LOCAL RULES

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

Effective October 1, 1991

CONTENTS

I. SCOPE OF RULES

1.1 GENERAL PROVISIONS

(a) Citation.
These rules may be cited as "S.D. Ohio L.R. _____".

(b) Effective Date.
The effective date of these rules is October 1, 1991.

(c) Scope of Rules.
These rules govern the procedure in the United States District Court for the Southern District of Ohio.

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

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

(2) These rules shall be construed to achieve an 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 the Local Rules.

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS; TRIAL ATTORNEY

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 PREPARATION OF PROCESS

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

1. Summons;
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.

3.3 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
Western Division: Cincinnati	Adams, Brown, Butler, Clermont, Clinton, Hamilton, Highland, Lawrence, Scioto and Warren
Dayton	Champaign, Clark, Darke, Green, 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 omissions giving rise to the claim occurred, or a substantial part of property that is the subject to the action is located; or (2) any location of court.

(e) Nonresident Defendant(s).

If no resident 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.

3.4 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 any judge of this district at the location where the complaint is to be filed in accordance with Local Rule 3.3. The judge receiving the complaint shall 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 and assignment to a judge.

4.1 SERVICE OF PROCESS

Rule 4(c)(2)(C), of FRCP provides for alternative methods of serving the summons and complaint in a civil action. The method established by the rule itself and the one most commonly now used is for plaintiff's attorney to mail a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to form 18-A and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service is received by the sender within twenty (20) days after the date of mailing, service of such summons and complaint shall be made by personal service and in the manner prescribed by other provisions of Rule 4. Service by the method established by the rule itself is the preferred method and provides the Clerk with a sufficient basis for entry of default when a defendant fails to appear in response to such service within the required time. Therefore, service by the method established by the rule itself should be attempted before service is attempted pursuant to the other method authorized by Rule 4(c)(2)(C).

The other method authorized by Rule 4(c)(2)(C) is service of a summons and complaint pursuant to the law of the state in which the district court is held for the service of summons or other like process upon the defendant in an action brought in the courts of general jurisdiction of that state. Rule 4 of the Ohio Rules of Civil Procedure provides 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, July 1983, (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 by him. 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 Local Rule.

This Local 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 procedures for other methods of service permitted by the FRCP or the Ohio Rules of Civil Procedures.

4.2 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), FRCP, 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), FRCP, 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.

4.3 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 a member in good standing of the bar of the Supreme Court of Ohio and who has been admitted to practice before a United States District Court and who maintains an office for the practice of law either within the State of Ohio or within 100 miles of the location of this Court at Cincinnati, at Columbus, or at Dayton as defined in Rule 45(e)(1) of the FRCP. 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 name 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 FRCP shall be served on the trial attorney. (Also see Local Rule 5.2, "Proof 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 accompanied by a current certificate of good standing by the highest court of the state. Such permission 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 anytime 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.

4.4 Prepayment of Fees; Registry Funds

(a) 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.

(b) Certified Checks.

The Clerk or the Marshal may require that any check tendered for any payment be certified before acceptance.

(c) 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.

(d) 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. (As of Dec. 1, 1990 such charge is 10 percent of the interest earned.) 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, FRCP, prior to December 1, 1990.

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 inch 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 inch 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 PROOF OF SERVICE; DELIVERY BY FACSIMILE

(a) Proof of Service.

Proof of service of all pleadings and other papers required or permitted to be served, other than those for which a method for proof of service is prescribed in the FRCP or these Local Rules (and except in the case of an ex parte proceeding), may be by written acknowledgment of service, by affidavit of the person making the service or by written representation of counsel. Such proof of service shall state the date and manner of service, including the name of the person served and the address to which service was directed, and shall be fully stated on or attached to the copy of the pleading or other papers served on any party or served 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), FRCP.

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.

6.1 COMPUTATION OF TIME

The provisions of Rules 6(a) and 6(e) of the FRCP shall govern the computation of any period of time, including additional time after service by mail, prescribed or allowed by these Local Rules.

III. PLEADINGS AND MOTIONS

7.1 PROCEDURE FOR DECIDING MOTIONS

(a) No Motion Day.

Pursuant to Rule 78, FRCP, the determination of all motions, including those filed pursuant to Rule 56, FRCP, shall be based upon memoranda filed pursuant to Local Rule 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 FRCP 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.

(c) Case Management Procedures.

(1) **Motions for Expedited Disposition.** In any case in which expedited disposition of the case or any pending motion is deemed necessary, the trial attorney for any party may file a written request for expedited disposition, advising the trial judge as to the status of the case or of pending motions and briefly setting forth the reasons why expedited disposition is deemed necessary.

(2) **Measures to Accelerate Decision.** If a motion has been fully at issue for 180 days or more, and the Court has been unable to reach it for decision, parties may elect to proceed as follows:

(A) Any party may request a motion be set promptly for decision on an accelerated basis, and decided orally at a brief hearing or conference before the Court. The Court shall schedule the matter at its earliest convenience. Following such argument or discussion as the Court deems desirable, the Court will dictate its decision into the record, or within 21 days will issue an abbreviated written opinion or advise the parties why the Court deems further time necessary for a decision. The transcript of any such oral decision, which the court reporter will prepare and file promptly, subject to any corrections by the Court, will serve as the record of the decision of the Court.

(B) In the alternative, all parties may consent in writing to submit a pending motion for decision by a Magistrate Judge. If the parties do so, they will be deemed to have waived all rights of review by or appeal to the District Judge from the decision of the Magistrate Judge, which shall be treated as the decision of the Court on the motion. The Magistrate Judge will assure that a ruling is forthcoming at the earliest time possible and in no event longer than sixty (60) days after such consent, or the date the motion is submitted for decision if supplemental briefing or oral argument is necessary. The denial of a case-dispositive motion or other action which leaves other matters in issue will return the case to the docket of the District Judge to whom the case was assigned. If a Magistrate Judge grants a case-dispositive motion and entry of judgment is appropriate under Rule 54, the Clerk will enter judgment.

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 Local Rule 5.1 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 the Motion as filed. 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), FRCP, 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 an abbreviated introductory summary of all points raised and of the primary authorities relied upon in the memorandum. No such summary may exceed fifteen (15) pages.

(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. Citations such as "Section so and so of the Act" are discouraged, even cumulatively.

(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 nonconsideration by the Court of the memorandum or other material.

(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 Local 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), FRCP, counsel shall consult one another and attempt to stipulate to an agreed extension of the schedule established by this Local 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), FRCP.

7.3 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

9.1 SOCIAL SECURITY NUMBER IN SOCIAL SECURITY CASES

Any person seeking judicial review of a decision of the Secretary of Health and Human Services under 42 U.S.C. 405(g) (Section 205(g) of the Social Security Act) shall provide, on a separate paper attached to the complaint served on the Secretary of Health and Human Services, the social security number of the worker on whose wage record the application for benefits was filed. The person shall also state, in the complaint, that the social security number has been attached to the copy of the complaint served on the Secretary of Health and Human Services.

12.1 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 Local Rule applies only to extensions of time to plead to a complaint, amended complaint, counter claim, 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 or agreed Order.

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, FRCP. 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 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 90 days after the filing of an action. In any action assigned to a Magistrate Judge under Rule 72.1, the Magistrate Judge is empowered to enter scheduling orders under Rule 16(b), FRCP, 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), FRCP:

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.

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), FRCP.

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), FRCP, 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.

24.1 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 affecting the public interest 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 affecting the public interest 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 Local Rule, or lack of notice, will not serve as a substitute for, or as a waiver of, any pleading requirement set forth in the FRCP or applicable statutes.

V. DEPOSITIONS AND DISCOVERY

26.1 FORM OF DISCOVERY DOCUMENTS

The party serving interrogatories, pursuant to Rule 33, FRCP, requests for production of documents or things, pursuant to Rule 34, FRCP, or requests for admission pursuant to Rule 36, FRCP, 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 any action.

26.2 FILING AND USE OF DISCOVERY DOCUMENTS

Interrogatories, requests for production, requests for admission and responses to such discovery shall not be filed with the Court except in those cases where informal attempts at discovery are ineffective and it becomes necessary to file a motion to which Local Rule 37.2 applies, or when such discovery is evidence in support of or in opposition to a motion, as provided in Local Rule 7.2 (e) and (f). Discovery documents which comply with the FRCP and with these Local Rules may be used in any action in the manner permitted by rule, statute or any order made in such action, notwithstanding the fact that a discovery document has not been filed with the Clerk.

