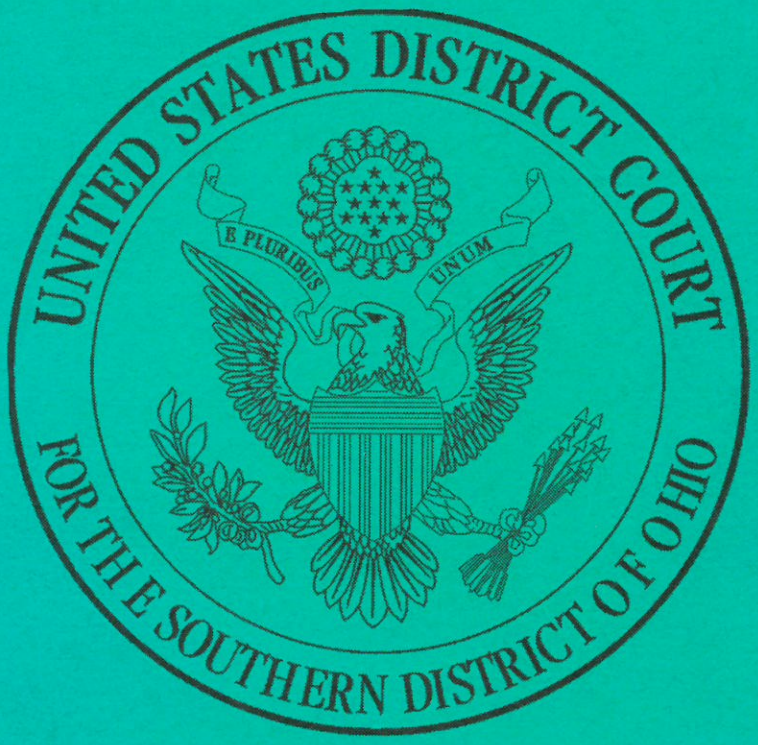
LOCAL CIVIL & CRIMINAL RULES



United States District Court
Southern District of Ohio

December 1, 2000

LOCAL COURT RULES
United States District Court
Southern District of Ohio

INTRODUCTORY STATEMENT ON CIVILITY

LOCAL CIVIL RULES

LOCAL CRIMINAL RULES

Introductory Statement on Civility

These Local Rules are designed to make litigation in this District Court efficient, manageable, and predictable. Yet, because every aspect of the practice of law cannot be regulated by rules, individual lawyers determine, in large measure, how they will discharge professional obligations to the Court, to opposing counsel, and to their clients.

The Model Federal Rules of Disciplinary Enforcement, the Code of Professional Responsibility, and other rules, such as Rule 11, Fed. R. Civ. P., govern lawyers' conduct through the imposition of sanctions, but necessarily set only minimum standards of behavior. Lawyers committed to professionalism must do more than merely avoid sanctions. They must acknowledge in their behavior that common courtesy, respect, and personal integrity play an essential role in the administration of justice.

Rather than devising additional Local Rules which attempt to mandate civility and professionalism, the Judges of this District have concluded that this Statement on Civility is the most appropriate way to emphasize for our bar and for litigants who come before this Court the ideals which ought to guide behavior for all those appearing in the Southern District of Ohio. Every lawyer, litigant, and Judge is entitled to expect, and should be accorded, the courtesy and respect described in this Statement.

1. **Common courtesy**. In everyday life, most people accord each other common courtesies. Ordinarily these include: politeness in conversation, respect for other's time and schedule, and an attitude of cooperation and truthfulness. Involvement in the legal system does not diminish the desirability of such conduct. A litigant opposing your client, a lawyer who represents that litigant, or a judge who decides an issue, has not thereby forfeited the right to be treated with common courtesy.

2. **Respect for the profession.** One of a lawyer's foremost obligations is to serve his or her client's interests zealously within the bounds of the law. Yet, this is not a blanket excuse for disrespectful or obstructionist behavior. Such conduct reinforces the public's negative perception of the legal profession. Lawyers who practice the art of making life difficult - who shade the truth, are deliberately uncooperative in the discovery or trial preparation process, take extreme or marginally defensible legal positions, or deliberately make litigation more expensive or time consuming — bring disrepute on the legal profession and harm the reputation of this Court's bar in the community. Lawyers engaging in such conduct, and litigants who encourage or tolerate it, undermine immeasurably their own standing with the Court.

3. **Respect for the legal system.** Those who have chosen to practice law as a profession have sworn to uphold a legal system which offers all people a fair and just way to resolve disputes. Inappropriate behavior - treating litigation as a "game" in which the party with the most overtly aggressive lawyer might prevail regardless of the merits of the case, or casting aspersions on the fairness or integrity of decisions by judges or juries when there is no legitimate basis to do so — brings disrespect upon the legal system as a whole. We acknowledge that Judges and court staff who are noticeably impatient, impolite, or disrespectful to lawyers and litigants can cause the same undesirable effect. Lawyers and the Judges and court personnel of this District Court must all conduct themselves in ways which do not impugn the integrity and dignity of this Court.

4. **Alternative dispute resolution and legal reform.** Although dissatisfaction with litigation and the legal system has existed for centuries, this Court and its bar can lessen such dissatisfaction by being sensitive to the time and expense factors inherent in each separate matter in litigation, and by being receptive to cost effective case management including those methods of alternative dispute resolution offered through the Court itself. More broadly, lawyers should continuously reexamine ways in which the system can be improved, and should advocate, in a respectful and appropriate way, legal reforms to allow the system in general and this Court in particular to work more fairly and efficiently. Our Judges remain open to suggestions about procedures in individual cases, and to improvements District-wide implemented through these Local Rules.

The overwhelming majority of those who practice before this Court honor the values of professionalism and civility. This Statement is not so much a plea for a change in behavior as it is an effort to describe the shared values within this District and to encourage all litigants and practitioners - resident, nonresident, new, and old - to comport themselves in keeping with the highest and best traditions of the Southern District of Ohio.

The Judges of the United States District Court
for the Southern District of Ohio

LOCAL CIVIL RULES

I. SCOPE OF RULES

1.1 GENERAL PROVISIONS

(a) **Citation.** These rules may be cited as "S.D. Ohio Civ. R. ____."

(b) **Effective Date.** The effective date of these rules as amended is December 1, 2000.

(c) **Scope of Rules.** These rules govern practice and procedure in cases before the United States District Court for the Southern District of Ohio, unless otherwise ordered in a given case by the presiding judicial officer. These Rules apply to United States courthouses, and to the courtrooms, chambers, and ancillary portions of state courthouses or other buildings while in use by this Court under agreement with local authorities.

(d) **Relationship to Prior Rules; Actions Pending on Effective Date.** These Rules supersede all previous rules promulgated by this Court. They govern proceedings in this Court after they take effect except to the extent that in the opinion of the Court the application to already pending cases would not be feasible or would work injustice, in which event the former rules shall govern.

(1) United States Code, Title 1, sections 1 to 5 shall, as far as applicable, govern the construction of these rules.

(2) These rules shall be construed to achieve the orderly administration of the business of this Court; to govern the practice of attorneys and parties before this Court; and to secure the just, speedy and inexpensive determination of every action. References to statutes, regulations or rules shall be interpreted to include revisions and amendments made subsequent to the adoption of these Rules.

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS

3.1 CIVIL COVER SHEET.

Every complaint or other document initiating a civil action shall be accompanied by a completed civil cover sheet, on a form available from the clerk. This requirement is solely for administrative purposes, and matters appearing only on the civil cover sheet have no legal effect in the action. If the complaint or other document is filed without a completed civil cover sheet, the clerk shall file the document and shall give notice of the omission to the party filing the document that the completed civil cover sheet must be promptly filed.

3.2 CIVIL ACTION FOR FALSE CLAIMS.

Any civil action brought pursuant to 31 U.S.C. § 3730(b) (the False Claims Act) shall be filed *in camera* by presenting such complaint, in the presence of a representative of the office of the United States Attorney for the Southern District of Ohio, in an appropriate envelope to the judge of this district randomly assigned at the location where the complaint is to be filed in accordance with S.D. Ohio Civ. R. 82.1. The judge assigned shall, or, in his or her absence any other District Judge of this Court may, receive and record the time and date of receipt on the face of the Complaint, and shall hold the complaint under seal until notified that either (a) sixty (60) days or any Court-approved extension of time have elapsed or (b) that the Government has made an election either to intervene in the action or not, at which time the judge shall unseal the complaint and deliver it to the Clerk for docketing.

3.3 PREPAYMENT OF FEES

Deposits. Upon the commencement in this Court of any action, whether by original process, removal or otherwise, except when not required by law, deposits for costs shall be paid to the Clerk and the Marshal as follows: To the Clerk, the fees provided by 28 U.S.C. Section 1914; and to the Marshal, a deposit, in a sum deemed sufficient to cover fees for any service to be performed by the Marshal.

3.4 CORPORATE DISCLOSURE STATEMENT.

(a) Parties required to make Disclosure.

(1) With the exception of the United States Government (or its agencies,) all corporate parties and *amici curiae* to a civil or bankruptcy case or agency review proceeding, and all cor-

porate defendants in criminal proceedings shall file a corporate affiliations/financial interest disclosure statement pursuant to this Local Rule.

(2) Except as required by subdivision (b)(2) of this Local Rule, States and municipalities (including their departments, agencies, or other political subdivisions) and individual litigants need not make disclosures pursuant to this Local Rule.

(3) A negative report is required except that no filing is required of individuals who are criminal defendants.

(b) Financial Interest to be Disclosed.

(1) Whenever a corporation which is a party or which appears as *amicus curiae* is a subsidiary or affiliate of any publicly owned corporation not named in the case, counsel for the corporation that is a party or *amicus* shall advise the Clerk in the manner provided by subdivision (c) of this Local Rule of the identity of the parent corporation or affiliate and the relationship between it and the corporation that is a party or *amicus*. A corporation shall be considered an affiliate of a publicly owned corporation for purposes of this Local Rule if it controls, is controlled by, or is under common control with a publicly owned corporation.

(2) Whenever, by reason of insurance, a franchise agreement, or an indemnity agreement, a publicly owned corporation or its affiliate, not a party to the case nor an *amicus*, has a substantial financial interest in the outcome of the litigation, counsel for the party or *amicus* whose interest is aligned with that of the publicly owned corporation or its affiliate shall advise the Clerk in the manner provided by subdivision (c) of this Local Rule of the identity of such publicly owned corporation or affiliate, and the nature of its or its affiliate's substantial financial interest in the outcome of the litigation.

(c) Form and Time of Disclosure.

(1) The disclosure statement shall be made on a Form provided by the Clerk, or prepared substantially in accordance with the comparable Form 6CA-1 required by Sixth Circuit Rule 26.1, and available on the Website of the Court of Appeals.

(2) Although counsel and parties have an obligation to the Court to investigate and be accurate in making disclosures required by this Local Rule, these requirements are solely for administrative purposes and matters disclosed have no legal effect in the action. The disclosure statement shall be prepared and filed by all parties initiating a lawsuit at the time the complaint, removal petition, or other document initiating a civil action is filed. If, because of a deadline for removal, statute of limitations issue, need for emergency injunctive relief, or other good cause the filing must occur before all the facts about corporate relationships are fully available, the disclosure statement shall be filed and expressly noted as potentially incomplete. Counsel shall promptly thereafter investigate and supplement an incomplete disclosure statement.

(3) Corporate defendants in criminal cases, and parties required to file disclosure statements in civil cases or appeals shall file them, whenever possible, with the first motion, answer, or other document filed with this Court. If such a filing occurs before all facts have been fully investigated, the disclosure statement shall be expressly noted as potentially incomplete. Counsel shall promptly thereafter investigate and supplement an incomplete disclosure statement.

(4) In addition to addressing the corporate affiliations/financial interests required by the form, counsel are directed to consider at the earliest opportunity whether there may be any other reason for a judicial officer of this Court to disqualify himself or herself, pursuant to 28 U.S.C. §455, and to advise the Court in writing as early as possible in the case about any such concerns.

(5) Copies of all disclosure statements shall be filed, and contemporaneously served upon all parties or their counsel, in accordance with Rule 5, Fed. R. Civ. P. and Local Civil Rule 5.2.

4.1 PREPARATION OF PROCESS.

Any attorney or party requesting the issuance of any process or who initiates any proceeding in which the issuance of process is required, shall prepare all required forms, including the following:

1. Summons or waiver of service forms;
2. Warrants of seizure and monition;
3. Subpoenas to witnesses;
4. Certificates of judgment;
5. Writs of execution;
6. Orders of sale;
7. All process in garnishment or other aids in execution;
8. Civil cover sheet; and

present the required forms, together with the requisite written request for issuance (or praecipe) at the office of the Clerk for signature and sealing. The Clerk shall, upon request and subject to current availability, provide reasonable supplies of all blank official forms of process to any attorney or party.

4.2 SERVICE OF PROCESS.

Rule 4, Fed. R. Civ. P. provides for alternative methods of serving the summons and complaint in a civil action. Methods established by the Rule itself are preferred and should be attempted before service is attempted pursuant to the Ohio mail methods authorized by Rule 4(e)(1). Rule 4(e)(1) authorizes service pursuant to the law of the state in which the district court is located for a summons or other like process upon the defendant in an action brought in the courts of general jurisdiction of Ohio. Rules 4.1 and 4.3(B) of the Ohio Rules of Civil Procedure provide for service by the Clerk mailing the summons and complaint by certified mail. An attorney who attempts to effect service in this Court pursuant to the law of Ohio must comply with the following procedure:

(a) Plaintiff's attorney shall address the envelope to the person to be served, and shall place a copy of the summons and complaint or other document to be served in the envelope. Plaintiff's attorney shall also affix to the back of the envelope the domestic return receipt card, PS Form 3811, Dec. 1994, (the "green card") showing the name of sender as "Clerk, United States District Court, Southern District of Ohio" at the appropriate address, with the certified mail number affixed to the front of the envelope. The instructions to the delivering postal employee shall require the employee to show to whom delivered, date of delivery, and address where delivered. Plaintiff's attorney shall affix adequate postage to the envelope and deliver it to the Clerk who shall cause it to be mailed.

(b) The Clerk shall enter the fact of mailing on the appearance docket and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, the Clerk should forthwith notify, by mail, the attorney of record or if there is no attorney of record, the party at whose instance process was issued. The Clerk shall enter the fact of notification on the appearance docket and shall file the return receipt or returned envelope in the records of the action. (Rule 4.1, Ohio Rules of Civil Procedure.)

(c) If service of process is refused or was unclaimed, the Clerk shall forthwith notify, by mail, the attorney of record or if there is no attorney of record, the party at whose instance process was issued. If the attorney, or serving party, after notification by the Clerk, files with the Clerk a written request for ordinary mail service, accompanied by an envelope containing the summons and complaint or other document to be served, with adequate postage affixed to the envelope, the Clerk shall send the envelope to the defendant at the address set forth in the caption of the complaint, or at the address set forth in written instructions to the Clerk. The attorney or party at whose instance the mailing is sent shall also prepare for the Clerk's use a certificate of mailing which shall be signed by the Clerk or a Deputy Clerk and filed at the time of mailing. The attorney or party at whose instance the mailing is sent shall also endorse the answer day (23 days after the date of mailing shown on the certificate of mailing) on the summons sent by ordinary mail.

If the ordinary mail is returned undelivered, the Clerk shall forthwith notify the attorney, or serving party, by mail.

