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RULES

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF OHIO

Effective April 1, 1990

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CONTENTS

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I. GENERAL PROVISIONS

1.0 SHORT TITLE
These rules may be referred to individually as "S.D. Ohio R. _____".

1.1 EFFECTIVE DATE
The effective date of these rules is September 1, 1985.

1.2 SCOPE OF RULES
These rules govern the procedure in the United States District Court for the Southern District of Ohio and supersede all previous rules promulgated by this Court or any judge of this Court.

1.3 CONSTRUCTION OF RULES
These rules shall be construed to achieve an orderly administration of the business of this Court; to govern the practice of attorneys before this court; and to secure the just, speedy and inexpensive determination of every action. References to statutes, regulations or rules shall be interpreted to include revisions and amendments made subsequent to the adoption of these rules. References to the Clerk shall include the Clerk of this Court and any Deputy Clerk.

1.4 COMPUTATION OF TIME
The provisions of Rules 6(a) and 6(e) of the Federal Rules of Civil Procedure shall govern the computation of any period of time, including additional time after service by mail, prescribed or allowed by these rules.

II. COURT ADMINISTRATION

2.0 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.

2.1 VENUE OF ACTIONS WITHIN THE DISTRICT
This rule is subject to the jurisdictional and venue requirements of all statutes, both general and specific. This rule shall not preclude the filing of any action when the status of the parties may vary from that set forth in this rule. This rule shall not affect the rights of any party under 28 U.S.C. Section 1441 through Section 1450 (removal of actions) and 28 U.S.C. Section 1404 (change of venue).

2.1.1 RESIDENT DEFENDANT
Actions brought against residents of the following counties shall be filed at the indicated locations of court:

Eastern Division:	**Defendant's Residence**
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

2.1.2 NONRESIDENT DEFENDANT
If the cause of action arose or the event complained of occurred in this district and no defendant is a resident of this district, the action shall be filed at the location of court containing the county in which the cause of action arose or the event complained of occurred, the locations of court and counties being those described in Section 2.1.1 of this rule.

2.1.3 CORPORATIONS
For purposes of this rule, a corporation shall be deemed to be a resident of that county in which it has its principal place of business in this district. If a corporation does business throughout this district and has no operation that properly can be deemed to be a principal place of business, the action shall be filed in accordance with Section 2.1.2 of this rule, if the cause of action arose or the event complained of occurred in this district.

2.1.4 RAILROAD COMPANIES
Actions brought against railroad companies involving claims for damage to property, personal injuries or wrongful death shall be filed in accordance with Section 2.1.2 of this rule, if the cause of action arose or the event complained of occurred in this district.

2.1.5 UNINCORPORATED ASSOCIATIONS AND PARTNERSHIPS
Actions brought against a partnership or unincorporated association subject to suit in a common name, shall be filed in accordance with Section 2.1.3 of this rule, if the cause of action arose or the event complained of occurred in this district.

2.1.6 MULTIPLE DEFENDANTS
Actions brought against persons who are residents of counties in more than one division shall be filed at the location of the court containing the county in which the claim arose or the event complained of occurred. If the claim arose or the event complained of occurred outside of the district and no plaintiff is a resident of the district, then the action may be brought at the location of the court containing any county of which any defendant is a resident.

2.1.7 OTHER CASES
If the defendant is a nonresident of this district or is a corporation having no

principal place of business in this district, and the cause of action arose or the event complained of occurred outside this district, the action shall be filed at the location of the court containing the county of plaintiff's residence, the locations of court and counties being those described in Section 2.1.1 of this rule.

2.2 LOCATION OF COURT PROCEEDINGS
Unless otherwise ordered, actions will be tried at the locations of court where they are filed.

2.3 CALENDAR OF COURT PROCEEDINGS
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 by the Clerk, at the direction of the respective judges, and notices thereof shall be sent to all interested parties by the Clerk.