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 Local Rule 79.2.

(d) Depositions Taken Out 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), FRCP, and any proceeding under Rule 30(b), FRCP, initiated or arising during the process of taking depositions out 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 Local 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, FRCP, 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 Local Rule, application in such other districts generally tends to unduly increase the business of such other districts 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.

33.1 INTERROGATORIES

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

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 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, FRCP, 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, FRCP, and Local Rule 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 MOTION

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), FRCP. 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 Local Rule shall be filed within the time specified by the FRCP, or, if no time is specified, within the time specified by Local Rule 7.2. The time for filing a reply memorandum is likewise governed by Local Rule 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.

VI. TRIALS

38.1 NOTATION OF "JURY DEMAMD" IN THE PLEADING

If a party demands a jury trial by endorsing it on a pleading, as permitted by Rule 38(b), FRCP, 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).

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.

39.2 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 Local Rule 79.2 has been satisfied.

40.1 CALENDAR OF COURT PROCEEDINGS

(a) Unless otherwise ordered, actions will be tried at the locations of court where they are filed.

(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.

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 connected with the trial of an action shall personally, or acting through any 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.

48.1 CIVIL JURY TRIALS

Unless otherwise ordered, the Court shall seat a jury of not fewer than six and not more than twelve members and all jurors shall participate in the verdict unless excused from service by the Court. Unless the parties otherwise stipulate, (1) the verdict shall be unanimous and (2) no verdict shall be taken from a jury reduced in size to fewer than six members. (This Local Rule shall have no further effect after December 1, 1991, provided the amendment to FRCP48 proposed by the Supreme Court on April 30, 1991 takes effect.)

53.1 ALTERNATIVE DISPUTE RESOLUTION

The Court may, in its discretion, assign any civil case for a summary jury trial, mandatory, non-binding arbitration hearing, settlement week conference, or other alternative method of dispute resolution.

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 30 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 Local Rules. Costs shall be taxed by the Clerk not less than 10 days after service of the bill of costs.

54.2 APPLICATION FOR ATTORNEYS FEES

Except as otherwise provided by statute or by Order of the Court, an application for attorneys fees by a prevailing party together with a supporting memorandum shall be filed within thirty (30) days after the entry of judgment. This requirement shall not be affected by the filing of a notice of appeal. Failure to file the application within the time specified shall be considered a waiver of the right to attorneys fees, unless for good cause shown the Court extends the time for filing the application.

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 FRCP, 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), FRCP, or shall take steps to perfect service of summons and complaint as required by the FRCP.

(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 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 dismissal, 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 Local 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 upon 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.

72.1 FULL-TIME MAGISTRATE JUDGES

All full-time Magistrate Judges may perform any of the duties authorized by 28 U.S.C. §636(a), (b) and (c). All full-time 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. Upon consent of the parties, all full-time 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 a 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. The Clerk 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. If the parties consent to disposition by a Magistrate Judge and stipulate that the appeal from the decision of the Magistrate Judge shall be to a District Judge, rather than to the United States Court of Appeals, the appeal shall be assigned to that District Judge to whom the case was originally assigned.

72.2 PART-TIME MAGISTRATE JUDGES

All part-time Magistrate Judges may perform any of the duties authorized by 28 U.S.C. Section 636(a)(1), (2) and (3). All part-time Magistrate Judges are specially designated within the meaning of 18 U.S.C. Section 3401(a) to try persons accused of and to sentence persons convicted of misdemeanors. When a part-time Magistrate Judge holds an initial appearance under Rule 5(a) and (c), F. R. Crim. Proc., the Magistrate Judge shall set the case for preliminary examination under Rule 5.1, F. R. Crim. Proc., before a full-time Magistrate Judge located at the place where the case is to be tried.

72.3 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 Local 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.)

72.4 EFFECT OF 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.

IX. DISTRICT COURT AND CLERK

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.

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 Local 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.

X. GENERAL PROVISIONS

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 DECORUM

No person may, without permission of the Court, operate a camera or other recording device on any floor of a courthouse where judicial proceedings are being conducted.

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 Local Rule is applicable whether or not the Court is in session.

83.4 ADMISSION TO THE BAR

(a) Roll of Attorneys

The bar of this Court shall consist of those attorneys currently admitted and those attorneys hereafter admitted, in accordance with this rule or by order of this Court, to practice in 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, 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's designee, 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, 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).

100. GENERAL APPLICATION

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

(a) are made inapplicable by Rule 101;

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

(c) are clearly inapplicable to criminal actions by their nature, or by reason of provisions in the F. R. Crim. Proc., 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.

101. CIVIL LOCAL RULES NOT APPLICABLE

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

3.1, 3.3, 3.4, 4.1, 5.3, 9.1, 16.1, 16.2, 23.1, 23.2, 23.3, 26.1, 30.1, 33.1, 36.1, 38.1, 48.1, 53.1, 54.1, 55.1 and 65.1.

102. PRESENTENCE REPORTS

This Rule creates a guideline with respect to the procedures and time limits applicable to cases arising under the Comprehensive Crime Control Act of 1984, involving charge offense conduct which occurred after October 31, 1987.

(a) 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 provide two copies of the initial presentence investigation report to counsel for the defendant, (who is responsible for delivering one such copy to the defendant) and provide one copy directly to the Government.

(b) Within ten (10) days thereafter, the parties shall communicate to the Probation Officer any objections they may have as to the material information, sentencing classifications, sentencing guidelines ranges, and policy statements contained in or omitted from the report. Such communication may be oral or written, but the Probation Officer may require any oral objection be promptly confirmed in writing. All objections to the presentence report material to sentencing should be resolved to the extent practicable through informal procedures, including telephone conferences.

(c) Within seven (7) days after receiving the objections, the Probation Officer shall conduct any necessary further investigation, make revisions to the presentence report, or decline to make revisions, and shall notify the parties of the position of the Probation Officer regarding the objections.

(d) If any objection is not resolved under paragraphs (b) and (c) above, it shall be the obligation of the party objecting to seek a conference with the Probation Officer and the parties if there is a good faith belief such a conference may resolve any disputes. This presentence conference shall be held within ten (10) days from the date of the notification by the Probation Officer of the Probation Officer's position regarding the objections.

(e) Within fourteen (14) days after the notification required by paragraph (c), counsel for the defendant and the government shall submit to the Probation Officer and opposing counsel written statements of any objections not resolved under paragraphs (b), (c), and (d).

(f) Within four (4) days from receipt of the written statements, the Probation Officer shall transmit to the Judge pursuant to Rule 32 of the F. R. Crim. Proc. the final presentence investigation report including statements of the parties concerning any unresolved objections. The Probation Officer shall certify the final presentence report as true and accurate. The certification shall include a statement that all of the information submitted to the Judge has been disclosed to the defendant through counsel for the defendant and the government, and that all statements submitted under paragraph (e) are attached. The final recommendation as to sentence shall not be divulged. Copies of the final presentence report shall be provided to the parties upon the return of the copies of the initial presentence report.

(g) The Judge shall schedule any additional conferences and the sentencing hearing not less than ten (10) days after receiving the final presentence report.

(h) Except with regard to any objection made under paragraph (e) that has not been resolved, the final presentence report may be accepted by the Court as accurate. 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 time set forth in this rule may be modified by the Court for good cause shown, except that the ten (10) day periods set forth in paragraphs (b) and (g) may be shortened only with the consent of the defendant.

(j) Nothing in this rule requires the disclosure of any part of any presentence report that is not disclosable under Rule 32 of the F. R. Crim. Proc.

(k) The presentence reports, statements and other attachments shall be deemed to have been disclosed at the earliest of the following events: a) on the date designated as the availability date in the Disclosure Notification letter; b) when a copy of the document is physically presented; c) one (1) day after the availability of the document for inspection is orally communicated; or d) three (3) days after notice of the immediate availability of them is mailed.

(l) The presentence report shall be a document under seal. Unauthorized copying or disclosure of the information contained in the presentence reports, statements, and other attachments will be an act in contempt of Court and be punished accordingly.

(m) In the event that, during the disclosure process, the Probation Officer, government, and defendant agree that a sentence is reasonable under the Guidelines, they shall set forth the justifications for such sentence in writing. The Court may accept such agreement as a reasonable sentence.

(n) The Probation Department of this Court shall administer the operation of this Rule.

103. PROBATION OFFICE RECORDS

Except as otherwise provided by Rule 32 of the F. R. Crim. Proc., confidential records of the Court maintained by the Probation Office, including presentence and probation supervision records, shall not be sought by any applicant except by written application to the Court establishing with particularity the need for the information sought.

