOCUMENT all the steps you took to try and have a GOOD FAITH attempt with opposing Counsel.

# Hints for Successful Discovery Conferences

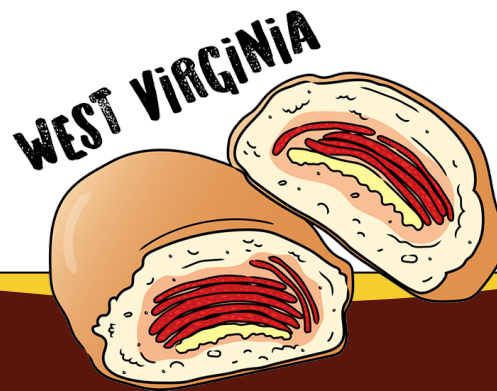
- 3. Remember to review the local rules!!!
- 4. Timelines are important and will **NOT** be modified without an extraordinary showing of need.
  - **NEVER** assume that the Court will extend or modify the schedule just because the parties agree!!!
  - Best Practice is to **ASSUME** that the schedule **WILL NOT** be modified!!
- 5. You must know how the District has ruled on similar matters before. Citing out-of-District cases when there are ON-POINT local District Cases is **INSANE**!!!

# Top Secret Hints about MJ Aboulhosn

- Nearly **ALWAYS** requires an informal (off the record) conference with the parties' counsel regarding discovery motions (Motions to Compel; Motions for Sanctions; Motions for Protective Orders). **GENERALLY HELD WITHIN DAYS OF MOTION BEING FILED.**
  - **Purpose:** Save the Parties Time and Money.
    - Reduces the filing of formal responses and on the record hearings;
    - Most of the Time it Eliminates the requirement of Rule 37 Sanctions being awarded
- Nearly **ALWAYS** gives great hints about how he would rule on the matters if formal (on the record) hearing had to be conducted.
  - If you listen carefully, he telegraphs his balls and strike calls during the conference!!!

# Top Secret Hints about MJ Aloi

- Expects you to always be respectful to all persons in the courtroom.
- Will **ALWAYS** ask the parties if you conferred **first** on civil discovery matters; if no, **beware**, Judge Aloi will stop the hearing and make you confer on the spot. Everything is a mediation.
  - **Purpose**: Conferring prior to the filing of discovery motions and throughout the process saves time.
- **Always** happy to conduct proceedings by Zoom to save time and travel for parties and their counsel.
- If proceedings are protracted enough and timed correctly, pepperoni rolls may be offered.
  - **Bonus points**: if you can name what's "wrong" with this pepperoni roll. *Artist credit: Liz Pavlovic.*



**QUESTIONS OR  
COMMENTS?**

Thank you!