2.4 UNITED STATES MAGISTRATES

2.4.1 FULL-TIME MAGISTRATES
All full-time magistrates may perform any of the duties authorized by 28 U.S.C. Section 636(a), (b) and (c). All full-time magistrates 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 minor offenses. Upon consent of the parties, all full-time magistrates are specifically designated within the meaning of 28 U.S.C. Section 636(c) (1) to conduct any and all proceedings in jury or nonjury civil matters and to order entry of judgment. 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. Section 636(c) (2), and each plaintiff is required to serve a copy of that notice with each summons and complaint on each defendant in the action. Upon the filing of a stipulation that the action may be tried before a magistrate, agreed to by all parties, the Clerk shall reassign the case from the calendar of the judge to the calendar of the magistrate. In the event the parties stipulate that the appeal from the decision of the magistrate shall be to a judge, rather than to the United States Court of Appeals, the appeal shall be assigned to that judge to whom the case was originally assigned.

2.4.2 PART-TIME MAGISTRATES
All part-time magistrates may perform any of the duties authorized by 28 U.S.C. Section 636(a)(1), (2) and (3). All part-time magistrates 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 minor offenses. When a part-time magistrate holds an initial appearance under Rule 5(a) and (c), Federal Rules of Criminal Procedure, the magistrate shall set the case for preliminary examination under Rule 5.1, Federal Rules of Criminal Procedure, before a full-time magistrate located at the place where the case is to be tried.

2.4.3 ASSIGNMENT OF DUTIES TO MAGISTRATES
Individual judges at each location of court may in their discretion request magistrates to perform such duties as are not inconsistent with the Constitution and laws of the United States. Nothing in this rule shall prevent a judge from filing orders establishing procedures governing the

formal reference of cases to magistrates by individual judges or by the judges of a particular Division of this Court. (See Appendix to these Rules.)

2.5 ADMISSION TO THE BAR

2.5.1 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, to practice in this Court.

2.5.2 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.

2.5.3 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.

2.5.4 EXAMINATION FOR ADMISSION
Under the direction of the Chief Judge or his 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.

2.5.5 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.

2.6 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).

2.7 PUBLICITY AND DISCLOSURES

2.7.1 CAMERAS AND RECORDINGS
No person may, without permission of the Court, operate a camera or other recording device on the first and third floors of the United States Courthouse in Columbus, Ohio; the eighth floor of the United States Courthouse in Cincinnati; the ninth floor of the United States Courthouse in Dayton, Ohio, or in any other area posted by order of this Court.

2.7.2 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.

2.7.3 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.

III. CIVIL ACTIONS

3.0 TRIAL ATTORNEY

3.0.1 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 Federal Rules of Civil Procedure. Unless such designation is changed pursuant to Section 3.0.5 of this rule, the trial attorney shall attend all hearings, conferences, and the trial itself, unless otherwise excused.

3.0.2 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 3.0.1 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. 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.

3.0.3 SERVICE
All notices and communications from the Court and all documents required to be served on other parties by these rules and by the Federal Rules of Civil Procedures, shall be served on the trial attorney. (Also see Rule 3.4.4—Proof of Service). The trial attorneys shall be responsible for notifying co-counsel or associate counsel of all matters affecting the action.

3.0.4 PARTICIPATION BY CO-COUNSEL
Any member in good standing of the bar of any United States District Court or 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 co-counsel or associate counsel, upon motion of the trial attorney for any party. 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 3.0.2 of this rule.

3.0.5 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 showing of good cause and upon such terms as the Court shall impose. Unless otherwise ordered, a trial attorney shall not be permitted to withdraw from an action at any time later than twenty (20) days in advance of trial or the setting of a hearing on any motion for judgment or dismissal and, unless otherwise ordered, the substitution of a trial attorney shall not serve as the basis for a postponement of the trial or any hearing.

3.1 COMMENCEMENT OF ACTION

3.1.1 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 the fees for the service to be performed by the Marshal.

3.1.2 CERTIFIED CHECKS

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

3.1.3 REGISTRY FUNDS

Funds deposited in the Registry of the Court shall be held in the following manner:

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

b. 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.

c. 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.