When a request for disclosure of presentence and probation records is made, by way of subpoena or other judicial process, to a probation officer of this Court, the probation officer may file a petition seeking instructions from the Court with respect to responding to the subpoena or other judicial process or for authority to release documentary records or produce testimony with respect to the confidential records and information.

In no event shall disclosure of confidential records and information of the Probation Office be made, except upon an order issued by the Court, unless otherwise permitted by the F. R. Crim. Proc.

104. 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 Local 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.

105. 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 Local 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 Local Rule shall be interpreted to prohibit or restrict otherwise existing authorities 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.

106. 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) Issurance Of Certificate Of Probable Cause

If a certificate of probable cause 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 it.

(h) Assignment Of Judge

If the same petitioner has previously filed in this Court an application to stay enforcement of a state court judgement or for habeas corpus relief, the case shall be allotted to the judge who considered the prior matter.

(i) Second Or Successive Petitions

A second or successive petition for habeas corpus may be dismissed if the Court finds that it fails to allege new or different grounds for relief, if the failure of the petitioner to assert those grounds in a prior petition constitutes an abuse of the writ, or if the petition is frivolous and entirely without merit. Even if it cannot be concluded that a petition should be dismissed on these grounds, the Court will expedite the consideration of any second or successive petition.

APPENDIX
COURT ORDERS

Unless otherwise specified, orders are applicable throughout the Southern District of Ohio

ORDER NUMBER	CONTENTS
91-1	In re: Adoption of Revised Local Rules of the United States District Court, Southern District of Ohio, effective October 1, 1991
81-1	Re: Adoption of Model Federal Rules of Disciplinary Enforcement together with the Model Rules
81-2	In Re: United States Magistrates (re-affirming Western Division Rule No. 1) (Western Division Only)
81-4	In Re: Complaint Form for 42 U.S.C. Section 1983 Actions by Incarcerated Persons (Civil Rights Cases)
81-5	Re: Rule 11, Federal Rules of Criminal Procedure: Pleas of Guilty Offered Pursuant to A Plea Agreement and Pleas of Guilty Offered in Absence of A Plea Agreement
85-1	In Re: Referred Arbitration with Arbitration Rules (Western Division Only)
85-1A	In Re: Referred Arbitration (Western Division Only)
91-3	In Re: United States Magistrate Judges (Eastern Division Only)
91-4	General Order On Pretrial (Eastern Division Only)
____	Order of General Reference to the United States Magistrate Judges Assigned to Cincinnati (filed March 25, 1991) (Cincinnati Only)
Gen. Order No. 11	Amended General Order of Reference to United States Magistrate Judge Michael R. Merz (Dayton Only)
Gen. Order	General Order of Reference From Hon. Herman J. Weber to United States Magistrate Judge Michael R. Merz (filed January 30, 1986) (Dayton Only)
MS-1-84-152	In the Matter Of: The Bankruptcy Amendments and Federal Judgeship Act of 1984 (filed August 23, 1977) (District-wide)

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

IN RE: Order 81-1

MODEL FEDERAL RULES OF DISCIPLINARY ENFORCEMENT (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 readopted 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

Carl B. Rubin, Chief Judge

Joseph P. Kinneary, Judge

Robert M. Duncan, Judge

S. Arthur Spiegel, Judge

John D. Holschuh, Judge

Walter H. Rice, Judge

Timothy Hogan, Judge

David S. Porter, Judge

MODEL FEDERAL RULES OF DISCIPLINARY ENFORCEMENT

TABLE OF CONTENTS

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, and 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 shown, 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 Court 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 procedding 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 other 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 identical 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 is deemed by this Court to warrant 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 accepting 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 into allegation 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 person or persons, which violate the Code of Professional Responsibility adopted by this Court shall constitute misconduct and shall be 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 of bar associations within the state.

Rule V

Disciplinary Proceedings.

A. When misconduct or allegations of misconduct with, 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 considered 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 otherwise 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 for prompt hearing before one or more Judges of this Court, provided however that if 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 into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, 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 of 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 were 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 until 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 assigned 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 requried 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 administration of justice, or subversive of 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. 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 partial or complete restitution to parties harmed by the petitioner 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 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 mail 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 may move to disqualify an attorney so appointed who is or has been engaged as an adversary of 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.

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

IN RE: Order 81-2

UNITED STATES MAGISTRATES (Western Division Order)

ORDER

The Judges of the Western Division hereby reaffirm by this Order Western Division Rule No. 1 adopted by previous Order of the Judges of the Western Division on October 21, 1980. A copy of Western Division Rule No. 1 is attached hereto and made a part hereof. This Order supercedes all other prior orders regarding the duties of Magistrates in the Western Division and supplements S.D. Ohio Rule 2.4.

SO ORDERED.
September 1, 1981

Carl B. Rubin, Chief Judge

S. Arthur Spiegel, Judge

Walter H. Rice, Judge

Timothy Hogan, Judge

David S. Porter, Judge

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

IN RE:
UNITED STATES MAGISTRATES

WESTERN DIVISION
RULE No. 1

This Order creates a Rule with respect to the duties and function of the Magistrates pursuant to 28 U.S.C. §636(b)(4) and effective in the Western Division only (Dayton and Cincinnati). The following Rule supersedes all prior orders regarding the duties of the Magistrates at Dayton and Cincinnati and those orders are hereby vacated.

The Judges of the Western Division hereby adopt the following Rule to be designated as Western Division Rule No. 1:

RULE 1
AUTHORITY OF UNITED STATES MAGISTRATES

(a) Duties Under 28 U.S.C. §636(a).

United States Magistrates Robert A. Steinberg and J. Vincent Aug, Jr. are authorized to perform the duties prescribed by 28 U.S.C. §636(a), and many—

(1) Exercise all the powers and duties conferred or imposed upon United States commissioners by law and the Federal Rules of Criminal Procedure;

(2) Administer oaths and affirmations, impose conditions of release under 18 U.S.C. §3146, and take acknowledgements, affidavits, and depositions; and

(3) Conduct extradition proceedings, in accordance with 18 U.S.C. §3184.

(b) Disposition of Misdemeanor Cases

A magistrate may —

(1) Try persons accused of, and sentence persons convicted of, misdemeanors committed within this district in accordanced with 18 U.S.C. §3401;

(2) Direct the probation service of the court to conduct a presentence investigation in any misdemeanor case; and

(3) Conduct a jury trial in any misdemeanor case where the defendent so requests and is entitled to trial by jury under the Constitution and laws of the United States.

(c) Determination of Non-Dispositive Pretrial Matters

The magistrates may hear and determine any procedural or discovery motion or other pretrial matter in a civil or criminal case, other than the motions which are specified in subsection 1(d), infra, of these rules, pursuant to 28 U.S.C. §636(b)(1)(A).

(d) Recommendations Regarding Case-Dispositive Motions

(1) The magistrates may submit to a judge of the court a report containing proposed findings of fact and recommendations for disposition by the judge of the following pretrial motions in civil and criminal cases, pursuant to 28 U.S.C. §636(b)(1)(B).

A. Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;

B. Motions for judgment on the pleadings;

C. Motions for summary judgment;

D. Motions to dismiss or permit the maintenance of a class action;

E. Motions to dismiss for failure to state a claim upon which relief may be granted;

F. Motions to involuntarily dismiss an action;

G. Motions for review of default judgments;

H. Motions to dismiss or quash an indictment or information made by a defendant; and

I. Motions to suppress evidence in a criminal case.

(2) The magistrates may determine any preliminary matters and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this subsection.

(e) Prisoner Cases Under 28 U.S.C. §§2254 and 2255.

The magistrates may perform any or all of the duties imposed upon a judge by the rules governing proceedings in the United States district courts under §2254 and §2255 of Title 28, United States Code. In so doing, the magistrates may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for disposition of the petition by the judge. Any order disposing of the petition may only be made by a judge.

(f) Prisoner Cases Under 42 U.S.C. §1983.

The magistrates may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for the disposition of petitions filed by prisoners challenging the conditions of their confinement.

(g) Special Master References.

The magistrates may be designated by a judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C.§636(b)(2) and Rule 53 of the Federal Rules of Civil Procedure. Upon the consent of the parties, the magistrates may be designated by a judge to serve as special masters in any civil case, notwithstanding the limitations of Rule 53(b) of the Federal Rules of Civil Procedure.