(d) The attorney of record or the serving party shall be responsible for determining if service has been made under the provisions of Rule 4 of the Ohio Rules of Civil Procedure and this Rule.

This Rule is confined to the domestic service of the summons and complaint in a civil action in this Court by certified mail or ordinary mail, pursuant to the law of Ohio, and is not intended to affect the procedure for other methods of service permitted by the Fed. R. Civ. P. or the Ohio Rules of Civil Procedure.

4.3 SERVICE IN *IN FORMA PAUPERIS* OR GOVERNMENT-INITIATED CASES.

In those cases in which the United States Marshal is directed by the

Court, or is otherwise authorized pursuant to Rule 4(c)(2)(B), Fed. R. Civ. P., to serve summons and complaint, the Marshal may in the first instance, and as an alternative to making service under Rule 4(c)(2)(C)(ii), Fed. R. Civ. P., perform the functions of the "Clerk of Court" for the purposes of making service as described in Rule 4 of the Ohio Rules of Civil Procedure.

5.1 GENERAL FORMAT OF PAPERS PRESENTED FOR FILING.

(a) **Form.** All pleadings, motions, briefs, and other papers presented to the Clerk for filing shall be on 8 1/2" x 11" wide paper of good quality, flat and unfolded, without backing or binding, and shall be plainly typewritten, printed, or prepared by a clearly legible duplication process, and double-spaced, except for quoted material. Each page shall be numbered consecutively, and shall have appropriate side margins and a top margin of not less than one inch.

This rule does not apply to: (1) exhibits submitted for filing; provided that all exhibits shall be neatly bound, and whenever possible reduced or folded to 8 1/2" x 11" size; and (2) forms approved by this Court or approved for use in federal courts generally.

Exhibits not attached to pleadings and other papers shall be identified by a cover page using the caption of the case, the case number, and other identification as provided in subsection (b).

(b) **Identification.** Except for the original complaint, all pleadings, other papers, and exhibits shall be identified by a title which shall identify the name and party designation of the person filing it and the nature of the pleading or paper; for example: "Defendant John Smith's Answer to the Amended Complaint," "Plaintiff Richard Roe's Answer to Defendant Sam Brown's Motion to Dismiss," "Affidavit of Joan Doe in Support of Motion for Summary Judgment," or "Exhibits in Support of Plaintiff John Smith's Motion for Summary Judgment." The names of the District Judge and Magistrate Judge to whom the case has been assigned shall be placed below the case number in the caption.

5.2 CERTIFICATE OF SERVICE; DELIVERY BY FACSIMILE

(a) **Certificate of Service**. Proof of service of all pleadings and other papers required or permitted to be served (except in the case of an *ex parte* proceeding) shall be made in compliance with Rule 5(d), Fed. R. Civ. P. Such proof of service shall state the date and

manner of service, including the name of the person(s) served and the address(es) to which service was directed, and shall be fully stated on or attached to the copy of the pleading or other document served upon a party or upon the trial attorney of each party.

(b) **Delivery by Facsimile.** Facsimile transmission of motions, responses to motions, injunction hearing notices, and similar pre-trial pleadings between the parties or the parties' counsel shall constitute "delivery" under Rule 5(b), Fed. R. Civ. P.

5.3 STATUTORY THREE-JUDGE ACTIONS

(a) In any action or proceeding which a party believes is required to be heard by a three-judge district court, the words "Three-Judge District Court Requested" or the equivalent shall be included immediately following the title of the first pleading in which the cause of action requiring a three-judge court is pleaded. Unless the basis for the request is apparent from the pleading, it shall be set forth in the pleading or in a brief statement attached thereto. The words "Three-Judge District Court Requested" or the equivalent on a pleading is a sufficient request under 28 U.S.C. § 2284.

(b) In any action or proceeding in which a three-judge court is requested, parties shall file an original and three copies of every pleading, motion, notice, or other document with the clerk until it is determined either that a three-judge court will not be convened or that the three-judge court has been convened and dissolved, and the case remanded to a single judge. The parties may be permitted to file fewer copies by order of the Court.

5.4 FILING DISCOVERY DOCUMENTS

(a) If, in connection with any proceeding or motion before the Court, it becomes necessary to use any discovery document (*i.e.* disclosures under Rule 26(a)(1), interrogatories, requests for documents or to permit entry upon land, or requests for admissions) such discovery document may be filed.

(b) Deposition transcripts may be filed if a party reasonably anticipates that they will be needed as evidence relating to a forthcoming motion or other proceeding. Unless otherwise ordered, deposition transcripts may be filed in condensed or "minuscript"® format, using two-sided copying. All deposition transcripts filed with the Clerk must include any signature page and statement of

changes in form or substance made by the witness pursuant to Rule 30(e), and the certificate described in Rule 30(f), Fed. R. Civ. P.,

(c) Discovery documents which comply with the Federal Rules of Civil Procedure and with these Rules may be used in any action in the manner permitted by rule, statute, or an order made in the action even if such documents have not been filed with the Clerk.

III. PLEADINGS, MOTIONS AND ORDERS

6.1 EXTENSIONS OF TIME TO MOVE OR PLEAD.

(a) Each party to an action may obtain stipulated extensions of time not to exceed a total of twenty (20) days in which to file a motion or any responsive pleading. This may be done by filing with the Clerk a written stipulation between the parties for such extensions, provided, however, that the aggregate time extended to any party for all extensions by stipulation during the action shall not exceed a total of twenty (20) days. A stipulation filed with the Clerk shall affirmatively state the new date for response agreed to by the parties and that no prior stipulated extensions to that party, together with the stipulated extension then filed, exceed a total of twenty (20) days. Neither the stipulation nor any Order to that effect need be submitted to the Court for such extensions. If no such stipulation is obtained, or if additional extensions beyond the stipulated periods are requested, the party desiring an extension must obtain the approval of the Court.

(b) This Rule applies only to extensions of time to plead to a complaint, amended complaint, counterclaim, or comparable pleading. It does not permit stipulated extensions of time to respond to Motions, Court Orders, or other deadlines. All extensions other than those permitted by this Rule must be upon motion.

7.1 PROCEDURE FOR DECIDING MOTIONS

(a) **No Motion Day.** Pursuant to Rule 78, Fed. R. Civ. P., the determination of all motions, including those filed pursuant to Rule 56, Fed. R. Civ. P., shall be based upon memoranda filed pursuant to S.D. Ohio Civ. R. 7.2 and without oral hearings, unless specifically ordered by the Court.

(b) **Procedure to Obtain Hearing or Oral Argument.**

(1) **Evidentiary Hearings.** Upon the filing of any motion which requires an evidentiary hearing under the Fed. R. Civ. P. or any provision of law, the movant shall obtain a date for such hearing. Movant's counsel shall, to the extent practicable, consult with opposing counsel to select agreeable dates. Movant's counsel shall promptly notify all other parties in writing, preferably transmitted to counsel by facsimile, of the date and time of the evidentiary hearing.

(2) **Oral Argument.** In all other cases, if oral argument is deemed to be essential to the fair resolution of the case because of its public importance or the complexity of the factual or legal issues presented, counsel may apply to the Court for argument. This may be done by including the phrase "ORAL ARGUMENT REQUESTED" (or its equivalent) on the caption of the motion or on a responsive memorandum. The ground(s) for any such request shall be succinctly explained. If the Court determines argument or a conference would be helpful, the Court will notify all parties.

(3) **Urgent Motions.** The Court may, for good cause shown, provide for an early hearing on any motion with or without the filing of memoranda by the parties.

7.2 MOTIONS AND OTHER PAPERS

(a) **Legal Memoranda.**

(1) **Supporting Memorandum and Certificate of Service.** All Motions and applications tendered for filing shall be accompanied by a memorandum in support thereof which shall be a brief statement of the grounds, with citation of authorities relied upon. Except in the case of a motion or application permitted by law to be submitted *ex parte*, a certificate of service in accordance with S.D. Ohio Civ. R. 5.2 shall accompany all such papers.

(2) **Opposing and Reply Memoranda.** Any memorandum in opposition shall be served and filed within twenty-one (21) days from the date of service set forth in the certificate of service attached to the Motion. Failure to file a memorandum in opposition may be cause for the Court to grant any Motion as filed, other than one which would result directly in entry of final judgment or an award of attorney fees. A reply memorandum may be served and filed within eleven (11) days after the date of service of the memorandum in opposition. Pursuant to Rule 6(e), Fed. R. Civ. P., three (3) days shall be added to these periods when memoranda are served by mail. No additional memoranda beyond those enumerated will be permitted, except upon leave of court for good cause shown.

(3) **Limitation Upon Length of Memoranda.** Memoranda in support of or in opposition to any Motion or application to the Court should not exceed twenty (20) pages. In all cases in which memoranda exceed twenty (20) pages, counsel must include a combined table of contents and a succinct, clear and accurate summary, not to exceed five (5) pages, indicating the main sections of the memorandum, the principal arguments and citations to primary authority made in each section, as well as the pages on which each section and any sub-sections may be found.

(b) **Citation of Legal Authorities.**

(1) **Statutes and Regulations.** All pleadings, briefs and memoranda containing references to statutes or regulations shall specifically cite the applicable statutes or regulations. United States Statutes should be cited by the United States Code Title and Section number, *e.g.*, 1 U.S.C. Section 1.

(2) **Preferential Authorities.** In citing authorities, the Court prefers that counsel rely upon cases decided by the Supreme Court of the United States, the United States Court of Appeals for the Sixth Circuit (or, in appropriate cases, the Federal Circuit), the Supreme Court of Ohio, and this Court.

(3) **Supreme Court Citations.** Citation to United States Supreme Court decisions should be to the official U.S. Reports if published. Supreme Court Reporter and Lawyer's Edition shall be used where the official U.S. Reports are not yet published. For more recent decisions, United States Law Week, Lexis, or Westlaw citations are acceptable.

(4) **Unreported Opinions.** If unreported or unofficially published opinions are cited, copies of the opinions shall be attached to the memorandum and shall be furnished to opposing counsel.

(c) **Failure to Comply**. Failure to comply with this Rule may result in the imposition of sanctions.

(d) **Correspondence with the Court.** Letters to the Court are generally inappropriate and disfavored, unless (1) requested by the Court in a specific matter, or (2) advising the Court of the settlement of a pending matter. All other written communications shall

be by way of formal motion or memorandum submitted in compliance with these Rules. All letters which are sent to the Court shall be contemporaneously served upon opposing counsel, unless otherwise ordered by the Court.

(e) **Evidence Supporting Motions — Deadlines.** When proof of facts not already of record is necessary to support or oppose a motion, all evidence then available shall be discussed in, and submitted no later than, the primary memorandum of the party relying upon such evidence. Evidence used to support a reply memorandum shall be limited to that needed to rebut the positions argued in memoranda in opposition. If evidence is not available to meet this schedule, or circumstances exist as addressed by Rule 56(f), Fed. R. Civ. P., counsel shall consult one another and attempt to stipulate to an agreed extension of the schedule established by this Rule; failing agreement, counsel shall promptly bring the matter to the attention of the Court in order to avoid piecemeal submission of evidence and unnecessary memoranda. Assignment of any Motion for oral argument or a conference with the Court shall not extend these deadlines for the submission of evidence.

(f) **Attachments to Memoranda.** Evidence ordinarily shall be presented, in support of or in opposition to any Motion, using affidavits, declarations pursuant to 28 U.S.C. § 1746, deposition excerpts, admissions, verified interrogatory answers, and other documentary exhibits. Unless already of record, such evidence shall be attached to the memorandum or included in an appendix thereto, and shall be submitted within the time limit set forth above.

Evidence submitted, including discovery documents, shall be limited to that necessary for decision and shall include only essential portions of transcripts or exhibits referenced in the memorandum.

When a substantial number of pages of deposition transcripts or exhibits must be referenced for the full and fair presentation of a matter, counsel shall simply reference in their memoranda the specific pages at which key testimony is found, and assure that a copy of the entire transcript or exhibit is timely filed with the Clerk. Counsel shall assure that all transcripts relied upon include all corrections made by the witness pursuant to Rule 30(e), Fed. R. Civ. P.

7.3 CONSENT TO MOTIONS

(a) **Motions for Extension of Time**
Prior to filing any motion for an extension of time, counsel shall consult with all parties (except prisoners appearing *pro se*) whose interests might be affected by the granting of such relief and solicit their consent to the extension. The motion shall affirmatively state that such consultation has occurred or was attempted in good faith, and shall state whether the motion is unopposed. If the extension is not opposed, the movant shall ordinarily submit an agreed form of order to the Court in the form prescribed by S.D. Ohio Civ. R. 7.4

(b) **Other Motions**
A party filing any other type of motion to which other parties might reasonably be expected to give their consent (such as a motion to amend pleadings, for leave to file a document *instanter*, or for voluntary dismissal of a complaint or counterclaim) shall comply with the procedure set forth in S.D. Ohio Civ. R. 7.3(a) before filing such motion.

7.4 ORDERS.

On all papers requiring the signature of the court, such signature shall be identified as follows:

_____
UNITED STATES DISTRICT JUDGE

or

_____
UNITED STATES MAGISTRATE JUDGE

10.1 PROCEDURE FOR NOTIFICATION OF ANY CLAIM OF UNCONSTITUTIONALITY.

(a) In any action, suit, or proceeding in which the United States or agency, officer, or employee thereof is not a party and in which the constitutionality of an Act of Congress is drawn in question, or in any action, suit, or proceeding in which a State or any agency, officer, or employee thereof is not a party, and in which the constitutionality of any statute of that State is drawn in question, the party raising the constitutional issue shall notify the Court of the existence of the question by checking the appropriate box on the Civil Cover Sheet and by stating on the pleading that alleges the unconstitutionality, immediately following the title of that pleading, "Claim of Unconstitutionality" or the equivalent.

(b) Any notice provided under this Rule, or lack of notice, will not serve as a substitute for, or as a waiver of, any pleading requirement set forth in the Fed. R. Civ. P. or applicable statutes.

16.1 PRETRIAL PROCEDURES.

Each judge of the district shall be responsible for determining the procedure and content of preliminary pretrial conferences, scheduling orders and pretrial conferences under Rule 16, Fed. R. Civ. P. Any general or standing order of any judge or for any location of court which governs pretrial procedures and the content of pretrial conferences shall be transmitted by the Clerk to all parties to an action, together with any notice of a pretrial conference. In addition, copies of all such general or standing orders shall be made available, upon request and without charge, by the Clerk at each location of court to any trial attorney or *pro se* litigant to any proceeding pending before the Court.

16.2 PRETRIAL SCHEDULING ORDERS.

Scheduling orders will be issued in conjunction with preliminary pretrial procedures established by the judges of this Court, which normally will be implemented within ninety (90) days after the filing of an action. In any action assigned to a Magistrate Judge for that purpose, the Magistrate Judge is empowered to enter scheduling orders under Rule 16(b), Fed. R. Civ. P., and to modify scheduling orders upon a showing of good cause. Unless otherwise ordered, the following categories of cases shall be exempt, as inappropriate, from the requirement that a scheduling order be issued under Rule 16(b), Fed. R. Civ. P.:

Social Security disability matters;
Habeas corpus petitions;
Forfeitures;
Foreclosures in which the United States is the plaintiff;
General collection cases in which the United States is a plaintiff.

16.3 ALTERNATIVE DISPUTE RESOLUTION.

(a) **Evaluation of Cases for ADR.**

(1) Upon request by any party or in its discretion, and at such times during the progress of the case as appear appropriate, the Court may assign any civil case which is not exempted hereunder for one or more mediation or settlement week conferences. With the consent of all parties, the Court will also consider assigning any case for any other type of dispute resolution process which is an alternative to traditional litigation, including a summary jury trial.