3.2 PREPARATION OF PROCESS

Any attorney requesting the issuance of any process or who initiates any

proceeding in which the issuance of process is required, shall prepare all required forms, including the following:

1. Summons;
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 admitted to practice in this Court.

3.3 BOND REQUIREMENTS

3.3.1 BOND REQUIREMENTS IN GENERAL

In all civil actions and criminal proceedings, the Clerk shall accept as surety upon bonds and other undertakings of 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.

3.3.2 BOND ON REMOVAL

The bond accompanying a petition for removal of an action brought in a state court shall be One Thousand ($1,000.00) Dollars, with good and sufficient surety to the satisfaction of the Clerk.

3.4 PLEADINGS AND OTHER PAPERS FILED OR SERVED IN THE ACTION

3.4.1 FORM

Pleadings and other papers shall be typewritten or printed on 8½ by 11 inch bond paper and shall be double spaced with appropriate side margins and a top margin of not less than one inch. They shall be offered for filing without folding or backing, suitable for flat filing. Forms approved by this Court or approved for use in federal courts are exempt from these requirements. Original documents attached or offered as exhibits are exempt from these requirements, provided that all exhibits shall be neatly bound; and, whenever possible, reduced or folded to an 8½ by 11 inch size; and, if they are not attached to the pleadings and other papers, they shall be designated by the caption of the case, the case number, and identification as provided in Rule 3.4.2. Briefs and memoranda shall conform to this rule and to Rule 4.0.3.

3.4.2 IDENTIFICATION

Except for the original complaint, all pleadings, other papers and exhibits shall be identified by a title which shall contain 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" or "Exhibits in Support of Plaintiff John Smith's Motion

for Summary Judgment."
The name of the judge to whom the case is assigned shall be placed below the title.
All pleadings, orders and other papers in all appeals from the decision of the Secretary of Health and Human Services regarding social security benefits, as well as this Court's final judgment entries, shall contain in the caption of the pleading or other paper, directly below or alongside the name of the plaintiff, that plaintiff's social security number. All pleadings and other papers which do not comply with this requirement will not be received or filed by the Clerk. On all papers requiring the signature of the Court, such signature shall be identified as follows:

_____
United States District Judge

3.4.3 STATUTORY THREE JUDGE ACTIONS
In statutory three judge actions, an original and three (3) copies of each pleading shall be filed with the Clerk.

3.4.4 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 described in the Federal Rules of Civil Procedure or these 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 and also shall be fully stated on or attached to the copy of the pleading or other papers served on any party or served as required by Rule 3.0.3.

3.4.5 INTERROGATORIES AND REQUESTS FOR ADMISSIONS
Separate interrogatories and requests for admissions, in each instance, shall be followed by a space of at least one inch in which an answer or response can be inserted.
Answers to interrogatories and requests for admissions, in each instance, shall be preceded by the text of the interrogatory or the request.

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

3.4.7 PROBATION OFFICE RECORDS
Except as otherwise provided by Rule 32 of the Federal Rules of Criminal Procedure, 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 Federal Rules of Criminal Procedure.

3.5 EXTENSIONS OF TIME TO MOVE OR PLEAD

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 stipulating during the action shall not exceed a total of twenty (20) days. A stipulation filed with the Clerk shall affirmatively state 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 entry 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.

3.6 CLASS ACTIONS

3.6.1 DESIGNATION

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

3.6.2 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; and

(d) In actions claimed to be maintainable as class actions under subdivision (b)(3) of Rule 23 of the Federal Rules of Civil Procedure, allegations intended to support the findings required in that subdivision.

3.6.3 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) of the Federal Rules of Civil Procedure 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.

3.7 TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS

3.7.1 PROCEDURE FOR HEARING

Except in a clear emergency, the Court will not consider ex parte applications for a temporary restraining order. In the absence of a clear

emergency, the Court will not hear or rule on any application for a temporary restraining order or an application for a preliminary injunction except after an informal, preliminary conference has been held. Further proceedings in respect to 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 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 Rule 3.7.2.

3.7.2 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 Rule 4.0.1. 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.