(h) Conduct of Trials and Dispositions of Civil Cases Upon Consent of the Parties.

Upon the consent of the parties, the magistrates may conduct any or all proceedings in any civil case which is filed in this court, including the conduct of a jury or nonjury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. §636(c). In the course of conducting such proceedings upon consent of the parties, the magistrates may hear and determine any and all pretrial and posttrial motions which are filed by the parties, including case-dispositive motions.

(i) Social Security Act Cases.

The magistrates may review motions for summary judgment and submit reports and recommendations with respect to administrative determinations under the Social Security Act and related statutes.

(j) Internal Revenue Summonses.

The magistrates may hear all cases filed to judicially enforce obedience to an Internal Revenue summons pursuant to Sections 7402(b) and 7604(a) of Title 26, United States Code.

(k) Proceedings Involving Equal Employment Opportunity.

The magistrates may serve as special masters pursuant to 72 U.S.C. §2000e-5 et seq. and applicable provisions of Title 28 of the United States Code and the Federal Rules of Civil Procedure in the conduct of trial or proceedings involving Equal Employment Opportunity.

(l) Other Duties.

The magistrates are also authorized to —

(1) Exercise general supervision of civil and criminal calendars, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the judges;

(2) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in civil and criminal cases;

(3) Conduct arraignments in criminal cases not triable by the magistrates and to the extent of taking not guilty pleas or noting a defendant's intention to plead guilty or nolo contendere;

(4) Receive Grand Jury returns in accordance with Rule 6(f) of the Federal Rules of Criminal Procedure, and issue bench warrants, when necessary, for defendants named in the indictment;

(5) Accept waivers of indictment, pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure;

(6) Conduct voir dire and select juries for the court;

(7) Accept petit jury verdicts in civil and criminal cases in the absence of a judge;

(8) Conduct necessary proceedings leading to the potential revocation of probation;

(9) Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus and prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;

(10) Order the exoneration or forfeiture of bonds;

(11) Conduct proceedings for the collection of civil penalties of not more than $200 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. §1484(d);

(12) Conduct examinations of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure;

(13) Conduct proceedings for initial commitment of narcotics addicts under Title III of the Narcotic Addict Rehabilitation Act;

(14) Perform the functions specified in 18 U.S.C. §§4107, 4108 and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein;

(15) Institute proceedings against persons violating certain civil rights statutes, 42 U.S.C. §§1987 and 1989;

(16) Establish a bail schedule for petty offenses, as defined in 18 U.S.C. §1(3), provide for posting of collateral, waiver of appearance before a magistrate and consent to forfeiture of collateral;

(17) Consider motions relating to security for costs, for extension of time for pleading, for leave to amend pleadings or to file amended pleadings to substitute counsel or parties, to add parties, to intervene, to file third-party complaints, to sever or consolidate, and to set aside default judgments, after conducting such hearings as may be required;

(18) Review applications for post-trial or other relief made by individuals convicted of criminal offenses, obtain information that will aid in determining the merits of any complaint, and submit reports and recommendations to facilitate the decision of the district judge having jurisdiction over the case as to whether there should be a hearing;

(19) Examine and report to the respective judge on all vouchers submitted pursuant to the Criminal Justice Act;

(20) Hear motions, enter orders, conduct hearings, and make findings of fact and recommendations to the court on matters relating to mental competency as provided in 18 U.S.C. §4244; and

(21) Perform any additional duty as is not inconsistent with the Constitution and laws of the United States.

PROCEDURES BEFORE THE MAGISTRATE

(a) In General.

In performing duties for the Court, the magistrates shall conform to all applicable provisions of federal statutes and rules, to the general procedural rules of this court, and to the requirements specified in any order of reference from a judge.

(b) Special Provisions for the Disposition of Civil Cases by the Magistrates on Consent of the Parties — 28 U.S.C.§633(c).

(1) Notice.

The clerk of court shall notify the parties in all civil cases that they may consent to have a magistrate conduct any or all proceedings in the case and order the entry of a final judgment. Such notice shall be handed or mailed to the plaintiff or his representative at the time an action is filed and to other parties as attachments to copies of the complaint and summons, when served.

Additional notices may be furnished to the parties at later stages of the proceedings, and may be included with pretrial notices and instructions.

(b) Execution of Consent.

The clerk shall not accept a consent form unless it has been signed by all parties in a case. The plaintiff shall be responsible for securing the execution of a consent form by the parties and for filing such form with the clerk of court. No consent form will be made available, nor will its contents be made known to any judge or magistrate, unless all parties have consented to the reference to a magistrate. No magistrate, judge, or other court official may attempt to persuade or induce any party to consent to the reference of any matter to a magistrate from informing the parties that they may have the option of referring a case to a magistrate.

(3) Reference.

After the consent form has been executed and filed, the clerk shall transmit it to the judge to whom the case has been assigned for approval and referral of the case to a magistrate. Once the case has been assigned to a magistrate, the magistrate shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the clerk of court to enter a final judgment in the same manner as if a judge had presided.

REVIEW AND APPEAL

(a) Appeal of Non-Dispositive Matters — 28 U.S.C. §636(b)(1)(A).

Any party may appeal from a magistrate's order determining a motion or matter under subsection 1(c) of this rule, supra, within 10 days after issuance of the magistrate's order unless a different time is prescribed by the magistrate or a judge. Such party shall file with the clerk of court, and serve on the magistrate and all parties, a written statement of appeal which shall specifically designate the order, or part thereof, appealed from and the basis for any objection thereto. A judge of the court shall consider the appeal and shall set aside any portion of the magistrate's order found to be clearly erroneous or contrary to law. The judge may also reconsider sua sponte any matter determined by a magistrate under this rule.

(b) Review of Case-Dispositive Motions and Prioner Litigation — 28 U.S.C. §636(b)(1)(B).

Any party may object to a magistrate's proposed findings, recommendations or report under subsections 1(d), (e) and (f) of this rule, supra, within 10 days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate and all parties, written objections which shall specifically identify the portions of the proposed findings,

recommendations or report to which objection is made and the basis for such objections. Any party may respond to another party's objections within 10 days after being served with a copy thereof. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge, hwoever, need conduct a new hearing only in his discretion or where required by law, and may consider the record developed before the magistrate, making his own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate with instructions.

(c) Special Master Reports — 28 U.S.C. §636(b)(2).

Any party may seek review of, or action on, a special master report filed by a magistrate in accordance with the provisions of Rule 53(e) of the Federal Rules of Civil Procedure.

(d) Appeal from Judgments in Misdemeanor Cases — 18 U.S.C. §3402.

A defendant may appeal a judgment of conviction by a magistrate in a misdemeanor case by filing a notice of appeal with the clerk of courts within 10 days after entry of the judgment, and by serving a copy of the notice upon the United States Attorney. The scope of appeal shall be the same as on an appeal from a judgment of the district court to the court of appeals.

(e) Appeal from Judgments in Civil Cases Disposed of on Consent of the Parties — 28 U.S.C. §636(c).

(1) Appeal to the Court of Appeals.

Upon the entry of judgment in any civil case disposed of by a magistrate on consent of the parties under authority of 28 U.S.C. §636(c) and subsection 1(h) of this rule, supra an aggrieved party shall appeal directly to the United States Court of Appeals for this circuit in the same manner as an appeal from any other judgment of this court.

(2) Appeal to a District Judge.

A. Notice of Appeal.

In accordance with 28 U.S.C. §633(c)(4), the parties may consent to appeal any judgment in a civil case disposed of by a magistrate to a judge of this court, rather than directly to the Court of Appeals. In such case the appeal shall be taken by filing a notice of appeal with the clerk of court within ten days after entry of the magistrate's judgment; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within sixty days of entry of the judgment. For good cause shown, the magistrate or a judge may extend the time for filing the notice of appeal for an additional twenty days. Any request for such extension, however, must be made before the original time period for such appeal has expired. In the

event a motion for a new trial is timely filed, the time for appeal from the judgment of the magistrate shall be extended to thirty days from the date of the ruling on the motion for a new trial, unless a different period is provided by the Federal Rules of Civil or Appellate Procedure.

B. Service of the Notice of Appeal.

The clerk of court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record for all parties other than the appellant, or if a party is not represented by counsel to the party at his last known address.

C. Record on Appeal.

The record on appeal to a judge shall consist of the original papers and exhibits filed with the court and the transcript of the proceedings before the magistrate, if any. Every effort shall be made by the parties, counsel, and the Court to minimize the production and costs of transcriptions of the record, and otherwise to render the appeal expenditious and inexpensive, as mandated by 28 U.S.C. §636(c)(4).