(2) Litigants shall consider the use of one or more alternative dispute resolution processes at the conference held pursuant to Rule 26(f), Fed.R.Civ.P. They shall also consult about phasing initial discovery to most economically and efficiently focus potential settlement discussions.

(3) The Court will consult with counsel at conferences held pursuant to Rule 16, Fed. R. Civ.P., about the application of ADR processes to the case. The Court may at any stage of any case convene a separate conference to be attended by the Trial Attorney and each party or their authorized representative to determine if the issues of the case, the needs and relationships of the parties, or other factors make further efforts at ADR appropriate for the potential resolution of the dispute.

(b) **Exclusion of Categories of Cases.**

Unless otherwise ordered in a specific case, the categories of cases exempted from initial disclosure by Civ. R. 26(a)(1)(E) (ii), (iii), (iv), (vii), and (viii), Fed.R.Civ.P., are also exempt from assignment to mediation or settlement week conferences administered by this Court. Actions for review on an administrative record, and actions by the United States to recover benefit payments or collect on student loans guaranteed by the United States may be assigned to such ADR proceedings as the ADR Coordinator at that location of the Court deems prudent.

(c) **Confidentiality.**

(1) To promote candor, (and in addition to the protection afforded by Fed. Evid. Rule 408,) pursuant to 28 U.S.C. §652(d) all communications made during ADR processes conducted under the authority of this Court, including statements, testimony and argument by litigants, counsel, and neutral participants (including mediators and judicial officers), are confidential except as provided hereinafter. Unless confidentiality is waived by all participants or addressed by a judicial officer in accordance with this Local Rule, such communications are not subject to discovery, and are not admissible in evidence in any civil case or criminal misdemeanor proceeding before this or any other Court or administrative agency. However, facts otherwise admissible or subject to discovery do not become inadmissible or protected from discovery solely by reason of disclosure in an ADR proceeding in this Court.

(2) Except as provided in subsections (3) and (4) hereinafter, parties, counsel, and neutrals shall not disclose, and may prevent any other person from disclosing, communications made in connection with selecting an ADR process, initiating the process, selecting or retaining a mediator or other neutral, and setting forth positions or comments about a case or possible resolution of it. Neutrals are, however, permitted to report to the Court following an ADR proceeding information intended solely to aid in further management of the case, including: (A) whether a case is settled, or may settle in the near future without further Court involvement; (B) if the case has not been settled, suggestions about case management, (such as the desirability of further pretrial discovery followed by the scheduling of additional ADR pro-

ceedings, or followed by court rulings on one or more issues or motions); (C) such other information as all parties consent may be communicated.

(3) Parties, counsel, and neutral participants may waive confidentiality only if all such persons expressly agree in writing. In that event, the provisions of this Local Rule shall not preclude the use of ADR-related communications in the case or in other proceedings.

(4) Confidentiality conferred by this Local Rule may be overcome if:

(A)(i) the neutral participant deems it necessary to advise the judicial officers assigned to the case that a party or counsel failed to appear or participate in good faith, and

(ii) the judicial officer who would otherwise enter judgment in such case determines that further information is needed from the neutral or the participants in connection with possible sanctions for misconduct; or,

(B) the judicial officer assigned to the case who would otherwise enter judgment, (or, in the event of his or her unavailability the Chief Judge of this Court,) finds after a hearing *in camera* that the party seeking discovery or the proponent of evidence has shown that such evidence is not otherwise available, that there is a compelling need for the evidence that substantially outweighs the importance of the policy favoring confidentiality, and:

(i) the evidence will be used to establish or disprove a claim of criminal or professional misconduct or malpractice made against a mediator or other neutral participant, a party, or counsel concerning conduct occurring during the ADR proceeding; or

(ii) the evidence will be used in a proceeding in which fraud, duress, or incapacity is in issue regarding the validity or enforceability of an agreement evidenced by a record which was reached as a result of the ADR proceeding, but only if the evidence of the agreement is provided by persons other than the mediator or other neutral participant; or

(iii) the communications evidence a significant threat to public health or safety.

(d) **Selection of Mediators and Other Neutrals**

(1) Each location of the Court shall maintain and regularly update a roster of appropriately experienced attorneys willing to serve as volunteer neutrals for the Court's ADR programs. A United States Magistrate Judge or Court employee at each location of the Court shall be designated by the Chief Judge as the "ADR Coordinator" to implement, administer, oversee, and evaluate the Court's ADR programs at that location, and to be primarily responsible for recruiting, screening, and training attorneys to serve as neutrals for the Court, pursuant to 28 U.S.C. §651(d).

(2) ADR Coordinators may coordinate scheduling, training of neutrals, and other features of this Court's ADR program with comparable state court ADR programs or bar association programs.

(3) Volunteer mediators for Settlement Week or similar programs administered by this Court shall be appointed by the ADR Coordinator from the lists maintained at the location of the Court where the case is pending. Counsel are encouraged to consult about the selection of a mediator, and to propose the appointment of someone having familiarity with the subject matter of a particular case when that is deemed likely to improve the ADR process.

(4) Before accepting appointment in any ADR proceeding conducted under the authority of this Court, the neutral shall make inquiry reasonable under the circumstances to determine whether there are facts that a reasonable person would consider likely to affect his or her impartiality, including personal or financial interest in the outcome of the proceeding, or existing or past relationships with a party, counsel, or a significant, foreseeable witness to the dispute. The neutral shall consider the factors set forth in 28 U.S.C. §455. The neutral shall decline to participate in circumstances likely to be considered to affect impartiality, and if in doubt shall disclose facts known or learned to all counsel and unrepresented parties as soon as is practical.

(5) In unusually complex cases, or other situations in which service as a neutral is anticipated to impose a significant time demand, parties are permitted (but not required) to agree among themselves and with the assigned neutral (other than a Magistrate Judge) to reasonably compensate such neutral. If the parties have clearly memorialized any such arrangements in writing, the Court may enter such Orders as are just to enforce such a written agreement.

(e) **Remedies and Procedures Not Specified in this Rule.**

(1) This Court, or any Division or location of this Court, may by General Order provide supplemental procedures for ADR not inconsistent with this Rule and applicable law.

(2) Any judicial officer presiding in a civil case may, in that case, enter such Orders as are lawful, just and appropriate to fairly administer an ADR program suitably tailored to it.

(3) Mediators, and other neutrals used in ADR proceedings conducted by this Court shall control proceedings before them.

(4) Any breach or threatened breach of the confidentiality provisions of this Local Rule, and any refusal to attend and participate in good faith by a party or their counsel shall be reported to the presiding judicial officers who may, after notice, impose sanctions or make such other Orders as are just.

IV. PARTIES

23.1 DESIGNATION OF "CLASS ACTION" IN THE CAPTION.

A complaint or other pleading asserting a class action shall prominently state as part of its title the designation "Class Action."

23.2 CLASS ACTION ALLEGATIONS.

A complaint or other pleading asserting a class action shall contain sufficient allegations to identify the class and the claim as a class action, including, but not necessarily limited to:

(a) The approximate size and definition of the alleged class;

(b) The basis upon which the party or parties maintaining the class action or other parties claimed to be representing the class are alleged to be adequate representatives of the class;

(c) The alleged questions of law and fact claimed to be common to the class;

(d) The grounds upon which it is alleged that the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(e) Allegations intended to support findings required by the respective subsections of Rule 23(b)(1), (2), or (3), Fed. R. Civ. P.

23.3 MOTION FOR DETERMINATION AS CLASS ACTION.

Unless the Court otherwise orders, the party asserting a class action shall, within one hundred twenty (120) days after the filing of a pleading asserting the existence of a class, move for a determination under Rule 23(c)(1), Fed. R. Civ. P., as to whether the action is maintainable as a class action and, if so, the membership of the class. If no such motion is filed, the Court may enter an order that the action is not maintainable as a class action. Nothing in this rule shall preclude a motion by any party at any time to strike the class action allegations or to dismiss the complaint.

V. DEPOSITIONS AND DISCOVERY

26.1 FORM OF DISCOVERY DOCUMENTS.

The party serving interrogatories, pursuant to Rule 33, Fed. R. Civ. P., requests for production of documents or things, pursuant to Rule 34, Fed. R. Civ. P., or requests for admission pursuant to Rule 36, Fed. R. Civ. P., shall provide sufficient space, of not less than one inch, after each such interrogatory or request for the answer, response, or objection thereto. Parties answering, responding, or objecting thereto shall either set forth their answer, response, or objection in the space provided, or shall quote each such interrogatory or request in full immediately preceding the statement of any answer, response, or objection thereto. The parties shall also number each interrogatory, request, answer, response, or objection sequentially, regardless of the number of sets of interrogatories or requests, throughout the entire course of the action.

30.1 DEPOSITIONS.

(a) **Fees and Costs.** The fees of officers taking and certifying depositions shall be paid by the party on whose behalf such depositions are taken. Upon the filing and allowance of a verified bill of costs as provided in 28 U.S.C. Section 1920 *et seq.*, such costs may be taxed in favor of the prevailing party and shall then become part of the judgment in the action.

(b) **Opening of Depositions.** Unless otherwise ordered by the Court, when a deposition has been filed in any action, it shall be docketed by the Clerk and opened by the Clerk or by the Court.

(c) **Withdrawal of Depositions.** Depositions on file shall not be withdrawn during the pendency of the action without leave of the Court. After final termination of the action, at the instance of counsel for the party on whose behalf the depositions were filed, they shall be withdrawn or otherwise disposed of as provided in S.D. Ohio Civ. R. 79.2.

(d) **Depositions Outside of the Southern District of Ohio.** Except in the case of non-party witnesses not subject to the subpoena power of this Court, any motion under Rule 30(d), Fed. R. Civ. P., and any proceeding under Rule 30(b), Fed. R. Civ. P., initiated or arising during the process of taking depositions outside of the Southern District of Ohio will be initiated or filed in this District

and disposed of by the Judicial Officer responsible for discovery. This Rule applies to proceedings initiated by a party to the action involved and does not apply to such proceedings initiated by a deponent (not a party or officer or employee of a party or member of a partnership party). While it is recognized that Rule 30, Fed. R. Civ. P., extends the option to apply to the district court in the district where the deposition is being taken and that option may not be denied by this Rule, application in such other districts generally tends to unduly increase the business of such other district and tends to result in delaying the dispatch of its calendar by this Court. Proceedings initiated in other districts in violation of this rule may be subject to 28 U.S.C. Section 1927, or other applicable sanction.

36.1 REQUESTS FOR ADMISSION.

Unless there has been agreement of the responding party or leave of court has first been obtained, no party shall serve more than forty (40) requests for admission (including all subparts) upon any other party.

37.1 CONSULTATION AMONG COUNSEL; INFORMAL DISCOVERY DISPUTE CONFERENCE.

Objections, motions, applications, and requests relating to discovery shall not be filed in this Court, under any provision in Rules 26 and 37, Fed. R. Civ. P., unless counsel have first exhausted among themselves all extrajudicial means for resolving the differences. After extrajudicial means for the resolution of differences about discovery have been exhausted, then in lieu of immediately filing a motion under Rules 26 and 37, Fed. R. Civ. P., and S.D. Ohio Civ. R. 37.2, any party may first seek an informal telephone conference with the judicial officer assigned to supervise discovery in the case.

37.2 DISCOVERY MOTIONS.

To the extent that extrajudicial means of resolution of differences have not disposed of the matter, parties seeking discovery or a protective order may then proceed with the filing of a motion for a protective order or a motion to compel discovery pursuant to Rule 26(c) or Rule 37(a), Fed. R. Civ. P. Such motion shall be accompanied by a supporting memorandum and by an affidavit of counsel setting forth the extrajudicial means which have been attempted to resolve differences. Only those specific portions of the discovery documents reasonably necessary to a resolution of the motion shall be included as an attachment to it. Opposition to any motion filed pursuant to this Rule shall be filed

within the time specified by the Federal Rules of Civil Procedure, or, if no time is specified, within the time specified by S.D. Ohio Civ. R. 7.2. The time for filing a reply memorandum is likewise governed by S.D. Ohio Civ. R. 7.2. In all other respects, a motion to compel discovery or for a protective order shall be treated as any other motion under these rules.

38.1 NOTATION OF "JURY DEMAND" IN THE PLEADING.

If a party demands a jury trial by endorsing it on a pleading, as permitted by Rule 38(b), Fed. R. Civ. P., a notation shall be placed on the front page of the pleading, immediately following the title of the pleading, stating "Demand for Jury Trial" or an equivalent statement. This notation will serve as a sufficient demand under Rule 38(b).

VI. TRIALS

39.1 JUROR NOTE TAKING.

The Court in its discretion may allow jurors to take notes of the testimony and to take such notes into the jury room during deliberations. When jurors are told that they may take notes, the Court may instruct them that notes are for their personal use only, and they are not required to take them; that no one but the juror taking the notes will review the notes; that the notes will be destroyed at the end of the case; and that they should leave the notes face down on their seats during breaks and at the end of each day. When the jury is discharged, all jurors' notes shall be collected by a court employee and destroyed.

40.1 CALENDAR OF COURT PROCEEDINGS.

(a) Unless otherwise ordered, actions will be tried at the locations of court where they are filed. The Jury Plan of the District provides that a District Judge may try a case in the Eastern Division in Steubenville or any other location in the counties of Belmont, Guernsey, Jefferson, Harrison, Monroe, Morgan, Noble or Washington, with prospective jurors to be drawn from the aforementioned eight (8) counties.

(b) Each judge of the District shall be responsible for preparation of any court calendars, naturalization schedules or assignments of matters for hearings, conferences, pretrials, trials or other disposition of court business pertaining to actions filed at the respective locations at which each judge customarily holds court. Such calendars, schedules and assignments shall be prepared at the direction of the respective judges, and notices thereof shall be sent to all interested parties.

41.1 ASSIGNMENT OF PREVIOUSLY DISMISSED ACTION

If an action is filed or removed to this Court and subsequently discontinued, dismissed without prejudice, or remanded to a state court, and is then subsequently refiled or removed, it shall be assigned or transferred to the same District Judge and Magistrate Judge who received the initial case assignment. Counsel, or an unrepresented party, shall be responsible for bringing to the attention of the Court by notation on the civil cover sheet or otherwise any relationship between a new case and an earlier one. The Chief Judge has authority, pursuant to 28 U.S.C. §137, to approve such exceptions to this assignment policy as are in the interests of justice.

43.1 EXAMINATION OF WITNESSES.

At the trial or hearing of an issue of fact, only one attorney for each party shall examine or cross-examine any witness, unless otherwise permitted by the Court.

43.2 ATTORNEY TESTIFYING AS WITNESS.

If any attorney anticipates that he or she or a member of the attorney's firm may be required to testify as a witness under circumstances which would not require disqualification as counsel under applicable rules of the Code of Professional Responsibility, such attorney shall immediately notify the Court and opposing counsel in writing and set forth: (1) the issues on which the attorney or a member of the attorney's firm may be required to testify, and (2) a general plan for handling the testimony.

45.1 WITNESS FEES.

The fees and mileage of witnesses shall be paid by the party on whose behalf the witness is subpoenaed. Upon the filing and allowance of a verified bill of costs as provided in 28 U.S.C. Sections 1920, *et seq.*, such costs may be taxed in favor of the prevailing party and shall then become part of the judgment in the action.