3.7.3 ABSENCE OF ASSIGNED JUDGE
In the event that the judge to whom the action is assigned is not reasonably available in respect to 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 reassignment of the action from the originally assigned judge.

4.0 MOTIONS AND APPLICATIONS

4.0.1 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, and, except in the case of an ex parte motion or application, a certificate of service in accordance with Rule 3.4.4.

4.0.2 OPPOSING AND REPLY MEMORANDA
Any memorandum contra a motion shall be filed within twenty (20) days from the date of service as set forth on the certificate of service attached to the served copy of a motion. Failure to file a memorandum contra may be cause for the Court to grant the motion as filed. A reply memorandum may be filed within seven (7) days after the date of service shown on the certificate of service attached to the served copy of the memorandum contra. No additional memoranda beyond those enumerated above will be permitted, except upon leave of Court for good cause shown.

4.0.3 LIMITATION UPON BRIEFS, MEMORANDA AND EXHIBITS
Briefs and memoranda shall be prepared in accordance with Rule 3.4.1 and with this rule.
Briefs and 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 briefs or memoranda exceed twenty (20) pages, counsel shall include an introduction which contains a summary of all points raised and the primary authorities relied upon in the brief or memorandum. No such summary may exceed fifteen (15) pages.
Exhibits, including discovery documents, shall be limited to those necessary for decision and shall include only the essential part of any exhibit referred to in the brief or memorandum. Exhibits shall not include published authorities or documents on file in the case.

4.0.4 PROCEDURE FOR DECIDING MOTIONS
All motions shall be submitted without oral argument on the memoranda filed with the Clerk, unless otherwise provided in these rules or ordered by the Court.
On any motion for summary judgment, a party will be deemed to have waived a hearing on the motion unless a request for hearing is filed within ten (10) days of the time of filing or the expiration of time for filing a memorandum in opposition to the motion. In any case in which a hearing has been requested, a hearing may be held within sixty (60) days of the filing or expiration of the time for filing a memorandum in opposition to the motion.
Upon the filing of any other motion which requires a noticed hearing under the Federal Rules of Civil Procedure or any provision of law, the movant shall upon filing said motion, obtain a date for such hearing and promptly notify the other parties in writing of the date and time of the hearing and file proof of service of the notice with the Clerk prior to the hearing.
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.

4.1 REFERENCES AND CITATIONS

4.1.1 STATUTES AND REGULATIONS
All pleadings, briefs and memoranda containing references to statutes or regulations shall specifically cite the applicable statutes or regulations or attach copies. United States Statutes will 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.

4.1.2 PREFERENTIAL AUTHORITIES
In citing authorities, the Court prefers that counsel rely upon cases decided by the Supreme Court of the United States, the United States Court of Appeals for the Sixth Circuit and the Supreme Court of Ohio.

4.1.3 UNREPORTED OPINIONS
If unreported opinions are cited, copies of the opinions shall be attached to the briefs or memoranda and shall be furnished to opposing counsel. Failure to do so may be grounds for striking the pleading.

4.2 DEPOSITIONS

4.2.1 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 cost 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.

4.2.2 OPENING OF DEPOSITIONS

When a deposition has been filed in any action, except in actions for which the law prescribes a different procedure, it shall be opened only by the Clerk at the direction of the Court or at the direction of any counsel of record. The fact and date of opening and the name of the person making such request shall be endorsed by the Clerk on the envelope containing the deposition, which envelope shall be preserved with the deposition.

4.2.3 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 Rule 5.7.

4.2.4 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) of the Federal Rules of Civil Procedure and any proceeding under Rule 30(b) of the Federal Rules of Civil Procedure 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 judge to whom the action is assigned. This rule applies to proceedings initiated by a party to the action involved and does not apply to such proceedings initiated by a deponent (not a party or officer or employee of a party or member of a partnership party). While it is recognized that Rule 30 of the Federal Rules of Civil Procedure extends the option to apply to the district court in the district where the deposition is being taken and that option may not be denied by this rule, application in such other districts generally tends to unduly increase the business of such other 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.