D. Memoranda.

The appellant shall within 30 days of the filing of the notice of appeal file a typewritten memorandum with the clerk, together with two additional copies, stating the specific facts, points of law, and authorities on which the appeal is based. The appellant shall also file a copy of the memorandum on the appellee or appellees. The appellees shall file an answering memorandum within 30 days of the filing of the appellant's memorandum. The Court may extend these time limts upon a showing of good cause made by the party requesting the extension. Such good cause may include reasonable delay in the preparation of any necessary transcript. If an appellant fails to file his memorandum within the time provided by this rule, or any extension thereof, the Court may dismiss the appeal.

E. Disposition of the Appeal by a Judge.

The judge shall consider the appeal on the record, in the same manner as if the case had been appealed from a judgment of the District Court to the Court of Appeals and may affirm, reverse, or modify the magistrate's judgment, or remand with instructions for further proceedings. The judge shall accept the magistrate's findings of fact unless they are clearly erroneous, and shall give due regard to the opportunity of the magistrate to judge the credibility of the witness.

F. Appeals from other Orders of a Magistrate.

Appeals from any other decisions and orders of a magistrate not provided for in this rule should be taken as provided by governing, statute, rule, or decisional law.

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

IN RE:

COMPLAINT FORM FOR
42 U.S.C. §1983 ACTIONS BY
INCARCERATED PERSONS
(Civil Rights Cases)

Order 81-4

(District-Wide Order)

ORDER

All actions under 42 U.S.C. §1983 filed in this district by incarcerated persons shall be submitted on the court-approved form supplied by the Clerk unless a district judge or magistrate, upon finding that the complaint is understandable and that it conforms with local rules and the Federal Rules of Civil Procedure, in his discretion, accepts for filing a complaint that is not submitted on the approved form.

The Clerk shall provide copies of such forms to the Warden or his designated representative in each of the places of confinement operated by the State of Ohio within this district and shall also have copies of such forms available at each location of the Clerk's office in this district.

SO ORDERED.
September 1, 1981

Carl B. Rubin, Chief Judge

Joseph P. Kinneary, Judge

Robert M. Duncan, Judge

S. Arthur Spiegel, Judge

John D. Holschuh, Judge

Walter H. Rice, Judge

Timothy Hogan, Judge

David S. Porter, Judge

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

IN RE: Order 81-5

RULE 11, FEDERAL RULES OF CRIMINAL PROCEDURE: PLEAS OF GUILTY OFFERED PURSUANT TO A PLEA AGREEMENT AND PLEAS OF GUILTY OFFERED IN ABSENCE OF A PLEA AGREEMENT. (District-Wide Order)

ORDER

I. Pleas of Guilty Offered Pursuant to a Plea Agreement.

Rule 11, Federal Rules of Criminal Procedure, provides, in part:

(5) Time of Plea Agreement Procedure.

Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the court.

Rule 11 also places the duty upon the Court to either accept or reject any plea agreement, the performance of that duty requiring the Court, among other things, to consider carefully the terms of the agreement, to question the defendant and the United States Attorney concerning the agreement and to advise the defendant of the nature of the charge to which a plea under the agreement is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law.

Unless a judge has otherwise ordered, the following procedure is hereby established regarding plea agreements to be submitted to the Court for approval in cases pending in this District:

1. All plea agreements shall be reduced to writing and signed by the defendant, the attorney for the defendant and the Assistant United States Attorney in charge of the prosecution of the case.

2. Upon the execution of a plea agreement, a copy thereof shall be given to the Court (a) for informational purposes regarding the status of the case, (b) to enable the Court to properly and expeditiously schedule its docket of criminal cases, and (c) to give the Court an opportunity to consider the terms and provisions of the plea agreement in order to question the defendant and the United States Attorney in open court on the question of whether such an agreement should be approved or rejected by the Court.

3. At the time the copy of the plea agreement is submitted to the Court, the United States Attorney shall also advise the Court in writing regarding:

   (a) the elements of each offense to which a plea of guilty would be offered by the plea agreement;

   (b) the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law for each offense to which a plea of guilty would be offered pursuant to the plea agreement.

   (c) whether the attorney for the defendant concurs with the United States Attorney's listing of the elements of the offense and the penalties involved and, if there is no concurrence, the extent to which there is any disagreement.

4. If a plea agreement is executed prior to arraignment of the defendant, but the Court has not, prior to that time, received a copy of the agreement or the statement of the United States Attorney, the Court must be notified of the existence of the agreement at the arraignment, and the Court may, if it so desires, then continue the arraignment to a later date.

5. If a plea agreement is executed after arraignment of the defendant, the Court must be notified of its existence at least seven (7) days prior to the date set for trial.

II. Pleas of Guilty Offered in Absence of a Plea Agreement.

1. Whenever it comes to the attention of the United States Attorney that a defendant desires to change a plea of not guilty to a subsequent plea of guilty, and no plea agreement has been made, the United States Attorney shall promptly advise the court in writing regarding:

   (a) the anticipated offer of a plea of guilty and the fact that no plea agreement or understanding of any nature exists with respect to the plea of guilty;

   (b) the elements of each offense to which a plea of guilty would be offered by the plea agreement;

   (c) the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law for each offense to which a plea of guilty would be offered pursuant to the plea agreement.

(d) whether the attorney for the defendant concurs with the United States Attorney's listing of the elements of the offense and the penalties involved and, if there is no concurrence, the extent to which there is any disagreement.

SO ORDERED.
September 1, 1981.

Carl B. Rubin, Chief Judge

Joseph P. Kinneary, Judge

Robert M. Duncan, Judge

S. Arthur Spiegel, Judge

John D. Holschuh, Judge

Walter H. Rice, Judge

Timothy Hogan, Judge

David S. Porter, Judge

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

IN RE: Order 85-1

REFERRED ARBITRATION (Western Division At Cincinnati Order)

Civil cases may be referred, by the judges at the Cincinnati Location of Court, to mandatory, non-binding arbitration. The procedure set forth in the Appendix to this Order shall apply to such references.

SO ORDERED.
January 1, 1985

Carl B. Rubin, Chief Judge

S. Arthur Spiegel, Judge

APPENDIX

ORDER 85-1

ARBITRATION RULES

1.0 Applicability And Definitions

1.1 Applicability. This rule shall be applicable to the Location of Court at Cincinnati in accordance with Order 85-1, entered January 1, 1985.

1.2 Definitions.

1.2.1. "Administrator" shall mean that member of the office of the Clerk of the Southern District of Ohio, at the Location of Court at which this Rule is then applicable, who shall be responsible for the administration of this rule.

1.2.2. "Notice of Arbitration Proceeding" is the written notice to the parties from the Administrator of the names and addresses of the arbitration panel members and the date, time and place of the hearing.

1.2.3. "Notice of Disqualification" is a written certification by one or more parties, as defined in Rule 1.2.6, that one or more members of an arbitration panel, selected by the Administrator, should be disqualified for the reasons set forth in 28 U.S.C. Section 144 or Section 455.

1.2.4. "Panel" shall mean those members of the Arbitration Tribunal designated by the Administrator to serve as a panel of not less than three arbitrators in respect to a given action. The designation will include the name of one member as chairman and may include one or more alternate panel members in the Administrator's discretion. The arbitration panel may consist of less than three members of the Tribunal if the parties should so agree.

1.2.5. "Reference" shall mean the Order by which the Court requires that mandatory arbitration, as provided by this Rule, shall be implemented. A reference to arbitration may be contained in a scheduling order

1.2.6. "Party" shall mean both the singular and plural thereof and shall mean the trial attorney for a party or a named party if not represented by a trial attorney.

1.2.7. "Tribunal" shall mean that listing, maintained by the Administrator, of members of the Arbitration Tribunal appointed by Order of the Court.

2.0 Arbitration Tribunal

2.1. Appointment of Tribunal Members.

2.1.1. There shall be one Tribunal at each Location of

Court at which this Rule is then applicable.

2.1.2. The judges at each Location of Court may nominate Tribunal members from among those attorneys admitted to the practice of law in the State of Ohio, who reside within the counties of venue of each Location of Court at which this Rule is then applicable and who have exhibited qualities of unquestioned legal ability and high competence.