47.1 ATTORNEY COMMUNICATION WITH JURORS.

No attorney or party, or anyone acting as agent or in concert with them, connected with the trial of an action shall personally, or acting through an investigator or other person, interview, examine or question any juror with respect to the verdict or deliberations of the jury in the action except with leave of the court.

VII. JUDGMENT

54.1 TAXATION OF COSTS.

(a) **Timeliness.** Unless otherwise ordered, taxation of costs shall not occur until a final judgment in favor of a party entitled to an award of costs has been entered by the Court. The bill of costs is to be served and filed within fourteen (14) days after the date such judgment becomes final, which ordinarily is the date on which any timely appeal should have been noticed, if one is not taken, or is the date on which the judgment is final after all appeals.

(b) **Procedure.** A bill of costs shall be prepared on forms approved by and available from the Clerk, or on a pleading which is substantially similar. The bill of costs shall be verified by the trial attorney submitting it, who shall certify that the costs listed were actually incurred. "Guidelines" for the taxation of costs are available from the Clerk, and may be consulted for information on the practices customarily followed in this Court; but such Guidelines are not to be considered controlling law. Service of the bill of costs shall include the certificate required by Rule 5.2 of these Rules. Costs shall be taxed by the Clerk not less than ten (10) days after service of the bill of costs.

55.1 DEFAULTS.

(a) **Procedure.**

(1) When a party against whom a judgment for affirmative relief is sought fails to respond within the time set forth by the Federal Rules of Civil Procedure, counsel for the party entitled to judgment shall present to the Clerk of this Court either a request for judgment pursuant to Rule 55(b)(1), Fed. R. Civ. P., or shall take steps to perfect service of summons and complaint as required by the Federal Rules of Civil Procedure.

(2) Should counsel for the party entitled to judgment fail to proceed as set forth above, the Court may dismiss the action forthwith for failure of prosecution.

(b) **Dismissal for Want of Prosecution.** An action which has been pending on the docket for one hundred eighty (180) days without any proceedings taken in the action, except actions awaiting trial assignment or decision on pending motions, shall be dismissed as a matter of course, without prejudice and for want of prosecution, unless good cause be shown to the contrary. Prior to dis-

missal, all parties shall be notified by the Clerk and shall have fifteen (15) days following receipt of notice within which good cause may be shown to the contrary.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

65.1 TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS.

(a) **Procedure for Hearing.** In most cases the Court will not hear or rule on any application for a temporary restraining order or a preliminary injunction until after the Court holds an informal preliminary conference with all parties. Further proceedings in respect of the application will be determined at the conference. The trial attorney for the applicant shall obtain, from the office of the judge to whom the action is assigned, a date and time for the informal conference and shall immediately notify counsel for the adverse party, if known, or if not known, the adverse party, that the application has been filed or is to be filed and the date, time and location of the conference. The trial attorney shall also comply with the service requirements of subsection (b).

(b) **Form of and Service of Applications.** Applications for temporary restraining orders or preliminary injunctions shall be made in pleadings separate from the complaint and in accordance with this Rule. Applications shall be accompanied by a certificate of the trial attorney or other proof satisfactory to the Court that: (1) The application and all other pleadings filed in the action have been served upon the adverse party's attorney, if known, or if not known, then the adverse party; or (2) reasonable efforts to accomplish the service of the application and pleadings have been made; or (3) the reasons, in affidavit form, why such service cannot or need not be made or be required.

(c) **Absence of Assigned Judge.** In the event that the judge to whom the action is assigned is not reasonably available to act upon an application which requires immediate attention, the trial attorney for the applicant shall request the Clerk to assign the matter, temporarily, to another judge who is available and who consents to hear the matter. The assignment of any matter in this manner shall not constitute a permanent reassignment of the action from the originally assigned judge.

67.1 BOND REQUIREMENTS IN GENERAL.

In all civil actions and criminal proceedings, the Clerk shall accept as surety, upon bonds and other undertakings, a surety company approved by the Treasury Department, cash or an individual personal surety residing within this district. Unless otherwise ordered by the

Court, any personal surety must qualify as the owner of real estate within this district of the full net value of the face amount of the bond. Attorneys or other officers of this Court shall not serve as sureties.

IX. DISTRICT COURT AND CLERK

72.1 MAGISTRATE JUDGES.

All Magistrate Judges may perform any of the duties authorized by 28 U.S.C. § 636(a), (b) and (c). All Magistrate Judges are specially designated within the meaning of 18 U.S.C. § 3401(a) to try persons accused of and to sentence persons convicted of misdemeanor offenses. All Magistrate Judges are specifically designated within the meaning of 28 U.S.C. § 636(c)(1) to conduct any and all proceedings in jury or non-jury civil matters, and to order entry of judgment, and to adjudicate any post-judgment matters. In all civil actions filed in this Court, the Clerk shall furnish to each plaintiff filing a complaint notice setting forth the provisions of 28 U.S.C. § 636(c)(2), and each plaintiff is required to serve a copy of that notice with the complaint on each defendant in the action.

72.2 ASSIGNMENT OF DUTIES TO MAGISTRATE JUDGES.

Individual District Judges at each location of Court may in their discretion request Magistrate Judges to perform such duties as are not inconsistent with the Constitution and laws of the United States. Nothing in this Rule shall prevent a District Judge from filing orders establishing procedures governing the formal reference of cases to Magistrate Judges by individual District Judges or the District Judges of a particular Division of this Court. *(See Appendix to these Rules.)*

72.3 EFFECT OF MAGISTRATE JUDGE RULING PENDING APPEAL TO A DISTRICT JUDGE.

When an objection is filed to a Magistrate Judge's ruling on a non-case dispositive motion, the ruling remains in full force and effect unless and until it is stayed by the Magistrate Judge or a District Judge.

77.1 SESSIONS OF COURT.

The Court shall be in continuous session for transacting judicial business on all business days throughout the year at the locations of court which are: Cincinnati, Columbus and Dayton.

77.2 FUNDS

(a) **Certified Checks.** The Clerk or the Marshal may require that any check tendered for any payment be certified before acceptance.

(b) **Registry Funds.** Funds deposited in the Registry of the court shall be held in the following manner:

(1) In the absence of any order to the contrary, in a checking account maintained by the Clerk in an approved depository.

(2) Upon request of an interested party and upon approval of a judge of this Court, specific funds shall be deposited by the Clerk in an interest-bearing account in an institution where such accounts are insured by an agency of the United States or in obligations of the United States with the interest to be accumulated for the benefit of the ultimate owners of the funds as determined by order of the Court; provided, however, that no order which requires the Clerk to make a deposit of funds in an interest-bearing account shall become effective until the order is personally served upon the Clerk or upon the deputy clerk in charge of the office of the Clerk at the location of court where the action is pending.

(3) In lieu of depositing funds in the Registry of the Court, an interested party may apply to the Court for appointment of escrow agents. With court approval, such agents may deposit funds in a financial institution in an interest-bearing account insured by an agency of the United States and provide for the disposition of interest earned on such funds.

(c) **Fees for Handling Funds.** All funds on deposit at interest in the registry of this Court will be assessed a charge against interest income earned, at the rate established by the judicial conference of the United States so administered by the Administrative Office of the United States Courts. This fee is assessed regardless of the nature of the case underlying the investment. The Clerk shall collect such fee at the time funds are disbursed by Order of this Court, without further Order or direction. This Rule is inapplicable to funds for which a fee has been collected by a prior method, and is inapplicable to cases in which funds were invested outside the scope of Rule 67, Fed. R. Civ. P., prior to December 1, 1990.

79.1 CUSTODY OF FILES AND EXHIBITS.

Originals of papers or pleadings filed with this Court shall not be withdrawn from the files, except upon order of the Court.

79.2 DISPOSITION OF EXHIBITS, MODELS, DIAGRAMS, DEPOSITIONS, AND OTHER MATERIALS.

(a) **Withdrawal By Counsel.** All models, diagrams, depositions, photographs, x-rays and other exhibits and materials filed in an action or offered in evidence shall not be considered part of the pleadings in the action and, unless otherwise ordered by the Court, shall be withdrawn by counsel without further Order within six (6) months after final termination of the action.

(b) **Disposal By The Clerk.** All models, diagrams, depositions, x-rays and other exhibits and materials not withdrawn by counsel shall be disposed of by the Clerk as waste at the expiration of the withdrawal period.

79.3 SEALED, OR CONFIDENTIAL DOCUMENTS.

(a) Unless otherwise ordered or otherwise specifically provided in these Rules, all documents submitted for a confidential *in camera* inspection by the Court, which are the subject of a Protective Order, which are subject to an existing order that they be sealed, or which are the subject of a motion for such orders, shall be submitted to the Clerk securely sealed in an envelope approximately 9" x 12" in size, or of such larger size as needed to accommodate the documents.

(b) The envelope containing such documents shall contain a conspicuous notation that it carries "DOCUMENTS UNDER SEAL," "DOCUMENTS SUBJECT TO PROTECTIVE ORDER," or the equivalent.

(c) The face of the envelope shall also contain the case number, the title of the court, a descriptive title of the document and the case caption, unless such information is to be, or has been, included among the information ordered sealed. The face of the envelope shall also contain the date of any order, or the reference to any statute permitting the item to be sealed. The date of filing of an order formally sealing documents, submitted in anticipation of such an order, shall be added by the Clerk when determined.

(d) The Clerk's file stamp and appropriate related information or markings shall be made on the face of the envelope. Should the document be ordered opened and maintained in that manner in the case records, the actual date of filing will be noted on the face of the document by the Clerk and the envelope retained therewith.

(e) Sealed or confidential documents shall be disposed of in accordance with Rule 79.2.

79.4 CONTROL OF EXHIBITS.

Unless otherwise ordered, any weapon, controlled substance, or item of substantial value, introduced as evidence during a hearing or trial, shall be returned each evening for safe keeping to the agent or attorney for the party introducing such evidence. It is the responsibility of the agent or attorney to see that such evidence is maintained in a secure manner during the trial and while any appeal is pending, or until S.D. Ohio Civ. R. 79.2 has been satisfied.

X. VENUE; GENERAL PROVISIONS

82.1 VENUE OF ACTIONS WITHIN THE DISTRICT.

(a) **Scope of this Rule.** The filing of actions properly venued within this District shall be governed by the following rules, subject to the jurisdictional and venue requirements of all statutes, both general and specific.

(b) **Location of Court.** For venue purposes, the area served by each location of court consists of the following counties:

Eastern Division: ***Columbus:*** Athens, Belmont, Coshocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Guernsey, Harrison, Hocking, Jackson, Jefferson, Knox, Licking, Logan, Madison, Meigs, Monroe, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Union, Vinton and Washington. The Jury Plan of the District provides that a District Judge may try a case in the Eastern Division in Steubenville or any other location in the counties of Belmont, Guernsey, Jefferson, Harrison, Monroe, Morgan, Noble or Washington, with prospective jurors to be drawn from the aforementioned eight (8) counties.

Western Division: ***Cincinnati:*** Adams, Brown, Butler, Clermont, Clinton, Hamilton, Highland, Lawrence, Scioto and Warren; ***Dayton:*** Champaign, Clark, Darke, Greene, Miami, Montgomery, Preble and Shelby.

(c) **Resident Defendant(s).** An action against a defendant or defendants resident in this district shall be filed at the location of court which embraces a county in which at least one defendant resides.

(d) **Corporate Residence, Venue When Indeterminate.** A corporation which is deemed to reside in this judicial district pursuant to 28 U.S.C. § 1391(c) is further deemed to reside in that county in which its principal place of business within the district is located, or, if none, in that county with which it has the most significant contacts. If such a corporation's county of residence cannot be

determined under this rule, an action against such corporation shall be filed at a location of court determined in accordance with the following rules, in order of preference: (1) A county in which a substantial part of the events or omission giving rise to the claim occurred, or a substantial party of property that is the subject to the action is located; or (2) any location of court.

(e) **Nonresident Defendant(s).** If no defendant is a resident of this district, an action shall be filed at the location of court embracing a county in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated.

(f) **Non-Capital Habeas Corpus Actions.** A habeas corpus action not involving the death penalty shall be filed at the location of Court which serves the county in which the state court judgment which is the subject of the habeas petition was filed.

83.1 FREE PRESS — FAIR TRIAL PROVISIONS.

(a) **Disclosure of Information by Court Personnel.** No employee of this Court may disclose any information relating to a pending proceeding before this Court, which information is not part of the public records of this Court. This rule specifically prohibits the disclosure of information concerning grand jury proceedings, *in camera* proceedings and proceedings held in chambers.

(b) **Orders in Special Cases.** This Court may in appropriate cases issue special orders governing any conduct likely to interfere with the rights of the parties to a fair trial.

83.2 COURTROOM AND COURTHOUSE SECURITY AND DECORUM

(a) No person may, without permission of the Court, operate a camera or other recording device on any floor of a United States courthouse where judicial proceedings are being conducted. No person may, without permission of the Court, operate a camera or other recording device within courtrooms, chambers, and ancillary portions of state courthouses or other buildings while in use by this Court under agreement with local authorities. Cameras and other recording devices in the possession of a person entering a building in which judicial proceedings are being conducted by this Court must, upon request, be turned over to security personnel for safekeeping and may be retrieved when leaving the building.

(b) Subject to subsection (e) of this Local Rule, persons other than criminal defendants in the custody of the United States Marshal Service entering any courthouse being used by this District Court are permitted to keep in their possession laptop computers, wireless telephones, electronic calendars, and other electronic devices commonly used to conduct business activities. Security personnel may inspect any electronic device brought into a courthouse, and may take possession of a device if, upon inspection, the possession or use of such specific electronic device is deemed a security concern.

(c) Electronic devices brought into a courthouse pursuant to this Local Rule may be used anywhere in the courthouse so long as such use does not disrupt courtroom or other official proceedings. By way of illustration, the ringing of a wireless telephone in a courtroom while proceedings are being conducted is considered disruptive. No device may be used to circumvent subsection (a) of this Local Rule prohibiting the use of cameras or recording devices where federal judicial proceedings are being conducted.

(d) Unless expressly permitted by the presiding judicial officer, no electronic device which might be used to record deliberations or communicate outside the jury room, (including without limitation wireless telephones, and laptop computers) may be taken into a jury room during jury deliberations.

(e) The courthouse security committee for each United States courthouse may promulgate such further requirements and restrictions as are deemed necessary, consistent with this Rule. Nothing herein shall limit the discretion of a judicial officer to permit special arrangements, or to order specific requirements or restrictions on the possession or use of electronic devices in connection with a particular case before that judicial officer.

83.3 SECURITY IN THE COURTHOUSE.

No person, with the exception of employees of the U.S. Marshal's Service and case agents, may enter or remain in any courtroom or hearing room of this Court, or any Clerk's Office, while in possession of a firearm or other deadly weapon. All other persons in possession of firearms shall leave such weapons in the care and custody of the U.S. Marshal in his office prior to entering or remaining in any courtroom or hearing room in this District, or any Clerk's Office. This Rule is applicable whether or not the Court is in session.

83.4 ADMISSION TO THE BAR.

(a) **Roll of Attorneys.** The permanent bar of this Court shall consist of those attorneys currently admitted and those attorneys hereafter admitted, in accordance with these Rules or by order of this Court, to practice in this Court. Attorneys admitted *pro hac vice* are not permanent members of the bar of this Court.

(b) **Eligibility.** Any member in good standing of the Bar of the Supreme Court of Ohio is eligible for admission to the Bar of this Court.