4.3 DISCOVERY

4.3.1 OBJECTIONS AND MOTIONS RELATED TO DISCOVERY PROCEDURES

Interrogatories, requests for production of documents, requests for admissions 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 compel discovery under the provisions of Rule 37, Federal Rules of Civil Procedure or Rule 4.3.4.

4.3.2 TIME FOR OBJECTION OR RESPONSE

Unless otherwise agreed between the parties, all responses and objections to discovery requests shall be made within the times set forth for response or objection to discovery requests in the Federal Rules of Civil Procedure. Any failure to agree between the parties shall be subject to the provisions of Rule 4.3.4.

4.3.3 CONSULTATION AMONG COUNSEL
No objections, motions, applications or requests related to discovery shall be filed under the provisions of Rules 26 and 37 of the Federal Rules of Civil Procedure in this Court unless counsel have exhausted among themselves all extrajudicial means for the resolution of differences.

4.3.4 MOTIONS IN RESPECT TO DISCOVERY
To the extent that extrajudicial means of resolution of differences have not disposed of the matter, the 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), of the Federal Rules of Civil Procedure. Such motion shall be accompanied by a supporting memorandum and by an affidavit of counsel setting forth what extrajudicial means have been attempted to resolve differences and only those specific portions of the discovery documents reasonably necessary to a resolution of the motion shall be included with the motion. Opposition to any motion filed pursuant to this Rule 4.3.4 shall be filed within the time specified by the Federal Rules of Civil Procedure, or, if no time is specified, within the time specified by Rule 4.0.2 The time for filing a reply memorandum is likewise governed by Rule 4.0.2. In all other respects, a motion to compel discovery or for a protective order shall be treated as any other motion under these rules.

4.3.5 USE OF DISCOVERY DOCUMENTS
Discovery documents which comply with the Federal Rules of Civil Procedure and with these rules may be used in any action in the manner permitted by rule, statute and any order made in the action, notwithstanding the fact that a discovery document has not been filed with the Clerk.

4.4 ARBITRATION

4.4.1 REFERENCE OF CIVIL CASES TO ARBITRATION
Civil cases may be referred to mandatory, non-binding arbitration. The procedures set forth in the Appendix to these rules shall apply to such referrals, on a provisional basis, at the location of court at Cincinnati.

4.5 ALTERNATIVE DISPUTE RESOLUTION
A Judge may in his discretion set any civil case for summary jury trial or other alternative method of dispute resolution.

5.0 PRETRIAL PROCEDURES

5.1 PRETRIAL SCHEDULING ORDERS
Scheduling orders will be issued in conjunction with preliminary pre-trial 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 under Rule 2.4.3, the magistrate is empowered to enter scheduling orders under Rule 16(b) of the Federal Rules of Civil Procedure 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) of the Federal Rules of Civil Procedure;

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.

5.2 PRETRIAL CONFERENCES

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 of the Federal Rules of Civil Procedure. 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.

5.3 CIVIL JURY TRIALS

Unless otherwise ordered, a jury for the trial of civil actions shall consist of six (6) persons, plus such alternate jurors as may be impaneled.

5.4 TRIAL PROCEDURES AND WITNESSES

5.4.1 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.

5.4.2 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.

5.4.3 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.

5.5 DISMISSALS 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.

1. Where no responsive pleading has been filed by a defendant within the time set forth by the Federal Rules of Civil Procedure, the United States

Attorney or his representative shall present to the Clerk of this Court either a request for judgment by default pursuant to Rule 55(b)(1), or a motion to serve an alias summons or to serve by publication.
2. Should the United States Attorney fail to proceed as above set forth, the Court may dismiss the action in question forthwith for failure of prosecution.

5.6 QUESTIONING PETIT JURORS

No attorney connected with the trial of an action shall himself, or through any investigator or other person acting for him, 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 granted upon good cause shown.

5.7 DISPOSITION OF EXHIBITS, MODELS, DIAGRAMS, DEPOSITIONS, AND OTHER MATERIALS

5.7.1 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.

5.7.2 DISPOSAL BY THE CLERK

All models, diagrams, depositions, photographs, 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.