2.1.3. All appointments as members of a Tribunal shall be made by order of the Chief Judge.

2.2. Oath or Affirmation. Each member of a Tribunal shall execute a written oath or affirmation that such member will justly and equitably try all matters properly at issue and submitted by any reference from the Court. (See 28 U.S.C. Section 453. Oath of Justices And Judges.) Each oath or affirmation shall be maintained on file by the Administrator.

2.3 Costs Incident to Arbitration. Unless otherwise provided by order of the Court, members of the Tribunal will serve without compensation. The members of a panel shall bear no costs incident to any referred arbitration. Costs, if any shall be involved in the arbitration, shall be borne by the party incurring such costs or costs shall be borne as they may be set forth in the order of reference when such costs are reasonably anticipated. Costs incident to the arbitration may finally be awarded to any party in any judgment of the Court.

3.0 Actions Referrable to Arbitration

3.1. Discretion of Court as to Manner And Time of Reference. Any civil action pending before any judge of this Court may be referred to arbitration in the sole discretion of the judge to whom the action is assigned. Reference to arbitration will not be made after the expiration of 180 days following an initial pre-trial conference held in accordance with Rule 16(a)-(c) of the Federal Rules of Civil Procedure except in the case of actions abeyed pending the resolution of dispositive motions.

3.2. Criteria Applied. The Court will consider, among others, the following criteria in making a reference determination:

The total net amount of damages reasonably at issue;

The number of parties and the degree of actual adverse interests represented in the case of co-parties and third parties, if any;

The availability of parties and the availability of witnesses whose testimony cannot fairly be given by deposition or by affidavit;

The number and nature of documents and exhibits considered essential to a fair presentation of the evidence;

The number and complexity of issues of law which are not reasonably related one to another or which may involve questions of

first impression or of conflicting decisional precedents;

The existence of valid claims for punitive or exemplary damages or claims for damages which are in addition to compensatory damages;

The existence or non-existence of factual issues which may govern the exercise of the Court's jurisdiction, power or discretion;

The probable amount of time required for an arbitration hearing.

4.0 Reference to Arbitration

4.1. Reference by Order. Reference shall be made by written order or by scheduling order of the judge to whom the action is assigned.

4.2 When Order of Reference May be Made. Reference may be made at any time prior to the expiration of the period set forth in Rule 3.1. or reference may be made in any scheduling order issued pursuant to Rule 16(b) of the Federal Rules of Civil Procedure.

4.3. Arbitration And Arbitration Schedule. Unless a scheduling order previously has been issued in the action, each reference to arbitration shall include: (1) Time limitations for the filing of amendments, for the filing of motions and for the completion of pre-arbitration discovery; and (2) the date for commencement of the arbitration hearing and a date for completion of the arbitration hearing should the arbitration be continued pursuant to Rules 5.3 or 6.2.

4.4 [Omitted]

4.5 Appointment of Arbitration Panel.

4.5.1 Selection. The Administrator will select and forward to the parties a designation of the names of nine members of the Tribunal. Members of the Tribunal will not be asked to serve more often than once during any 12 to 18 month period.

The parties may strike the names of three Tribunal members from the designation; and, if any names are stricken, the designation shall be returned to the Administrator within the time specified for return by the Administrator. For purposes of this Rule 4.5.1, co-plaintiffs and co-defendants who are united in interest (or who possess no interests adverse one to another) shall be considered as one party.

The Administrator shall select the panel members, including the chairman, from the names remaining on the designations as sent and returned.

The selection shall be made after disclosure by the Administrator to the proposed panel members of the names of the parties, the names of the trial attorneys, the nature of the case and after the agreement

of the Tribunal members to serve on the date or dates established for the arbitration.

4.5.2. Notification. Not later than 30 days prior to the date set for commencement of the arbitration proceeding, the parties shall be notified in writing by the Administrator of the names and addresses of the panel members and the chairman of the panel.

4.6 Disqualification. The panel selection shall become final unless, within 10 days after notification by the Administrator, a "Notice of Disqualification" is made by a party in writing to the Administrator that a conflict of interest does or may exist as to one or more members of the panel; and a brief description of such conflict of interest shall be set forth. "Conflict of Interest" shall mean a conflict as described in 28 U.S.C. Sections 144 and 455. The "Notice of Disqualification" shall be sent to each panel member in respect to whom the notice is made; and the Administrator shall, if necessary, select replacement panel members in respect to each such panel member so notified.

The parties shall be notified of the names and addresses of any replacement panel members; and, within seven days of such notification by the Administrator, the parties may submit a "Notice of Disqualification" in the manner provided above.

If, within 10 days prior to the date scheduled for the commencement of the arbitration proceeding or any continuation, no panel of three arbitrators has been selected, the administrator shall refer the matter to the assigned judge for a further pre-trial conference in respect to continuation of the arbitration proceeding.

4.7. Communications with Arbitrators. There shall be no ex parte communication between any member of the panel and any party in respect to the action referred to arbitration.

4.8. Removal of Actions from Arbitration. If, at any time, it should appear that an action which has been referred t arbitration reasonably cannot be concluded within three days, the party or parties so contending shall advise the Administrator by written motion for removal of the case from arbitration. Such motion shall be supported by the affidavit of the party, which affidavit shall set forth the reasons why the proceeding cannot reasonably be concluded within three days. The motion will be referred to the Court by the Administrator; and the Court may take such action as is provided in Rule 6.3.

5.O Time And Place of Hearing

5.1 Assignment. The Arbitration will be held as set forth in the Court's order of reference or scheduling order and shall be held on the dates and during the times set forth in the Administrator's Notice of Arbitration Proceeding.

5.2. Place of Hearing. Unless otherwise stated in the Notice of Arbitration Proceeding, the hearing will be held at an assigned room in the United States Courthouse at the Location of Court at which this Rule is then applicable.

5.3 Continuance Prior to Hearing. One continuance, not to exceed 30 days, may be granted by the Administrator within the time period set forth in the reference order for completion of the arbitration either at the request of the Chairman of the panel or at the request of all parties made to the Administrator.

6.0 Procedure upon Failure of A Party to Attend

6.1 Commencement of Hearing. The arbitration may proceed on the date and at the time set in the Notice of Arbitration Proceeding in the absence of a party who, after notice, fails to be present or fails to obtain a continuance. No award shall be made solely on the default of a party, but only upon presentation of evidence satisfactory to the panel. In the event a party fails to appear or fails to participate in the arbitration in a meaningful manner, the Court may impose appropriate sanctions, including but not limited to the striking of any appeal for a trial before the Court filed by that party.

6.2. Continuation of Hearing. In the absence of a party, the Court or the panel, for good cause shown, may continue the hearing to a date not greater than 30 days subsequent to the date assigned by the Administrator for the commencement of the hearing. For any non-attendance of a party, the Court may award the attending party reasonable expenses.

6.3 Action by The Court. If the arbitration does not proceed in accordance with Rule 6.2, the matter shall be referred by the panel to the Court, whereupon the Court may: (1) return the matter to its regular docket; or (2) after notice and hearing, enter such order(s) or final judgment as permitted by this rule, the rules of this Court or the Federal Rules of Civil Procedure, including sanctions and the award of costs in accordance with such rules or in accordance with Rule 11.3.

7.0 Transcript. Any party may arrange, at the party's expense, to have a stenographic record or recording of the hearing made. A copy of such record or recording shall be made available to any other party at such other party's expense. The cost of any such record or recording or any copy thereof may be taxed as costs as in any other proceeding.

8.0 Conduct of Hearing.

8.1 Evidence. Evidentiary and procedural decisions shall be made by the Chairman of the panel, provided however that when three arbitrators conduct a hearing, all evidentiary and procedural decisions shall be concurred in by a majority of the panel. Arbitrators are authorized to administer oaths and affirmations; and all testimony shall be given under oath or affirmation. Although strict conformity to the Federal Rules of Evidence is not necessary,

the panel shall receive only relevant and material evidence. All evidence shall be taken in the presence of the arbitrators and the parties except where any party fails to attend the hearing, is in default or has waived the right to be present. The panel shall receive evidence in the following forms:

(a) sworn testimony by competent witnesses.

(b) the product of all discovery completed prior to the hearing.

(c) affidavits, documentary evidence and/or written reports, provided that such evidence has been served upon the adverse party or counsel not less than ten days prior to the hearing, unless counsel otherwise agree; and, provided further that a party desiring to offer a document otherwise subject to hearsay objections at the hearing must serve a copy on the adverse party not less than ten days in advance of the hearing indicating the intention to offer it as an exhibit. Unless the adverse party gives written notice in advance of the hearing of intent to cross examine the author of the document, any hearsay objection to the document shall be deemed waived.