(c) **Application For Admission.** All candidates for admission to the bar of this Court shall file with the Clerk, at least twenty (20) days prior to the examination for admission, an application on the form provided by the Clerk. The application shall contain a certificate of two members of the bar of this Court, vouching for the good moral character and professional reputation of the applicant. Each candidate shall be present for examination at the next examination after the filing of the candidate's application. If the candidate fails to be present, it will be necessary to file a new application.

(d) **Examination For Admission.** Under the direction of the Chief Judge, a committee appointed by the judges of this Court shall prepare and administer a uniform examination in the cities of Columbus, Dayton and Cincinnati on the first Tuesday in June and December, or at such other time as may be ordered.

(e) **Fees.** Upon admission, upon filing a Motion for permission to appear *pro hac vice*, or upon application for readmission following disbarment or suspension from the bar of this Court, the attorney shall pay to the Clerk such fees as shall be prescribed by the Judicial Conference of The United States and by order of this Court. Any fee prescribed by order of this Court shall be paid into the United States District Court Special Fund to be used for such purposes as inure to the benefit of the bench and bar in the administration of justice within this district as determined to be appropriate by the Court.

(f) **Disciplinary Enforcement.** The conduct of attorneys who are admitted to practice before this Court, or admitted for the purpose of a particular proceeding (*pro hac vice*), and the supervision of their conduct by this Court shall be governed by the Model Federal Rules of Disciplinary Enforcement (with the exception of Rules XI and XII). *(See Appendix to these Rules.)*

83.5 TRIAL ATTORNEY.

(a) **Designation and Responsibility.** Unless otherwise ordered, in all actions filed in, transferred to or removed to this Court, all parties not appearing in propria persona shall be represented of record by a "trial attorney" who is both a permanent member of the bar of this Court in good standing and a member in good standing of the bar of the Supreme Court of Ohio. Unless such designation is changed pursuant to Section (e) of this Rule, the trial attorney shall attend all hearings, conferences and the trial itself, unless otherwise excused.

(b) **Signing of Pleadings and Motions.** All pleadings and motions filed on behalf of a party represented by counsel shall be signed by one attorney in his or her individual names as the trial attorney referred to in Section (a) of this rule, followed by the designation "Trial Attorney" together with his or her typed name, office address, zip code, and telephone number and area code. When one attorney signs on behalf of another, the full signature of each must appear; signatures followed by initials are unacceptable because the Court must determine who has actually signed the document. (E.g. "/s/ Joan Doe by /s/ Richard Roe per telephone authorization.") Firm names and the names of co-counsel may appear on the pleadings and motions for information as "of counsel." In addition, all attorneys representing parties in actions before this Court shall include their Ohio Supreme Court Registration Number immediately after their typed name in the signature and address block on all pleadings and motions.

(c) **Service.** All notices and communications from the Court and all documents required to be served on other parties by these rules and by the Federal Rules of Civil Procedure shall be served on the trial attorney. (Also see S.D. Ohio Civ. R. 5.2, "Certificate of Service"). Trial attorneys shall be responsible for notifying co-counsel or associate counsel of all matters affecting the action.

(d) **Participation by Co-counsel.** Any member in good standing of the bar of the highest court of any state, who is not otherwise eligible to become a member of the bar of this Court, may be permitted to appear and participate as counsel or co-counsel, upon motion of the trial attorney for any party. A motion for permission to appear *pro hac vice* shall be accompanied by a current certificate of good standing by the highest court of any state, and the tender of a $50 fee to the Clerk of the Courts. Should the application not be granted, the tendered fee will be returned.

Permission to appear *pro hac vice* may be withdrawn at any time. Such motion is not required for the purpose of having participating counsel's name appear on the pleadings as permitted by Section (b) of this Rule.

(e) **Substitution or Withdrawal of Trial Attorney.** The substitution or withdrawal of a trial attorney shall be permitted only: (1) upon filing with the Court and service on all other parties of a notice of a substitution of trial attorney signed by the withdrawing trial attorney, the client and a substitute trial attorney, (except that the client's signature is not required if the trial attorney is a member of the same partnership or legal professional association as the trial attorney to be substituted and affirmatively states that the substitution is made with the client's knowledge and consent), or (2) upon written application for substitution or withdrawal served upon the client and a showing of good cause, and upon such terms as the Court shall impose. Unless otherwise ordered, a trial attorney shall not be permitted to withdraw from an action at any time later than twenty (20) days in advance of trial or the setting of a hearing on any motion for judgment or dismissal and, unless otherwise ordered, the substitution of a trial attorney shall not serve as the basis for a postponement of the trial or any hearing.

LOCAL CRIMINAL RULES

I. SCOPE OF RULES

1.1 GENERAL PROVISIONS

(a) **Citation.** These rules may be cited as "S.D. Ohio Crim. R. ____."

(b) **Effective Date.** The effective date of these rules is December 1, 2000.

1.2 APPLICABILITY OF THE LOCAL CIVIL RULES

The Local Civil Rules shall apply to criminal actions unless such Rules:

(a) are made inapplicable by S.D. Ohio Crim R. 1.3;

(b) are applicable, by their terms, to civil actions only;

(c) are clearly inapplicable to criminal action by their nature, or by reason of provisions in the Federal Rules of Criminal Procedure, or any controlling statute or regulation of the United States; or

(d) are made inapplicable by Order of the Court or a Judge of this Court.

1.3 LOCAL CIVIL RULES NOT APPLICABLE.

The following Local Civil Rules are not applicable in criminal actions unless otherwise ordered:

1.1(a), 3.1, 3.2, 4.2, 10.2, 16.1, 16.2, 16.3, 23.1, 23.2, 23.3, 26.1, 30.1, 36.1, 37.1, 37.2, 38.1, 54.1, 55.1, 65.1, 82.1.

II. PROBATION AND SENTENCING RULES

32.1 PRESENTENCE REPORTS.

(a) Defendant or Defendant's counsel shall advise the Probation Officer whether counsel wish to receive notice of and a reasonable opportunity to attend any interview of the Defendant.

(b) Within thirty-five (35) days after a plea of guilty, nolo contendere, signed consent to conduct a presentence investigation prior to plea, or verdict of guilty, the Probation Officer shall disclose two (2) copies of the initial presentence investigation report to counsel for the defendant, and disclose one (1) copy to counsel for the Government. Defense counsel shall promptly provide one (1) copy to the Defendant.

(c) Within seventeen (17) days after disclosure of the initial presentence report, either by the posting or certified mail or personal delivery, the parties shall communicate to the Probation Officer and each other such objections as they have to matters either contained in or omitted from the report. Such communication may be oral or written, but the Probation Officer may require that any oral objection be promptly confirmed in writing. All objections to the presentence report should be clearly identified in order that they may be resolved to the extent practicable through informal procedures, including telephone conferences. During the disclosure period, written objections should be filed with the Probation Officer and not with the Court.

(d) Thereafter, the Probation Officer shall conduct such further investigation and make such revisions to the initial presentence report as may be deemed appropriate. The Probation Officer shall respond to all unresolved objections. If any party holds a good faith belief that a further conference may yet resolve or narrow any objection, it shall be the obligation of the objecting party to seek a conference with the Probation Officer and the other party. Any such conference shall be held within thirty-one (31) days following disclosure of the initial presentence report. All unresolved objections shall be memorialized in writing by the objecting party to the Probation Officer within three (3) business days after such conference.

(e) Following any conference held pursuant to paragraph (d) of this Rule, but not later than thirty-eight (38) days following disclosure of the initial presentence report, the Probation Officer shall trans-

mit the final presentence report investigation report to the Judge and the parties [two (2) copies to counsel for the Defendant and one (1) copy to counsel for the Government], either by posting of certified mail or by personal delivery, pursuant to Rule 32, Fed R. Crim. P. The final report shall include an addendum identifying (1) all unresolved objections previously memorialized in writing; (2) a brief statement of the grounds for each such objection; (3) the Probation Officer's comments on each such objection after considering such conferences and discussion among the parties as has occurred; and, if known, (4) an indication whether the parties are anticipated to wish to present evidence to the Court on any such objection at the sentencing hearing. The Probation Officer shall certify that the final presentence report is true and accurate to the best of his or her knowledge and belief, and that the Probation Officer has furnished all material revisions to the initial presentence report and the entire addendum to the Defendant's counsel, and counsel for the Government. Defendant's counsel shall promptly deliver copies of all such material to the Defendant.

(f) Pursuant to the authority granted in Rule 32(b)(6)(A), Fed. R. Crim. P., unless otherwise ordered in an individual case, the Probation Officer's recommendation, if any, on the appropriate sentence shall be disclosed in all copies of the initial and final presentence report including those furnished to counsel. However, no employee of the Probation Office of this Court may be called as a witness and examined concerning any such recommendation without the permission of the Court.

(g) If the Probation Officer communicates to the Court any material described in Rule 32(b)(5), which is believed to be of such a nature as ought not to be made available to the Defendant and the Defendant's counsel, the Probation Officer shall upon request by the Court promptly prepare a written summary of such material in order to assist the Court in complying with its obligations under Rule 32(c)(3)(A).

(h) Following receipt of the final report the Court may schedule additional conferences on the remaining objections, or may proceed to conduct the sentencing hearing not less than ten (10) days after receiving the final presentence report, provided that thirty-five (35) days have passed since disclosure of the initial report or Defendant waives this time requirement. Except with regard to any unresolved objections previously memorialized in writing, the final presentence report may be accepted by the Court as its find-

ings of fact. The Court, however, for good cause shown may allow a new objection to be raised at any time before the imposition of sentence. In resolving disputed issues of fact, the Court may consider any reliable information presented by the Probation Officer, the Defendant, or the Government.

(i) The Defendant may waive the minimum periods in this Rule and in Rule 32, Fed. R. Crim. P., provided such waiver is documented in the Record. Time frames set forth in this Rule and in Rule 32, Fed. R. Crim. P., may also be modified by the Court for good cause shown.

(j) The presentence report, statements, addenda and related documents shall be deemed to have been disclosed at the earliest of the following events: (1) on the date designated as the availability date in the Disclosure Notification letter; (2) when a copy of the document is physically presented; (3) one (1) day after the immediate availability of the document is orally communicated; (4) three (3) days after notice of the immediate availability is mailed; or (5) three (3) days after the document is sent by certified mail by the Probation Officer.

(k) The presentence report and related documents shall be maintained in confidence and under seal. Unauthorized copying or disclosure of the information contained in any draft or final presentence report, addendum, statement, or attachment to such a report will be an act in contempt of Court, and punished accordingly.

(l) The Probation department of this Court shall administer the operation of this Rule.

32.2 PRODUCTION OF PROBATION AND PRETRIAL SERVICES RECORDS; TESTIMONY OF PROBATION AND PRETRIAL SERVICES OFFICERS

(a) Probation and Pretrial Services Officers are officers of the Court. Their confidential records and files are the confidential records of the Court and the information they acquire in performing their duties is confidential.

(b) When disclosure of Probation or Pretrial Services records or a request for the testimony of a Probation or Pretrial Services Officer is sought by way of subpoena or other judicial process, the Probation or Pretrial Services Officer shall file a petition seek-

ing instructions from the Court with respect to responding to the subpoena or other judicial process. The petition shall be assigned to the District Judge or Magistrate Judge responsible for the pretrial handling of the case or the District Judge or Magistrate Judge who passed sentence. If that Judge is unavailable, the Clerk shall randomly assign the petition to another District Judge.

(c) The party serving the subpoena or other process, or their counsel, shall notify the Civil Division of the United States Attorney's Office at the location of the Court where they have filed the subpoena and shall deliver copies of all relevant documents promptly to such office.

(d) The Court shall authorize a Probation or Pretrial Services Officer to produce records or testify only if (1) disclosure is expressly authorized by federal law or (2) the Court finds there has been a particularized showing of a compelling need for such disclosure and that the information is necessary to meet the ends of justice.

(e) (1) If the Court finds that a Probation or Pretrial Services Officer shall be authorized to testify or to produce records, the authorization shall be limited to only those matters directly relevant to the demonstrated need. The Court's Order shall identify the records which shall be produced and the subject matter of the testimony which is authorized.
(2) If the Court finds that a Probation or Pretrial Services officer shall not be authorized to testify or to produce records, then the Court shall issue an Order quashing the subpoena or other judicial process under the authority of the Supremacy Clause, Article VI of the Constitution of the United States.

57.1 PUBLICITY AND DISCLOSURES.

(a) No attorney may publicly release any information or opinion which might interfere with a fair trial or otherwise prejudice the due administration of justice.

(b) No attorney participating in or associated with a grand jury or the investigation of any criminal matter may make any public extrajudicial statement that goes beyond the public record or that is not necessary to obtain assistance in the apprehension of a suspect, to warn the public of any dangers or otherwise to aid in the investigation.

(c) No attorney prior to the commencement of trial or disposition without trial may make any public statement concerning:

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

(2) Any statement or lack thereof by the accused;

(3) The performance or lack thereof of any examinations or tests upon the accused;

(4) The identity, testimony, or credibility of prospective witnesses, except that the attorney or law firm may announce 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 as to the merits of the case or the evidence in the case.

(d) During a jury trial of any criminal matter, no attorney may publicly give any extrajudicial statement that may interfere with a fair trial. An attorney may quote from or refer without comment to public records of the Court in the case.

(e) Nothing in this Rule shall preclude the lawful issuance of reports by investigative bodies, or preclude any attorney from replying to charges of professional misconduct that are publicly made against the attorney.

57.2 PROCEDURES IN DEATH PENALTY CASES.

(a) **Application.** This rule applies to cases filed pursuant to 28 U.S.C. Section 2254 and otherwise which challenge a state court order imposing a sentence of death.

(b) **Petitioner's Statement.** Whenever such a case is filed in this

Court, petitioner shall file with the petition a statement certifying the existence of a sentence of death and the emergency nature of the proceedings and listing the proposed date of execution, any previous cases filed by petitioner in federal court, and any cases filed by petitioner pending in any other court. Petitioner may use United States Court of Appeals for the Sixth Circuit form 6CA-99 or the equivalent of that form for the statement.

(c) **Duty of Clerk.** The Clerk shall immediately forward to the Clerk of the Court of Appeals a copy of petitioner's statement as required by Subsection (b) and immediately shall notify by telephone the Clerk of the Court of Appeals upon issuance of a final order in the case. When the notice of appeal is filed, the Clerk shall immediately transmit the available records to the Court of Appeals.

(d) **Motion For Stay.** A petitioner who seeks a stay of execution shall attach to the petition a copy of each state court opinion and judgment involving the matter to be presented. The petition shall also state whether or not the same petitioner has previously sought relief arising out of the same matter from this Court or from any other federal court. The reasons for denying relief given by any court that has considered the matter shall also be attached. If reasons for the ruling were not given in a written opinion, a copy of the relevant portions of the transcript may be attached.

(e) **Issues Not Raised or Exhausted in State Courts.** If any issue is raised that was not raised or has not been fully exhausted in state court, the petition shall state the reasons why such action has not been taken.

(f) **Rulings On Issues.** This Court's opinion in any such action shall separately state each issue raised by the petition and will rule expressly on each issue stating the reasons for each ruling made.

(g) **Issuance Of Certificate Of Appealability.** If a certificate of appealability is issued in any such case, the Court will also grant a stay of execution to continue until such time as the Court of Appeals expressly acts with reference to the certificate of appealability.