5.8 TAXATION OF COSTS

Unless otherwise ordered, taxation of costs shall not be made until a judgment in favor of a party entitled to an award of costs has been entered by the Court. A bill of costs shall be made on forms approved by and available from the Clerk or a pleading which is substantially similar; and the bill of costs shall be verified by the trial attorney submitting the bill of costs together with a certificate of the trial attorney that the costs listed were incurred and with a certificate of service in accordance with Rule 3.4.4. The bill of costs is to be filed within 30 days of the entry of judgment; and costs shall be taxed by the Clerk not less than 10 days after notice of taxation.

5.9 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.

IV. CRIMINAL ACTIONS

6.0 APPLICATION OF RULES TO CRIMINAL ACTIONS

6.0.1 GENERAL APPLICATION
Parts I through III of these rules shall apply to criminal actions unless such rules: (1) Are made inapplicable by rule 6.0.2; (2) are applicable, by their terms, to civil actions only; (3) clearly are not applicable to criminal actions by their nature or by reason of any provision of the Federal Rules of Criminal Procedure or any other controlling statute or regulation of the United States; or (4) are made inapplicable by order of the Court or a judge of the Court.

6.0.2 CIVIL RULES NOT APPLICABLE
The following rules shall not be applicable to criminal actions unless otherwise ordered: 2.1, 3.6, 4.2, 4.3, 5.1, 5.2, 5.3 and 5.5.

6.1 PUBLICITY AND DISCLOSURES

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

6.1.2 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.
6.1.3 No attorney prior to the commencement of trial or disposition without trial may make any public statement concerning:
(a) 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;
(b) Any statement or lack thereof by the accused;
(c) The performance or lack thereof of any examinations or tests upon the accused;
(d) 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;
(e) The possibility of a plea of guilty to the offense charged or a lesser offense;
(f) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.
6.1.4 During a jury trial of any criminal matter, no attorney may publically 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.
6.1.5 Nothing in this rule shall preclude the lawful issuance of reports by investigative bodies, or preclude any attorney from replying to charges of professional misconduct that are publically made against the attorney.

6.2 FORFEITURE OF COLLATERAL IN LIEU OF APPEARANCE

6.2.1 Persons charged in this district with a petty offense, for which a fixed

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

6.2.2 Nothing contained in this 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 is required, in which case the collateral forfeiture procedure in this rule shall not be available.

6.2.3 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.

6.3 PROCEDURES IN DEATH PENALTY CASES

6.3.1 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.

6.3.2 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.

6.3.3 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 Rule 6.3.2 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.

6.3.4 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.

6.3.5 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.

6.3.6 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.

6.3.7 ISSUANCE 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.

6.3.8 ASSIGNMENT OF JUDGE

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

6.3.9 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 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
85-0	In Re: Adoption of Revised Rules of the United States District Court, Southern District of Ohio, effective September 1, 1985
81-2	In Re: United States Magistrates (Western Division Only)
85-1	In Re: Referred Arbitration with Arbitration Rules (Western Division Only)
85-4	In Re: United States Magistrates (Eastern Division Only)
81-3	In Re: Petition Form for 28 U.S.C. Section 2254 Actions by Incarcerated Persons (Habeas Corpus Cases)
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
81-6	In Re: Presentence Reports
81-7	In Re: Conditions of Probation
81-1	Re: Adoption of Model Federal Rules of Disciplinary Enforcement together with the Model Rules

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

IN RE: ADOPTION OF REVISED RULES OF THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO

ORDER NO. 85-0
(District-Wide)

ORDER

The rules attached were adopted by the Judges of this Court on June 6, 1985, and shall become effective September 1, 1985. Effective September 1, 1985, the following Orders heretofore issued are superseded by these rules and are of no further force and effect:

May 10, 1982 - Order amending Rule 3.4.1
May 10, 1982 - Order amending Rule 4.0
May 10, 1982 - Order amending Rule 6.2.1
September 20, 1983 - Order amending Rule 5.4
February 14, 1985 - Order re use of social security numbers in social security appeals (Western Division)

Effective September 1, 1985, the following Orders heretofore issued in the Eastern Division of this Court are superseded by Order No. 85-4 in the Eastern Division and are of no further force and effect:

November 1, 1982 - Order re assignment of civil cases to Magistrates for pretrial conferences and decisions on non-dispositive motions
February 9, 1983 - Order re assignment of certain misdemeanor cases to Magistrates
February 9, 1983 - Order re consent to disposition by Magistrate
February 8, 1985 - Order amending the Order of November 2, 1982

IT IS SO ORDERED.