Notwithstanding the above, the panel may receive additional evidence as it deems proper.

All evidence received shall be given such weight as the panel deems it is entitled to after consideration of any objections which may be made.

8.2 Order of Presentation of Evidence. The order of testimony and proof at the hearing will proceed as in any civil action tried before the Court unless the parties shall agree upon a different order either with or without the request of the panel.

8.3 Exhibits. Facsimilies of existing, original exhibits may be received in evidence at the hearing unless a party shall object, in which event the original exhibit shall be made available for inspection by the party objecting and by the panel. Exhibits introduced into evidence shall be placed in the custody of the Administrator. Original exhibits, unless placed into evidence without substitution of a facsimile, shall be retained by the party having custody of such exhibits.

9.0 Attendance of Witnesses. Rule 45 of the Federal Rules of Civil Procedure shall apply to the issuance of subpoenas for attendance of witness and production of documents or things at any hearing.

10.0 Award And Judgment

10.0.1. Form of Award. The award shall be on forms approved by the Court and shall be signed by not less than a majority of the panel.

10.0.2. Filing And Notification of Award. The award shall be filed with the Administrator within ten days of the close of the hearing or within twenty days after the filing of briefs with the Administrator whichever is later;

provided, however, that briefs shall not be submitted except upon the request of a majority of the panel. The period for filing of the award may be extended by the Administrator at the request of the panel. The award shall be entered by the Administrator, and copies of the award, with the date of entry, shall be sent by the Administrator for each party.

10.0.3. Judgment. The award, as entered, shall be the judgment of the Court for purposes of any appeal for trial before the Court.

10.0.4. Appeal for Trial. Within twenty days after entry of the award, any party may file a notice of appeal of the award, in which event the action shall be returned to the Court's regular calendar for trial as if the action had not been referred to arbitration.

10.0.5. Finality of Judgment. If no appeal is filed for trial before the Court in the time required by Rule 10.0.4, the judgment shall become final and binding upon the parties and no appeal for trial before the Court shall be had from the judgment.

11.0 Trial upon Appeal

11.1. Evidence. At any trial before the Court, no evidence shall be received that there had been an arbitration proceeding, that there had been an award or any other matter concerning the arbitration, except that testimony given at the arbitration hearing, if transcribed and filed in the action in the same manner as a deposition is transcribed and filed, may be used in the same manner as permitted under the Federal Rules of Civil Procedure; and any statement of a party or a witness may be used in the same manner as permitted by the Federal Rules of Evidence.

11.2. Testimony of Arbitrators. No member of the arbitration panel may be called as a witness.

11.3. Award of Costs And Fees. In the event any party appealing the award shall fail after trial before the Court to obtain a judgment which is, exclusive of interest and costs, more favorble than the award to the party, costs may be modified or reduced as to that party or may be assessed against that party. For purposes of this Rule 11.3, costs may include attorney fees in those cases in which such fees may be included as costs or in those cases in which such fees may be awarded separately.

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

IN RE: Order 85-1A

REFERRED ARBITRATION (Western Division
At Cincinnati Order)

The Arbitration Rules set forth in the Appendix to Order 85-1, entered January 4, 1985, which establish the procedures for mandatory, non-binding arbitration, are amended as follows:

Rule 4.5.1 shall be amended by the addition of the following language at the end of such rule:

"In the event that three panel members cannnot be appointed by the Administrator from among the names remaining on any designation, the administrator shall repeat the selection process until a panel has been appointed."

SO ORDERED.
April 5, 1985

Carl B. Rubin, Chief Judge

S. Arthur Spiegel, Judge

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

IN RE: Order 91-3

UNITED STATES MAGISTRATE JUDGES EASTERN DIVISION

ORDER

I. ASSIGNMENT OF CIVIL CASE TO UNITED STATES MAGISTRATES 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 conference, sign order of dismissal under Rule 41(a)(1), Fed. R. Civ. P. and conduct all post-judgment proceedings under Rule 59, Fed. R. Civ. P. The District Judge may at any time perform these 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 to the 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 judgment, to dismiss, or for or opposing certification of a class. Nondispositive pretrial motions include, but 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 section, 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 OBJECTIONS TO MAGISTRATE JUDGES' DECISIONS

1. Calculation 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. Objections 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 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 master'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. §§2254 or 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 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.

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 motions 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 prejudgment 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 state 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

Magistrates 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 Magistrates 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

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

Joseph P. Kinneary, Senior Judge
United States District Court

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

IN RE: Order 91-4

IN THE MATTER OF PRETRIAL CONFERENCES Eastern Division

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 a United States Magistrate Judge pursuant to Rule 16 of the Federal Rules of Civil Procedure.

I. REFERENCE TO MAGISTRATE JUDGE

In accordance with the provisions of Eastern Division Order No. 91-3, all civil cases are randomly assigned to the Magistrate Judges for the purpose of conducting preliminary pretrial conferences, status conferences, and settlement conferences. The references include all non-dispositive pretrial motions. The District Judge in any case which has been referred to a Magistrate Judge under Eastern Division Order No. 91-3 may at any time, sua sponte, elect to conduct conferences or decide motions; 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 that case.

II. PRELIMINARY PRETRIAL CONFERENCE

A Preliminary Pretrial Conference will be held pursuant to notice in each action at the earliest practicable time. The objective is that the Preliminary Pretrial Conference be held no later than one hundred twenty (120) days after the case is filed. Three (3) days before the Preliminary Pretrial Conference the Trial Attorneys must file with the Clerk of Court and serve on the opposing party or parties a statement of whether the case will be tried to a District Judge or to a Magistrate Judge. The Court has experienced Magistrate Judges, and the Court does not hesitate to recommend disposition before a Magistrate Judge when the parties deem it advisable. The Clerk of Court will keep the statements concerning consent separate from the case file and will not disclose their contents to any District Judge or Magistrate Judge. At the Preliminary Pretrial Conference the District Judge or Magistrate Judge will consider the following matters:

A. VENUE

1. Venue generally under 28 U.S.C. §1391 et seq.
2. Compliance with S.D. Ohio L.R. 3.3 (intradistrict venue).

3. Change of venue under 28 U.S.C. §1404.

B. JURISDICTION

1. Jurisdiction of the parties—including proper service of process.

2. Jurisdiction of the subject of the action—including consideration of the amount in controversy in diversity cases.

C. PARTIES

1. Present parties—including questions of joinder, necessity to add parties or drop parties.

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

D. PLEADINGS

1. Pending and contemplated motions.

2. Amendments to pleadings and schedule for completion.

3. Jury demand or waiver.

E. ISSUES

1. Discussion and specification of the issues.

2. Feasibility of separation of the issues for trial.

F. DISCOVERY PROCEDURES

1. Nature of discovery completed to date, including:
   a. Interrogatories
   b. Requests for admissions
   c. Depositions
   d. Motions to produce documents
   e. Medical examinations

2. Time reasonably required for the completion of discovery.

G. EXPERT TESTIMONY

1. Identity of proposed expert witnesses.

2. Areas of conflict, if any, in findings and opinions of experts.

H. ESTIMATED TRIAL TIME

I. DISCUSSION OF SETTLEMENT POSSIBILITIES, to be preceded by consultation with clients prior to the first pretrial conference.

J. ANY OTHER MATTERS which will aid in the preparation of the case for a final and formal pretrial conference and trial.

At this First Pretrial Conference the Trial Attorneys must be prepared to discuss the foregoing matters and authorized to enter into such agreements as are necessary.

At the conclusion of this conference, the District Judge or Magistrate Judge shall make a scheduling order setting a date for the completion of discovery or for a status report on discovery.

Upon request of any party or on the initiative of the Magistrate, subsequent status conferences or settlement conferences may be held by a Magistrate Judge. Upon request by any party, a settlement conference may be held by the District Judge.

Each Magistrate Judge conducting a preliminary pretrial conference, status conference, or settlement conference shall prepare a brief Order summarizing the decisions made.

III. SETTLEMENT

In accordance with Rules 16 and 24(f) of the Federal Rules of Civil Procedure and 28 U.S.C. §§471, et seq. the parties will be encouraged to limit initial discovery to that necessary for the parties to evaluate the case for settlement. The judicial officer will provide the parties an opportunity to explore alternatives to completing discovery, filing case-dispositive motions, and going to trial. At any time during the pretrial proceedings when the judicial officer determines that the parties might benefit from meeting and considering alternatives to continued litigation, the case may be set for a settlement conference, Settlement Week mediation, or other method for dispute resolution permitted under S.D. Ohio L.R. 53.1.