(h) **Assignment Of Judge.** If the same petitioner has previously filed in this Court an application to stay enforcement of a state court judgment or for habeas corpus relief, the case shall be allotted to the judge who considered the prior matter.

58.1 FORFEITURE OF COLLATERAL IN LIEU OF APPEARANCE.

(a) Persons charged in this district with a petty offense, for which a fixed sum payment is established pursuant to this Rule, may elect to post, in person or by mail, collateral in the amount specified for such offense and, upon waiver of the right to a hearing on the charge made, consent to the forfeiture or such collateral in lieu of appearance before the United States Magistrate Judge and all further proceedings. Any person so charged who does not elect this procedure shall be required to appear before the United States Magistrate Judge as prescribed by law, and upon conviction shall be subject to any penalty otherwise provided.

(b) Nothing contained in this Rule shall be interpreted to prohibit or restrict otherwise existing authority of any law enforcement officer in proper circumstances to place persons under arrest. Further, where the law enforcement officer involved considers the circumstances of the offense to be aggravated, the officer may specify that appearance before the United States Magistrate Judge is required, in which case the collateral forfeiture procedure in this Rule shall not be available.

(c) The schedules of fixed sum payments which may be deposited as collateral and forfeited in lieu of appearance shall be those established by General Orders as may be issued from time to time by this Court. The schedules shall be posted by the Clerk in the offices of the Clerk at Columbus, Dayton, and Cincinnati. Such General Orders may be issued by the Chief Judge of this Court on behalf of the Court, pending further General Orders of the full Court.

(d) When a person charged in this district with a petty offense for which a fixed sum payment is established pursuant to this Rule fails to post collateral and also fails to appear before the Magistrate Judge for initial appearance on the date set by the Court, the Magistrate Judge may, when issuing a warrant for the person's arrest, increase the amount of collateral which may be forfeited to an amount not in excess of the maximum fine which could be imposed upon conviction.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
CINCINNATI, OHIO

Filed 3-25-91

ORDER OF GENERAL REFERENCE

Pursuant to 28 U.S.C. § 636(a) and (b), the following cases are hereby ORDERED referred to the United States Magistrate Judges assigned to Cincinnati, Ohio, who are authorized to perform in any such case any and all functions authorized for full-time United Sates Magistrate Judges by Western Division Rule No. 1 as now effective or hereafter amended. In each such case the Magistrate Judge shall proceed in accordance with Rule 72, Fed. R. Civ. P. In the event the parties in any such case consent to proceed to trial and judgment before the Magistrate Judge pursuant to 28 U.S.C. § 636(c), the Magistrate Judge is hereby authorized to proceed in such cases in accordance with the applicable statutes, Rules 73 through 76, Fed. R. Civ. P., and Western Division Rule No. 1. The referred categories of cases are:

1. All cases filed pursuant to 26 U.S.C. §§ 7402(b) and 7604(a) to judicially enforce all summons issued by the Internal Revenue Service. The Federal Rules of Civil Procedure regarding intervention and discovery are suspended in such cases. See *Donaldson v. United States*, 400 U.S. 528 (1971).

2. All appeals from decisions of the Secretary of Health and Human Services regarding Social Security benefits.

3. All misdemeanor cases unless or until the person charged with the misdemeanor elects to be tried before a judge of this Court, pursuant to 18 U.S.C § 3401(b).

4. All prisoner cases filed pursuant to 42 U.S.C. § 1983.

5. All prisoner cased filed pursuant to 28 U.S.C. § 2254.

6. All cases arising under the Miller Act.

7. All garnishment matters.

8. All discovery issues in cases assigned to the Honorable S. Arthur Spiegel.

9. All cases filed by pro se litigants. With regard to prose cases filed pursuant to 42 U.S.C. § 2000e et seq., the District Judges are unable to schedule said cases for trial with 120 days after issue has been joined. See 42 U.S.C. § 2000e-5(f)(5).

In each of the above-described cases, this Order shall act as a reference to the Magistrate Judge and no further order of reference need be prepared or docketed by the Clerk. The Clerk shall advise the parties in each such case of identity of the Magistrate Judge assigned, and of their right to consent to final disposition by the Magistrate Judge under 28 U.S.C. § 636(c).

SO ORDERED.

Carl B. Rubin
United States District Judge

S. Arthur Spiegel
United States District Judge

Herman J. Weber
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN THE MATTER OF THE MEDITATION AND SETTLEMENT OF CASES. **Filed 3-9-00**

GENERAL ORDER REGARDING ON-GOING MEDIATION PROGRAM

The United States District Judges for the Southern District of Ohio, Western Division at Cincinnati, hereby adopt the following general provisions regarding mediation conferences in civil cases on an on-going, year round basis.

I. ON-GOING MEDIATION PROGRAM

With the exception of pro se, § 1983 prisoner, social security, bankruptcy, and forfeiture cases, any civil action pending before any judge of this Court may be selected, at anytime, for mediation in the discretion of the district judge or magistrate judge to whom this action is assigned, or by request of the parties and with the judge's consent.

II. MEDIATION COORDINATOR

United States Magistrate Judge Jack Sherman, Jr. will act as mediation coordinator. The district judges will select, and the coordinator will work with, a panel of experienced litigators who have volunteered to act as mediators. The mediators shall represent a cross-section of attorneys who regularly litigate in this Court.

III. PROCEDURE

To maximize the likelihood of meaningful settlement negotiations at the mediation conference,

1. Both the trail attorney for each party, and the principal, must attend the conference;

2. No later than two (2) weeks prior to the conference, counsel for plaintiff(s) must submit to counsel for defendant(s), and to the mediator, a fully documented, written settlement demand(s);

3. No later than one (1) week prior to the conference, counsel for defendant(s) must provide to counsel for plaintiff(s) and to the mediator, a fully documented, written response to the settlement demand(s); and

4. A party may be excused from compliance with provisions tow and three above only upon motion to the district judge or magistrate judge assigned to the case, and for good cause shown. The unexcused failure to comply fully with this Order shall result in the imposition of sanctions.

IV. CONTINUANCE OR CANCELLATION OF MEDIATION

A request for continuance or cancellation of a mediation conference must be made promptly and by written motion. The memorandum supporting the motion shall state that the moving party's counsel has conferred with counsel for all parties prior to making the motion the memorandum shall also explain the reason(s) for the request. The motion shall be served to the moving counsel's client, all other counsel, and the district judge or magistrate judge assigned to the case.

If the request for a continuance or cancellation is based upon the need for additional discovery the memorandum must set out in detail (1) the discovery completed; (2) the discovery needed to formulate a reasonably informed settlement evaluation; and (3) the dates by which that conference can be completed and the parties prepared for the mediation conference.

If the request for a continuance or cancellation is based on the grounds that the parties are too far apart to justify the expense of participating in settlement, the memorandum shall state each party's settlement position, and the factual and legal bases for the movant's settlement position.

IT IS SO ORDERED

Date: July 28, 1999

Herman J. Weber
United States District Judge

Sandra S. Beckwith
United States District Judge

Susan J. Dlott
United States District Judge

S. Arthur Spiegel
United States Senior District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Filed 7-3-91

IN RE: **EASTERN DIVISION**
UNITED STATE MAGISTRATE JUDGES **Order No. 91-3**

ORDER

I. ASSIGNMENT OF CIVIL CASE TO UNITED STATES MAGISTRATES JUDGES FOR THE CONDUCTING OF PRELIMINARY PRETRIAL CONFERENCES AND STATUS CONFERENCES AND FOR DECISIONS ON NON-DISPOSITIVE MOTIONS.

A. REFERENCE TO MAGISTRATE JUDGES

The Clerk of Court shall randomly assign all civil cases at the time they are filed to a District Judge and a Magistrate Judge. The Magistrate Judge to whom the case is assigned will conduct preliminary pretrials, status conferences, settlement conferences, sign orders of dismissal under Rule 41(a) (1), Fed. R. Civ. P. and conduct all post-judgment proceedings under Rule 69, Fed. R. Civ. P. The District Judge may at any time perform theses duties instead of the Magistrate Judge.

B. PRELIMINARY PRETRIAL CONFERENCES, STATUS CONFERENCES AND SETTLEMENT CONFERENCES

The Magistrate Judge assigned to a case shall conduct preliminary pretrial, status, and settlement conferences. These conferences shall be conducted in accordance with L.R. 16.2 and the Court's General Order on Pretrial, Eastern Division Order No. 91-4

Each Magistrate Judge conducting a pretrial, status, or settlement conference shall prepare and file a brief Order reporting the results of that conference.

C. SCHEDULING ORDERS

As required by Rule 16, Fed. R. Civ. P., the Magistrate Judge shall issue a scheduling order in every civil case within 120 days of the date the complaint is filed subject tot he following exceptions. A scheduling order need not be issued where no defendant has filed an answer during the first 90 days following the filing of the complaint. In such cases, a scheduling order should be issued within 60 days of defendant's filing an answer.

If proof of service of the summons and complaint is not filed within 120 days after the complaint is filed, the Magistrate Judge shall issue an order requiring plaintiff to show cause why the defendant should not be dismissed pursuant to Rule 4(j), Fed. R. Civ. P.

If proof of service is filed within 120 days, but the defendant does not answer and no default is taken, the Magistrate Judge shall issue an order, after 180 days from the date the complaint was filed has passed, requiring plaintiff to show cause why the action should not be dismissed under Local Rule 55. 1(b).

When a defendant responds to the complaint with a case-dispositive motion, the Magistrate Judge shall review the case file and determine whether discovery should proceed while the motion is pending. If so, a scheduling order for discovery should be issued. If not, the Magistrate Judge should set the case for preliminary pretrial within 60 days after the Court rules on the case-dispositive motion.

In cases filed *pro se* by incarcerated persons, the Magistrate Judge should issue a written pretrial order within nine (9) months after an answer is filed.

No scheduling orders need be issued in those classes of cases that have been exempted from the requirements of Rule 16(b), Fed. R. Civ. P., by Local Rule 16.2.

D. NON-DISPOSITIVE MOTIONS

The Magistrate Judges, in accordance with 28 U.S.C. §636(b) (1) (A), are authorized to hear and determine any pretrial motion pending before the Court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgement, to dismiss, or for or opposing certification of a class. Non-dispositive pretrial motions include, buy are not limited to, motions for (1) leave to proceed without prepayment of fees, (2) appointment, substitution, or withdrawal of counsel, (3) leave to plead, (4) amendment of pleadings, (5) extension of time, (6) a discovery order, (7) a more definite statement, and any other motion not expressly excepted by 28 U.S.C. §636(b) (1) (A).

E. CASE DISPOSITIVE MOTIONS, NON-CONSENSUAL REFERENCES FOR TRIAL, AND SPECIAL MASTER PROCEEDINGS

1. Reference to Magistrate Judges

The District Judge may, without consent of the parties, designate the Magistrate Judge to whom a case is assigned to serve as a special

master pursuant to Rule 53, Fed. R. Civ. P., 28 U.S.C. §636(b) (2), 42 U.S.C. §2000e-5(f) (5), or any other statute or rule authorizing such appointment, and may refer any motion, application for post-trial relief made by an individual convicted of a criminal offense, or prisoner petition challenging conditions of confinement, to the Magistrate Judge for the conduct of any necessary evidentiary hearing, and the issuance of a report and recommendation, as authorized by 28 U.S.C. §636(b) (1) (B).

2. Conferences and Hearings

Upon issuance of a written order referring a matter to a Magistrate Judge under section 1 above, the Magistrate Judge may schedule and conduct any meetings of counsel, conferences, or evidentiary hearings that the Magistrate Judge deems necessary. Unless otherwise ordered by the District Judge or Magistrate Judge, all evidentiary hearings shall be governed by the Federal Rules of Civil Procedure and the Federal Rules of Evidence. The Magistrate Judge may require the parties to file a pretrial or prehearing statement or order in whatever format the Magistrate Judge deems advisable.

3. Masters' reports and reports and recommendations

As soon as practicable after the conclusion of all proceedings, including evidentiary hearings, which are necessary to the submission of any matter referred to a Magistrate Judge under this sections, the Magistrate Judge shall prepare and file with the clerk a written Master's Report or Report and Recommendation. The Clerk shall serve a copy of the report on all parties. The failure to object timely to a Magistrate Judge's report constitutes a waiver of any objection thereto, both for purposes of permitting the District Judge to adopt the Report and enter a decision or judgment thereon, and for purposes of appeal.

F. APPEALS FROM AND OBJECTION TO MAGISTRATE JUDGES' DECISIONS

1. **Calculations of time.** All time periods will be calculated in accordance with rules 6(a) and (e), Fed. R. Civ. P. Any time period may be lengthened or shortened by a Magistrate Judge or District Judge.

2. **Stipulated extensions of time.** Unless otherwise ordered by the Court, the parties may stipulate to extend for a period of no more than 15 days the time for filing an objection or a response to an objection. The stipulation must be entered before the applicable time period has expired.

3. **Motions for extensions of time.** Any motion for an extension of time must be filed before the applicable time period has expired. Motions for an extension of time will be granted for good cause shown.

4. **Hearing objections.** Ordinarily objections will be ruled on without hearing. If a party wants a hearing, the phrase "REQUEST FOR HEARING" or the equivalent shall be endorsed on the caption for the objection or responsive brief and the ground(s) for the request shall be stated in the supporting brief. In the case of a Special Master's report, the Court will proceed under Rule 53(e), Fed. R. Civ. P.

5. **Non-case dispositive orders.** Objective to non-case dispositive orders must be filed in accordance with Rule 72(a), Fed. R.Civ. P. (Objections must be "served and filed within 10 days after entry of the order.....") Response(s) to the objection must be filed and served within ten (10) days of the service and filing of the objection. Any reply must be filed and served seven (7) days after the filing of the objections. Any reply must be filed and served seven (7) days after the filing and service of the response. Under S.D. Ohio L.R. 72.4, the Magistrate Judge's decision remains in full force and effect unless and until stayed by the Magistrate Judge or the District Judge. Any request for a stay of a non-case dispositive order while an objection is pending on appeal must accompany the objection unless an earlier filing is required to allow the court to timely address the request.

6. **Case-dispositive orders.** Objections to case dispositive orders must be filed and served in accordance with Rule 72(b), Fed. R. Civ. P. ("Within 10 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections.....") Response(s) to the objection must be filed within ten (10) days after being served with it. Any reply must be filed within seven (7) days of the filing and service of the response.

7. **Special Master's reports.** Appeals from a Magistrate Judge's special mater's report are governed by Rule 53(e)(2), Fed. R. Civ. P. ("Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties.")

8. **Prisoner petitions and conditions of confinement trials.** Appeals from a Magistrate Judge's report and recommendation following evidentiary hearing on a prisoner's petition under 28 U.S.C. § §2255 or a trial of a prisoner's petition challenging his conditions of confinement are governed by Rule 72(b), Fed. R. Civ. P. ("Within 10 days after being served with a copy of the recommended disposposition, a party may serve and file specific written objections....") Response(s) to the objection must be filed within ten (10) days after being served with it. Any reply must be filed within seven (7) days of the filing and service of the response.

9. **Consent cases.** Appeals in consent cases under 28 U.S.C. §636(c) are governed by Rules 73 through 76, Fed. R. Civ. P.

10. **Record supporting objections.** Under Rule 53(e) (1), Fed R. Civ. P., the Magistrate Judge must file a transcript with the Magistrate Judge's special master report. Under Rule 72(b), Fed. R. Civ. P., a party objecting to a Magistrate Judge's report and recommendation " shall promptly arrange for the transcription of the record, or portions of it as all parties may agree upon or the Magistrate Judge deems sufficient unless the district judge otherwise directs."