Carl B. Rubin, Chief Judge
United States District Court

Joseph P. Kinneary, Judge
United States District Court

S. Arthur Spiegel, Judge
United States District Court

John D. Holschuh, Judge
United States District Court

Walter H. Rice
United States District Court

Herman J. Weber
United States District Court

Timothy S. Hogan
United States Senior District Judge

David S. Porter
United States Senior District Judge

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

IN RE:
UNITED STATES MAGISTRATES

ORDER 81-2
(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 supersedes 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 functions of the Magistrates pursuant to 28 U.S.C. Section 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. SECTION 636(a).
United States Magistrates Robert A. Steinberg, J. Vincent Aug, Jr., and Michael R. Merz are authorized to perform the duties prescribed by 28 U.S.C. Section 636(a), and may —
(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. Section 3146, and take acknowledgments, affidavits, and depositions; and
(3) Conduct extradition proceedings, in accordance with 18 U.S.C. Section 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 accordance with 18 U.S.C. Section 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 defendant 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. Section 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. Section 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. SECTIONS 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 Section 2254 and Section 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. SECTION 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. Section 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 DISPOSITION 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. Section 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 post-trial 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 42 U.S.C. Section 2000e-5 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, settlement, 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 to 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 ad 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. Section 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 Narcotics Addict Rehabilitation Act;
(14) Perform the functions specified in 18 U.S.C. Sections 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. Sections 1987 and 1989;
(16) Establish a bail schedule for petty offenses, as defined in 18 U.S.C. Section 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. Section 4244; and

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

PROCEDURES BEFORE THE MAGISTRATES

(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. SECTION 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.

(2) 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. SECTION 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 PRISONER LITIGATION — 28 U.S.C. SECTION 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, however, 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. SECTION 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. SECTION 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. SECTION 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. Section 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. Section 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 expeditious and inexpensive, as mandated by 28 U.S.C. Section 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 limits 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: REFERRED ARBITRATION

ORDER 85-1
(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 procedures 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 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 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 Pre-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 each 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.

In the event that three panel members cannot 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.

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 to 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.

5.0 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 6.1 or is not continued 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 than 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 the entry, shall be sent by the Administrator to 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 favorable 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 EASTERN DIVISION

IN RE:
UNITED STATES MAGISTRATES

EASTERN DIVISION
Order No. 85-4

ORDER

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

A. REFERENCE TO MAGISTRATES

The Clerk of Court shall randomly assign all civil cases at the time they are filed to a District Judge and a Magistrate. The Magistrate to whom the case is assigned will conduct preliminary pretrials, status conferences, settlement conferences and settlement and certification conferences and rule on all non-dispositive motions. The District Judge may at any time perform these duties instead of the Magistrate.

B. PRELIMINARY PRETRIAL CONFERENCES, STATUS CONFERENCES AND SETTLEMENT CONFERENCES

1. PRELIMINARY PRETRIAL CONFERENCES

The Magistrate assigned to the case shall conduct a pretrial conference, with the objective being to hold such conference no later than one hundred twenty (120) days after the case is filed.

2. STATUS CONFERENCES

Upon request of any party or on the initiative of a Magistrate, status conferences may be held by a Magistrate at any time in any case referred to the Magistrate.

3. SETTLEMENT CONFERENCES

Upon request of any party or on the initiative of a Magistrate, conferences

devoted exclusively to the purpose of effecting a settlement may be held by a Magistrate at any time in any case referred to the Magistrate, but, upon request by any party, such a conference may be conducted instead by the District Judge.