VI. SETTLEMENT WEEK MEDIATION

A. SETTLEMENT WEEK COORDINATOR

A Magistrate Judge will act as Settlement Week coordinator. The coordinator will develop and maintain a panel of experienced litigators who volunteer to act as Settlement Week mediators. The mediators should represent a cross-section of attorneys who regularly litigate in this Court. Counsel should report cases appropriate for mediation to the Court. Magistrate Judges should select cases appropriate for mediation and report them to the coordinator. The coordinator will assign cases for mediation to the individual mediators. The Magistrate Judges' clerical assistants will notice the cases for mediation, provide copies of relevant portions of the case file to the mediators, and provide any needed assistance to the mediators to permit the mediators to proceed as scheduled.

B. SETTLEMENT WEEK MEDIATION PROCEEDINGS

In order to maximize the likelihood of meaningful settlement negotiations at the conference:

1. The trial attorney for each party, and the principal, must attend the settlement conference.

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

3. No later than one (1) week prior to the conference, each opposing party must provide to counsel, and to the mediator, a written response to each settlement demand, fully documenting that party's position. A party may be excused from compliance with the above provisions of this General Order only upon motion to the Magistrate Judge, for good cause shown. The unexcused failure to comply fully with this Order will result in the imposition of sanctions.

C. CONTINUANCE OR CANCELLATION OF MEDIATION

Any request for a continuance or cancellation of a Settlement Week mediation conference must be made promptly by written motion. The memorandum supporting the motion should state that the moving party's counsel has conferred with counsel for all other parties prior to making the motion. It should set out the reason(s) for the request. If a reason is that sufficient discovery has not yet been completed, the memorandum must set out in detail the discovery completed, the discovery remaining necessary to make a reasonably informed settlement evaluation, the date by which that discovery can be completed, and the month in which the parties will be prepared for a settlement conference. If a reason for the request is that the parties are too far apart to justify the expense of participating in the mediation, the memorandum should state each party's settlement position, and the factual and legal bases for the movant's settlement position. The motion for continuance or cancellation of the Settlement Week mediation conference must be served on the moving counsel's client, opposing counsel, and the Magistrate Judge assigned to the case.

V. FINAL PRETRIAL CONFERENCE

A. A Final Pretrial Conference will be held by the District Judge or the Magistrate Judge. Notice of this conference will be given to all Trial Attorneys in time for them to adequately prepare therefor. The attorneys are hereby directed to confer in advance of the final pretrial conference and to prepare a proposed Final Pretrial Order in strict accordance with the form to be provided with the notice of Final Pretrial Conference.

This proposed Final Pretrial Order must be filed with the Clerk of Courts at least three working days prior to the date of the Final Pretrial Conference.

B. It is hereby directed that the designated Trial Attorney for all of the parties must attend the Final Pretrial Conference. Any exceptions to this requirement will be made only upon written application and order of the Court. The Trial Attorneys must be prepared and authorized to enter into such additional agreements as may be appropriate.

C. Before the Final Pretrial Conference, it is required that the Trial Attorneys fully explore settlement with their clients. If the Trial Attorney has full authority concerning settlement, it is not necessary to have the client present at the Final Pretrial Conference.

D. At the Final Pretrial Conference the Court will consider the proposed Final Pretrial Order, the necessity and desirability of amendments to the pleadings, the separation of issues, the date and probable length of the trial, the desirability of trial briefs, the prospects of settlement and such other matters as may assist in the trial or other disposition of the action.

At the conclusion of the Final Pretrial Conference the Final Pretrial Order will be filed. Failure of a Trial Attorney to appear at any scheduled pretrial conference or otherwise to comply with the provisions of this General Order may result in dismissal or default as may be appropriate.

IT IS SO ORDERED.
July ,1991

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

Joseph P. Kinneary, Judge
United States District Court

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

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 States 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 cases 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 pro se cases filed pursuant to 42 U.S.C. § 2000e *et seq.*, the District Judges are unable to schedule said cases for trial within 120 days after issue has been joined. *See* 42 U.S.C. §2003-5(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 by prepared or docketed by the Clerk. The Clerk shall advise the parties in each such case of the 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

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

IN RE: GENERAL ORDER NO. 11

UNITED STATES MAGISTRATE
MICHAEL R. MERZ

AMENDED GENERAL ORDER OF REFERENCE

Pursuant to 28 U.S.C. §636(a) and (b), the following cases assigned upon filing to District Judge Walter Herbert Rice are hereby ORDERED referred to United States Magistrate Michael R. Merz who is hereby authorized to perform in any such case any and all functions authorized for full-time United States Magistrates by Western Division Rule No. 1 as now effective or hereafter amended. In each such case the Magistrate shall proceed in accordance with Federal Rule of Civil Procedure 72. In the event the parties in any such cases consent to proceed to trial and judgment before the Magistrate pursuant to 28 U.S.C. § 636(c), the Magistrate is hereby authorized to proceed in such case(s) in accordance with the applicable statutes, Fed. R. Civ. P. 73, 74, 75, and 76, 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 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 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 cases filed by the United States seeking recovery with respect to a student or other loan.
5. All cases arising under the Miller Act.
6. All prisoner and all pro se cases arising under 42 U.S.C. §§ 1983 et seq.
7. All cases filed pursuant to 28 U.S.C. §§2241, 2254, and 2255.

In each case of the above-described cases, this Order shall act as a reference to the Magistrate 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 this General Order of reference and of their right to consent to final disposition by the Magistrate under 28 U.S.C. 636(c).

This Court's General Order No. 2 is hereby VACATED.

June 26, 1990.

Walter Herbert Rice
United States District Judge

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

IN RE:
UNITED STATES MAGISTRATE
MICHAEL R. MERZ

ORDER OF GENERAL REFERENCE
(HON. HERMAN J. WEBER, DISTRICT JUDGE)

Pursuant to 28 U.S.C. §636(a) and (b), the following cases filed in the Western Division at Dayton and assigned to the Honorable Herman J. Weber, District Judge, are hereby ORDERED referred to United States Magistrate Michael R. Merz, who is hereby authorized to perform in any such case any and all functions authorized for full-time United States Magistrates by Western Division Rule No. 1 as now effective or hereafter amended. In each such case the Magistrate shall proceed in accordance with Fed. R. of Civ. P. 72. In the event the parties in any such cases consent to proceed to trial and judgment before the Magistrate pursuant to 28 U.S.C. § 636(c), the Magistrate is hereby authorized to proceed in such case(s) in accordance with the applicable statutes, Fed. R. Civ. P. 73, 74, 75, and 76, 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 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 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 cases filed by the United States seeking recovery with respect to a student or other loan.
5. All cases arising under the Miller Act.
6. All prisoner and all pro se cases arising under 42 U.S.C. §§ 1983 et seq.
7. All prisoner cases filed pursuant to 28 U.S.C. § 2241 and 2254.
8. All discovery motions for the purpose of supervising discover matters and entering written orders, where appropriate, setting forth the disposition of the matter and the reasons therefore.

In each of the above-described cases, this Order shall act as a reference to the Magistrate 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 this General Order of Reference and of their right to consent to final disposition by the Magistrate under 28 U.S.C. § 636(c).

Herman J. Weber
United States District Judge

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

IN THE MATTER OF: MS-1-84-152

THE BANKRUPTCY AMENDMENTS
AND FEDERAL JUDGESHIP ACT
OF 1984

ORDER

The President has signed into law the Bankruptcy Amendments and Federal Judgship Act of 1984. Section 157(a), Chapter 6 of Title 28, United States Code, provides that "any and all cases under Title 11 and any or all proceedings arising under Title 11 or arising in or related to a case under Title 11 shall be referred to the Bankruptcy Judges for the District."

Accordingly, IT IS ORDERED that all such cases and proceedings now pending in the Bankruptcy Court or hereinafter filed are so referred to Bankruptcy Judges pursuant to Section 157(a) of the Act, supra; and that the Bankruptcy Judges for this District are directed to accept the jurisdiction conferred upon them by the Bankruptcy Amendments and Federal Judgeship Act of 1984 and to function threunder. This Order shall be effective retroactively to July 10, 1984. This Court's June 28, 1984 Orders pertaining to the selection and appointment of Special Masters, Consultants and Magistrates to Hear Bankruptcy Matters are hereby rescinded effective July 10, 1984.

_____

Carl B. Rubin, Chief Judge
United States District Court