II. ASSIGNMENT OF CERTAIN CRIMINAL MATTERS TO MAGISTRATE JUDGES

Magistrate Judges may try misdemeanor cases as authorized by S.D. Ohio L.R. 72.1.

In accordance with the provisions of Rule 6(f), Fed. R. Crim. P., Magistrate Judges shall take the return of indictments by the Grand Jury. By reference from a District Judge, a Magistrate Judge may hear and determine any matter related to a Grand Jury proceeding. At the request of a District Judge, a Magistrate Judge may arraign a defendant charged by indictment or information with a felony or misdemeanor, take the defendant's not guilty plea, and establish a schedule for motion and trial.

III. ADDITIONAL DUTIES OF THE UNITED STATES MAGISTRATE JUDGES

A. CIVIL PROCEEDINGS

In any case assigned to a Magistrate Judge, the Magistrate Judge may perform any of the following duties:

- Conduct hearings and file a report and recommendation under 28 U.S.C. §636(b) (1) (B) for the disposition of a motion for pre-judgment attachment, replevin, or other similar pre-judgment remedy.
- Conduct hearings and file an Order under 28 U.S.C. §636(b) for the disposition of a motion for change of venue.
- Conduct hearings and file an Order under 28 U.S.C. §636(b) for the disposition of a motion to remand to remand to sate court.
- Conduct hearings and file a report and recommendation under 28 U.S.C. §636(b) (1) (B) for the disposition of motions to dismiss for want of personal jurisdiction.
- Issue writs of habeas corpus ad testificandum and ad prosequendum.

A District Judge may at any time dispose of these motions instead of the Magistrate Judge.

B. MISCELLANEOUS PROCEEDINGS

Magistrate Judge may perform any of the following duties:

- Conduct hearings and issue orders disposing of Rule 27, Fed. R. Civ. P. petitions to perpetuate testimony.
- Issue orders of entry to enforce IRS tax levies.
- Hold hearings and file reports and recommendations for the disposition of any action to quash or enforce an IRS summons.
- Issue administrative search warrants.
- Issue orders for pen registers or trap and trace devices under 18 U.S.C. § § 3123 and 3127 (2) (A), (3), (4).
- Issue warrants under the Rules of Admiralty Proceedings for the seizure of property subject to forfeiture.
- Release garnished monies to the garnishor when neither the garnishee nor the debtor has contested the garnishment.
- Issue orders for the release of monies or property posted as bond in civil and criminal cases and for the release of monies on deposit in the registry of the court.
- Grant motions to proceed without prepayment of fees.
- Grant or deny motions for leave to intervene.

This Order is not intended to restrict the authorized responsibilities of the Magistrate Judges, and the District Judges may jointly or separately assign such additional duties to the Magistrate Judges as are not inconsistent with the Constitution and law of the United States.

IV. CONSENT TO DISPOSITION BEFORE A UNITED STATES MAGISTRATE JUDGE.

A. STATEMENT ABOUT CONSENT PRIOR TO PRELIMINARY PRETRIAL.

At least three (3) days before the preliminary pretrial conference the Trial Attorney for each party shall file with the Clerk of Court and serve on the opposing party or parties a statement indicating whether that party has decided, as of that date, that the case will proceed before a District Judge or whether that party consents to disposition of the case by a Magistrate Judge. Consent to proceed before a Magistrate Judge does not waive the parties' right to a jury trial.

B. REFERENCE TO MAGISTRATE JUDGE WHEN ALL PARTIES CONSENT

When all parties consent, the Clerk of Court shall notify the District Judge assigned to the case. The District Judge will then issue an Order referring the case to the Magistrate Judge for disposition under 28 U.S.C. §636(c).

C. APPEAL FROM JUDGMENT ENTERED BY MAGISTRATE JUDGE

The appeal is to the United States Court of Appeals, unless all parties expressly consent to appeal to the District Judge assigned to the case. 28 U.S.C. §636(c) (3) and (4); Rule 73, Fed. R. Civ. P. Procedures on appeal to the district Judge are set out in Rules 74 through 76, Fed. R. Civ. P.

D. ORAL ARGUMENT BEFORE DISTRICT JUDGE

Where the appeal is to a District Judge and any party wants an oral argument, that party must file a request for oral argument supported by a brief statement of why oral argument would facilitate resolution of the issues presented on appeal. A District Judge may set any case for oral argument.

E. VOLUNTARINESS

The parties are free to withhold consent without adverse substantive consequences. The Clerk of Court shall maintain any written communications from the parties regarding consent separate from the case file and shall not communicate any party's decision regarding consent to a District Judge or Magistrate Judge unless and until all parties to the case consent to disposition by a Magistrate Judge.

This Order supersedes Eastern Division order 85-4, which is of no further force and effect.

IT IS SO ORDERED.

July , 1991

s/John D. Holschuh
John D. Hoschuh, Chief Judge
United States District Court

s/James L. Graham
James L. Graham, Judge
United States District Court

s/George C. Smith
George C. Smith, Judge
United States District Court

s/Joseph P. Kinneary, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION
Filed 1-8-01

IN RE: **EASTERN DIVISION**
PRETRIAL CONFERENCES **Order No. 01-1**

GENERAL ORDER ON PRETRIAL

The United States District Judges for the Southern District of Ohio, Eastern Division, do hereby adopt the following general provisions to be applicable in the conduct of all pretrial conferences held by them or by the United States Magistrate Judges pursuant to Rule 16 of the Federal Rules of Civil Procedure, Rule 16.2 of the Local Rules of this Court and Eastern Division Order 91-3.

I. REFERENCE TO A MAGISTRATE JUDGE

All civil cases, except those categories listed in Rule 16.2 of the Local Rules of this Court, are referred to the Magistrate Judges for the purpose of conducting preliminary pretrial conferences, scheduling conferences, status conferences and settlement conferences. The District Judge in any case that has been referred to a Magistrate Judge under Eastern Division Order 91-3 may at any time *sua sponte*, elect to conduct conferences and any party or counsel for a party may request, for good cause, that a particular case be handled in its entirety by the District Judge assigned to the case.

II. CONFERENCE OF THE PARTIES

Consistent with Rule 26(f) of the Federal Rules of Civil Procedure, the parties shall, no later than twenty-one (21) days prior to the Rule 16(b) preliminary pretrial conference with the Court, confer with each other in a good faith effort to consider the nature and basis of the claims and defenses presented in the case, the discovery that will be reasonably necessary to the resolution of the case, the matters expected to be addressed by the Court at the Rule 16(b) preliminary pretrial conference, and the speedy resolution of the case.

The parties shall jointly file with the Court, at the time required by Rule 26(f) but in any event not fewer than seven (7) days prior to the Rule 16(b) preliminary pretrial conference, a report on the conference of the parties, using the form provided by the Court.

III. PRELIMINARY PRETRIAL CONFERENCE

A preliminary pretrial conference will be held pursuant to notice in each action not excluded by operation of Rule 16.2 of the Local Rules of this Court, consistent with Rule 16(b) of the Federal Rules of civil Procedure. At the preliminary pretrial conference, the District Judge or the Magistrate Judge will consider the following matters:

A. VENUE

1. Venue and change of venue under applicable provisions of the United States Code

2. Compliance with S.D. Ohio L.R. 82.1

B. JURISDICTION

1. Jurisdiction over the subject of the action, including consideration of the amount in controversy in diversity cases.

2. Jurisdiction over the parties, including proper and timely service of process.

C. PARTIES

1. Present parties, including questions of joinder or dismissal of parties.

2. Third parties, including impleading of third party defendants.

D. PLEADINGS AND PRELIMINARY MOTIONS

1. Jury demand or waiver.

2. Pending or contemplated preliminary dispositive motions.

3. Amendments to pleadings.

E. ISSUES IN THE CASE

1. Identification and discussion of claims and defenses.

2. Feasibility of separation of issues in the context of discovery, motion practice or trial.

F. DISCOVERY AND DISCLOSURES

1. Compliance with Rule 26(a)(1) of the Federal Rules of Civil Procedure.
2. Expert discovery

   a. Application of Rule 26(a)(2) of the Federal Rules of Civil Procedure.

   b. Date by which designations of primary experts must be made.

   c. Date by which designations of rebuttal experts must be made.

G. ESTIMATED TIME TO FINAL PRETRIAL CONFERENCE AND TRIAL

H. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION

The parties must, prior to the preliminary pretrial conference, consider and discuss the possibility of settling the case, as well as appropriate methods of alternative dispute resolution. The Court's Settlement Week program is its preferred method of alternative dispute resolution, and a referral to mediation will, unless otherwise ordered by the Court, be made during the preliminary pretrial conference.

In accordance with Rules 16 and 26(f) of the Federal Rules of Civil Procedure, and with 28 U.S.C. §471 *et seq.*, the parties are encouraged to limit initial discovery to only that necessary for the parties to evaluate the case for settlement. The Court will provide the parties an opportunity to explore alternatives to the completion of all discovery, the filing of dispositive motions, and trial. The case may be set for a settlement conference with the Court, A Settlement Week mediation or any other method of alternative dispute resolution permitted under S.D. Ohio L.R. 16.3 if, at any time during the pretrial proceedings, the District Judge or Magistrate Judge determines that the parties may benefit from such procedure.

I. NEED FOR ADDITIONAL PRETRIAL CONFERENCES

The parties must consider whether additional pretrial conferences, to be held before or after the close of discovery but prior to the final pretrial conference, would be helpful.

J. OTHER MATTERS

Any other matters that will aid in the preparation of the case will also be considered at the preliminary pretrial conference.

K. PRETRIAL ORDER

Following the preliminary pretrial conference, the Court will issue an order summarizing the decisions made at the conference.

IV. FINAL PRETRIAL CONFERENCE

Consistent with Rule 16(d) of the Federal Rules of Civil Procedure, a final pretrial conference will be held, upon adequate notice, by either the District Judge or Magistrate Judge assigned to the case. The parties must confer with each other in advance of the final pretrial conference and shall jointly file with the Court, no fewer than three working days prior to the final pretrial conference, a proposed final pretrial order, in strict accordance with the form provided by the Court.

Unless excused by the Court for good cause, the trial attorney for each party must attend the final pretrial conference. The trial attorney must be prepared and authorized to enter into such additional agreements as may be appropriate. Prior to the final pretrial conference, the trial attorney for each party must fully explore with his or her client the possibility of settlement. If the trial attorney has full negotiating and settlement authority, the client need not be present at the final pretrial conference.

At the final pretrial conference, the District Judge or Magistrate Judge will consider the following matters:

A. AMENDMENTS TO THE PLEADINGS
B. THE SEPARATION OF ISSUES
C. ADMISSIBILITY OF EVIDENCE
D. THE DATE AND PROBABLE LENGTH OF TRIAL
E. THE DESIRABILITY OF TRIAL BRIEFS
F. SETTLEMENT
G. OTHER MATTERS

Any other matters that will aid in the trial of the case will also be considered at the final pretrial conference.

H. FINAL PRETRIAL ORDER

Following the final pretrial conference, the Court will file the final pretrial order.

V. FAILURE TO COMPLY

The failure of any party or trial attorney to comply with the provisions of this General Order may result in dismissal or default, as may be appropriate.

IT IS SO ORDERED.

James L. Graham, Judge
United States District Court

George C. Smith, Judge
United States District Court

Edmund A. Sargus, Jr., Judge
United States District Court

Algenon L. Marbley, Judge
United States District Court

Joseph P. Kinneary, Senior Judge
United States District Court

John D. Holschuh, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Filed 1-8-01

IN THE MATTER OF SETTLEMENT WEEK

EASTERN DIVISION ORDER NO. 01-2

GENERAL ORDER ON SETTLEMENT WEEK

The United States District Judges for the Southern District of Ohio, Eastern Division, adopt the following general provisions to be applicable in the conduct of Settlement Week. This order is intended to supplement the provisions of Local Rule 16.3 and to replace Section IV of Eastern Division 91-4, which has been superseded by Eastern Division Order 01-1.

I. SETTLEMENT WEEK COORDINATOR

The United States Magistrate Judge selected as ADR Coordinator pursuant to Local Rule 16.3 (d)(1) shall, in addition to the duties set forth in that Rule, be the Settlement Week Coordinator, and shall be responsible for insuring that the procedures for appointing and training neutral mediators for Settlement Week are developed and promulgated as required by 28 U.S.C. §653. The Coordinator shall develop written procedures to be followed by clerical and administrative personnel which will insure the efficient operation of the Settlement Week program.

II. SELECTION OF CASES FOR SETTLEMENT WEEK AND ASSIGNMENT OF MEDIATORS

Each United States Magistrate Judge shall be primarily responsible for selecting those cases from his or her docket which should be mediated during any specific Settlement Week. Cousel may also request that a case be mediated during a specific Settlement Week. Mediators will be assigned to each such case based on prodecures to be developed by the Settlement Week coordinator and agreed to by the Magistrate Judges. Clerical assistance needed by the Magistrate Judges in order to implement the assignment of cases to Settlement Week and the selection of mediators shall be provided primarily by the Magistrate Judges' secretaries, administrative assistants, courtroom deputies, and other Clerk's office personnel, who shall also provide information and assistance to the mediators.

III. SETTLEMENT WEEK MEDIATION PROCEEDINGS

In order to maximize the likelihood of meaningful settlement negotiations at the Settlement Week conference, and unless otherwise ordered by a District or Magistrate Judge:

A. The trial attorney and principal for each party shall attend the conference in person.

B. The parties shall exchange fully-documented written settlement demands and offers prior to the conference, with the demand being due at least two weeks before the date selected for the conference, and the response not less than one week before that date.

C. A party may be excused from compliance with the provisions of this General Order or any other Settlement Week order only upon motion made to the Magistrate Judge, in writing or in a telephone or in-person conference, at an appropriate time prior to the conference. Any such motion must be accompanies by a statement that the movant has conferred with opposing counsel and a statement of the reasons for the requested continuance. If the continuance is being requested based on the lack of discovery or disclosures, the movant shall state, or be prepared to state, when it is reasonably anticipated that such discovery or disclosures will be completed and when the case will be ready for a mediation conference. Any written motion for a continuance must be served on the moving counsel's client. The Magistrate Judges, or the assigned District Judge, may impose sanctions, as permitted by law, for noncompliance with this General Order or with other orders relating to Settlement Week.

James L. Graham, Judge
United States District Court

George C. Smith, Judge
United States District Court

Edmund A. Sargus Jr., Judge
United States District Court

Algenon L. Marbley, Judge
United States District Court

Joseph P. Kinneary, Senior Judge
United States District Court

John D. Holschuh, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION
Filed 2-10-95

IN RE: **ORDER 95-2**

UNITED STATES MAGISTRATE JUDGES **EASTERN DIVISION**

ORDER

Pursuant to 28 U.S.C. §636(b)(1)(B) and section I(E)(1) of Southern District of Ohio, Eastern Division General Order 91-3, any and all motions of any type, including those listed in 28 U.S.C. §636 (b) (1) (A), which are filed in social security appeals, applications for post-trial relief filed by an individual convicted of a criminal offense, and prisoner petitions challenging conditions of confinement, are hereby REFERRED to the assigned Magistrate Judge for the conduct of such proceedings as may be necessary, and the issuance of a Report and Recommendation, without the need for the entry of a specific order of reference. Without limiting the generality of the foregoing, the term "case-dispositive motion" is intended to include the denial of an application to proceed in *forma pauperis* filed pursuant to 28 U.S.C. § 1915 (d). All such motions filed in other types of civil actions may be referred to a Magistrate Judge through a specific order of reference.

Notwithstanding the terms of the preceding paragraph, any motion which is referred to a Magistrate Judge by this order by a specific order of reference may be decided in the first instance by the referring District Judge without the need for a separate order withdrawing the reference to the Magistrate Judge.

IT IS SO ORDERED.

John D. Holschuh, Chief Judge
United States District Court

James L. Graham, Judge
United States District Court

George C. Smith, Judge
United States District Court

Sandra S. Beckwith, Judge
United States District Court

Joseph P. Kinneary, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

IN RE: UNITED STATES MAGISTRATE **Filed 12-29-95**

JUDGE MICHAEL R. MERZ

District Judge Walter Herbert Rice
District Judge Susan J. Dlott

GENERAL ORDER OF REFERENCE

Pursuant to 28 U.S.C. §§636(a) and (b), the following categories of cases filed at the Dayton location of court on or after January 1, 1996, are hereby ordered referred to United States Magistrate Judge Michael R. Merz who is hereby authorized to perform in any such case any and all functions authorized for full-time United States Magistrate Judges by statute or by Western Division Rule No. 1 as now effective or hereafter amended. In each such case the Magistrate Judge shall proceed in accordance with Fed. R. Civ. P. 72.

If the parties in any such case unanimously consent to plenary magistrate judge jurisdiction under 28 U.S.C. §636(c), Magistrate Judge Merz is hereby authorized to exercise such jurisdiction in accordance with the applicable statutes, Fed. R. Civ. P. 73, 74, 75, and 76, and Western Division Rule No. 1, and without further order of reference. As permitted by statute, Magistrate Judge Merz may be remind the parties and counsel of their right to consent under §636(c), but shall also remind them that there are no adverse substantive consequences to failure to consent.

The referred categories of cases are:

1. All cases filed pursuant to 26 U.S.C. §§7402(b) and 7604(a) to enforce judicially summonses issued by the Internal Revenue Service. The Federal Rules of Civil Procedure regarding intervention and discovery are suspended in such cases. See *Donaldson v. United States*, 400 U.S. 528 (1971).
2. All appeals from decisions of the Commissioner of Social Security regarding Social Security benefits.
3. All petty offense and midemeanor cases unless or until the defendant elects to be tried before a District Judge of this Court. Pursuant to 18 U.S.C. §3401, Magistrate Judge Merz is specially designated to preside over such cases.
4. All cases filed by the United States seeking recovery of a loan.

5. All cases arising under the Miller Act.
6. All cases filed by plaintiffs proceeding pro sel. In such cases, the reference shall not terminate if the plaintiff later obtains counsel unless otherwise ordered by the assigned District Judge.
7. All cases filed pursuant to 28 U.S.C. §§2241, 2254, and 2255.

In each case in the above-described categories, this Order shall act as a reference to the Magistrate Judge without further order. The Clerk shall advise the parties in each such case of this General Order of Reference and of their right to consent to plenary magistrate judge jurisdiction under 28 U.S.C. §636(c). In any case in which the parties so consent, appeal shall be to the United States Court of Appeals for the Sixth Circuit, absent express provision by the parties for appeal to the District Court.

District Judge Rice's Amended General Order of Reference dated June 26, 1990, (General Order No. 11) is hereby VACATED. This Order has no effect on cases referred to Magistrate Judge Merz under prior order of reference, whether general or limited to a particular case.

December 29, 1995.

Walter Herbert Rice
UNITED STATES DISTRICT JUDGE

December 29, 1995.

Susan J. Dlott

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

IN RE:
MODEL FEDERAL RULES OF DISCIPLINARY ENFORCEMENT

Order 81-1
(District-Wide Order)

ORDER

All Judges concurring, the previous Orders of this Court dated February 4, 1979 and March 7, 1979, are reaffirmed, and the Model Federal Rules of Disciplinary Enforcement (except Rules XI and XII) are hereby as attached hereto. Rule X, as amended by the Order of March 7, 1979, is hereby readopted and made a part of the attached rules.

SO ORDERED.
September 1, 1981

s/ Carl B. Rubin
Carl B. Rubin, Chief Judge

s/ Joseph P. Kinneary
Joseph P. Kinneary, Judge

s/ Robert M. Duncan
Robert M. Duncan, Judge

s/ S. Arthur Spiegel
S. Arthur Spiegel, Judge

s/ John D. Holschuh
John D. Holschuh, Judge

s/ Walter H. Rice
Walter H. Rice, Judge

s/ Timothy Hogan
Timothy Hogan, Judge

s/ David S. Porter
David S. Porter, Judge

MODEL FEDERAL RULES OF DISCIPLINARY ENFORCEMENT

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MODEL FEDERAL RULES OF DISCIPLINARY ENFORCEMENT

The United States District Court for the Southern District of Ohio, in furtherance of its inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it, or admitted for the purpose of a particular proceeding (*pro hac vice*) promulgates the following Rules of Disciplinary Enforcement superceding all of its other Rules pertaining to disciplinary enforcement heretofore promulgated.

Rule I

Attorneys Convicted of Crimes

A. Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any Court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, the Court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, or nolo contendere or from a verdict after trial or otherwise, regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause show, the Court may set aside such order when it appears in the interest of justice to do so.

B. The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

C. A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.

D. Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Court shall in addition to suspending that attorney in accordance with the provisions of this Rule, also refer the matter to counsel for the institution of a disciplinary proceeding before the Court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

E. Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime," the Court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the Court; provided, however, that the Cout may in its discretion make no reference with respect to convictions for minor offenses.

F. An attorney suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

Rule II

Discipline Imposed By Other Courts.

A. Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other Court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, promptly inform the Clerk of this Court of such action.

B. Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been disciplined by another Court, this Court shall forthwith issue a notice directed to the attorney containing:

1. a copy of the judgment or order from the court; and

2. an order to show cause directing that the attorney inform this Court within 30 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in (D) hereof that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.

C. In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this Court shall be deferred until such stay expires.

D. Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of (B) above, this Court shall impose the idential discipline unless the respondent-attorney demonstrates, or this Court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

1. that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

2. that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or

3. that the imposition of the same discipline by this Court would result in grave injustice; or

4. that the misconduct established in deemed by this Court to warranty substantially different discipline.

Where this Court determines that any of said elements exist, it shall enter such other order as it deems appropriate.

E. In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in the Court of the United States.

F. This Court may at any stage appoint counsel to prosecute the disciplinary proceedings

Rule III

Disbarment on Consent or Resignation in Other Courts.

A. Any attorney admitted to practice before this Court who shall be disbarred on consent or resign from the bar of any other Court of the United States or the District of Columbia, or from the Bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, shall, upon the filing with this Court of a certified or exemplified copy of the judgment or order acepting such disbarment on consent or resignation, cease to be permitted to practice before this Court and be stricken from the roll of attorneys admitted to practice before this Court.

B. Any attorney admitted to practice before this Court shall, upon being disbarred on consent or resigning from the bar of any other Court of the United States or the District of Columbia, or from the Bar of any state, territory, commonwealth or possession of the United States while an investigation of misconduct is pending, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

Rule IV

Standards for Professional Conduct.

A. For misconduct defined in these Rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be disbarred, suspended from practice before this Court, reprimanded or subjected to such other disciplinary action as the circumstances may warrant.

B. Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other preson or persons, which violate the Code of Professional Responsibility adopted by this Court shall constitute misconduct and shallb e grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Code of Professional Responsibility adopted by this court is the Code of Professional Responsibility adopted by the highest court of the state in which this Court sits, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives or bar associations within the state.

Disciplinary Proceedings.

A. When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a Judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the Judge shall refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

B. Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent-attorney because sufficient evidence is not present, or because there is pending another proceeding against the respondent-attorney, the disposition of which in the judgment of the counsel should be awaited before further action by this court is condistered or for any other valid reason, counsel shall file with the court a recommendation for disposition of the matter, whether by dismissal, admonition, referral, or otherwide setting forth the reasons therefor.

C. To initiate formal disciplinary proceedings, counsel shall obtain an order of this Court upon a showing of probable cause requiring the respondent-attorney to show cause within 30 days after service of that order upon that attorney, personally or by mail, why the attorney should not be disciplined.

D. Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent attorney wishes to be heard in mitigation this Court shall set the matter from prompt hearing before one or more Judges of this Court, provided however that it the disciplinary proceeding is predicated upon the complaint of a Judge of this Court, the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge, or, if there are less than three Judges eligible to serve or the Chief Judge is the complainant, by the Chief Judge of the Court of Appeals for this Circuit.

Rule VI

Disbarment on Consent While Under Disciplinary Investigation or Prosecution.

A. Any attorney admitted to practice before this Court who is the subject of an investigation intop, or a pending proceeding involving, allegations of misconduct may consent to bisbarment, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and that:

1. the attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications or so consenting;

2. the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline the nature of which the attorney shall specifically set forth;

3. the attorney acknowledges that the material facts so alleged are true; and

4. the attorney so consents because the attorney knows that if charges wre predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself.

B. Upon receipt of the required affidavit, this Court shall enter an order disbarring the attorney.

C. The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

Rule VII

Reinstatement.

A. **After Disbarment or Suspension.** An attorney suspended for three months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three months or disbarred may not resume practice unitl reinstated by order of this Court.

B. **Time of Application Following Disbarment.** A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment.

C. **Hearing on Application.** Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the Chief Judge of this Court. Upon receipt of the petition, the Chief Judge shall promptly refer the petition to counsel and shall assign the matter for prompt hearing before one or more Judges of this Court, provided however that if the disciplinary proceeding was predicated upon the complaint of a Judge of this Court the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge, or, if there are less than three Judges eligible to serve or the Chief Judge was the complainant, by the Chief Judge of the Court of Appeals for this Circuit. The Judge or Judges assinged to the matter shall within 30 days after referral schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law before this Court and that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the adminstration of justice, or subversive or the public interest.

D. **Duty of Counsel.** In all proceedings upon a petition for reinstatement, cross-examination of the witnesses of the respondent-attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel.

E. **Deposit for Costs of Proceedings.** Petitions for reinstatement under this Rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the Court to cover anticipated costs of the reinstatement proceeding.

F. **Conditions of Reinstatement.** If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him, provided that the judgement may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of parital or complete restitution to parties harmed by the petitioners whose conduct led to the suspension or disbarment. Provided further, that if the petitioner has been suspended or disbarred for five years or more, reinstatement may be conditioned, in the discretion of the Judge or Judges before whom the matter is heard, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

G. **Successive Petitions.** No petition for reinstatement under this Rule shall be filed within one year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

Rule VIII

Attorneys Specially Admitted.

Whenever an attorney applies to be admitted or is admitted or is admitted to this Court for purposes of a particular proceeding (*pro hac vice*), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

Rule IX

Service of Papers and Other Notices.

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified maill addressed to the respondent-attorney at the last known office and residence addresses of the respondent-attorney. Service of any other papers or notices required by these Rules shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at the last known office and residence addresses of the respondent-attorney; or to counsel or the respondent's attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding.

Rule X

Appointment of Counsel.

Whenever counsel is to be appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this Court shall appoint as counsel the disciplinary agency of the Supreme Court of Ohio or other disciplinary agency having jurisdiction. If no such disciplinary agency exists or such disciplinary agency declines appointment, or such appointment is clearly inappropriate, this Court shall appoint as counsel one or more members of the Bar of this Court to investigate allegations of misconduct or to prosecute disciplinary proceedings under these rules, provided, however, that the respondent-attorney in any matter. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

Rule XIII

Duties of the Clerk

A. Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk of this Court shall determine whether the clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk of this Court shall promptly obtain a certificate and file it with this Court

B. Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another court, the Clerk of this Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court, and, if not, the Clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this Court.

C. Whenever it appears that any person convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other court, the Clerk of this Court shall, within ten days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other court, a certificate of the conviction or a certified exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.

D. The Clerk of this Court shall, likewise, promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this Court.

Rule XIV

Jurisdiction.

Nothing contained in these Rules shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure

Rule XV

Effective Date.

These rules shall become effective on February 1, 1979, provided that any formal disciplinary proceeding then pending before this Court shall be concluded under the procedure existing prior to the effective date of these Rules.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

Filed 9-29-98

IN RE: **GENERAL ORDER 98-3**

DISCLOSURE OF PRETRIAL SERVICES REPORT (PS3) FOR GOOD CAUSE

Order

Pursuant to the regulations issued by the Director of the Administrative Office of the United States Courts under the authority. Conferred by 18 U.S.C. §3153 (c)(2) (as amended by the Pretrial Services Act of 1982, Pub. L. No. 97-267, 96 Stat. 1136), counsel for the defendant and the United States may retain Pretrial Services Reports (PS3) after disclosure. Further dissemination or disclosure of the report by counsel is prohibited, without order of the court.

Walter Herbert Rice, Chief Judge
United States District Court

Sandra S. Beckwith
United States District Judge

Herman J. Weber
United States District Judge

Susan J. Dlott
United States District Judge

James L. Graham
United States District Judge

Edmund A. Sargus, Jr.
United States District Judge

George C. Smith
United States District Judge

Algenon L. Marbley
United States District Judge

Joseph P. Kinneary
Senior United States District Judge

S. Arthur Spiegel
Senior United States District Judge

John D. Holschuh
Senior United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

Procedure for Assigning
Multi-Defendant Criminal
Actions

Filed 12-18-98

It is the determination of the Judges of this Court that all criminal actions containing twenty (20) or more defendants should be assigned equally between the Judges in each division of the Court.

In Columbus and Cincinnati, the Clerk shall prepare a separate and additional deck of assignment cards comprising all of the Judges of that division accepting criminal assignments. The deck shall contain one card for each such Judge. The cards shall be shuffled and numbered. The cards shall thereafter be placed in envelopes containing the same number as the card. The assignment cards shall be placed in the envelopes in such a manner as to preclude any ability to determine the Judge named on the card without opening the envelope.

The envelopes shall be sealed and remain in the custody of the Office Manager. The lowest numbered card shall be used to assign a Judge in the normal procedures of that office whenever a criminal action containing twenty (20) or more defendants is filed.

When the cards are exhausted, the Office Manager shall make a confidential report of the deck to the Judges of that division and make a new and replacement deck as set forth herein. When the new deck is prepared, the Clerk shall make any adjustments to the cards necessitated by activities which occurred during the administration of the prior deck. These adjustments shall be explained to the involved Judges in the confidential memorandum.

No deviation from these instructions shall be permitted without consulting with the Clerk of Court who shall, in turn, consult with the Senior Active Judge present in the division and/or with the Chief Judge of the District.

These instructions shall apply to the Dayton Division whenever criminal assignments are routinely made to more than one Judge of the Court at that location.

IT IS SO ORDERED

Walter Herbert Rice, Chief Judge
United States District Court

Herman J. Weber, Judge
United States District Judge

James L. Graham, Judge
United States District Court

George C. Smith, Judge
United States District Court

Sandra S. Beckwith, Judge
United States District Court

Susan J. Dlott, Judge
United States District Court

Edmund A. Sargus, Jr., Judge
United States District Court

Algenon I. Marbley, Judge
United States District Court

Joseph P. Kinneary, Senior Judge
United States District Court

S. Arthry Spiegel, Senior Judge
United States District Court

John D. Holschuh, Senior Judge
United States District Court