4. REPORTS OF CONFERENCES

Each Magistrate conducting a pretrial conference or status conference or settlement conference shall prepare a brief report of the results of that conference for the file and shall send copies of the report to the District Judge and to counsel for the parties.

5. CONTINUITY OF MAGISTRATE ACTION

To the extent practicable, a Magistrate to whom a case is assigned for the purpose of conducting the preliminary pretrial conference should also conduct subsequent conferences and act, in accordance with the provisions of this Order, on any non-dispositive motions filed in that case.

C. NON-DISPOSITIVE MOTIONS

1. Decisions by the Magistrates

The Magistrates, in accordance with 28 U.S.C. Section 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. Non-dispositive pretrial motions shall include, but not be limited to, motions for orders granting (1) leave to proceed in forma pauperis, (2) appointment of counsel, (3) substitution of counsel, (4) leave to plead, (5) amendment of pleadings, (6) extension of time, (7) a protective order, (8) discovery, and (9) any other motion not expressly excepted by 28 U.S.C. Section 636(b)(1)(A).

2. Reconsideration of Magistrate's Decision on Non-Dispositive Motions.

Pursuant to 28 U.S.C. Section 636(b)(1)(a) and Rule 72(a), Fed. R. Civ. P., within ten (10) days after the Magistrate's order is filed, any party may file and serve on all parties a motion for reconsideration by the Court, which motion shall specifically designate the order, or part thereof, in question and the basis for any objections thereto. The party or parties opposing reconsideration shall file their memorandum contra, which should separately state any request for reconsideration they seek, within ten (10) days of the date the motion for reconsideration was filed. Reply briefs must be filed within seven (7) days of the date the memorandum contra was filed. At the request of any party, the Magistrate may extend any of these filing deadlines. A motion to extend the time for filing a motion for reconsideration must be filed within ten (10) days after the Magistrate's order for which reconsideration is sought was filed.

II. ASSIGNMENT OF CERTAIN CRIMINAL MATTERS TO UNITED STATES MAGISTRATES.

With the consent of the defendant, a Magistrate may adjudicate any petty offense complaint or misdemeanor complaint or information charging an offense which is listed in the General Order on the forfeiture of collateral issued pursuant to S.D. Ohio R. 6.2.3. In addition, with the consent of the defendant, a Magistrate may adjudicate any misdemeanor complaint or information charging an offense which occurred within the jurisdiction of, in a facility operated by, or on land owned or controlled by any agency listed in the General Order on forfeiture of collateral. By written order, and with the consent of the defendant, a District Judge may refer any other misdemeanor complaint or information to a Magistrate.

In accordance with the provisions of Rule 6(f), Fed. R. Crim. P., Magistrates shall take the return of indictments by the Grand Jury. At the request of a District Judge, a Magistrate 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 MAGISTRATES

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

IV. CONSENT TO DISPOSITION BEFORE A UNITED STATES MAGISTRATE

A. TRANSFER TO MAGISTRATE

If all the parties to a civil case consent to disposition by a United States Magistrate, the Clerk of Court shall so inform the United States District Judge to whom the case is assigned. If the District Judge approves, the Clerk of Court shall then assign the case to a United States Magistrate who will conduct all proceedings, including pretrial motions, jury or non-jury trial, and entry of final judgment. 28 U.S.C. Section 636(c). Unless otherwise ordered by the District Judge to whom the case is assigned, the case will be assigned to the Magistrate to whom it was referred for preliminary pretrial and decisions on non-dispositive motions.

B. VOLUNTARINESS

A party's decision to consent, or not to consent, to the referral of a case to a United States Magistrate must be entirely voluntary. No District Judge or Magistrate of this Court will attempt to persuade or induce a party to consent to disposition by a Magistrate. 28 U.S.C. Section 636(c)(2).

C. CONFIDENTIALITY

Only if all the parties to the case consent to the reference to a Magistrate will either the District Judge or Magistrates to whom the case has been assigned be informed of a party's decision to consent or not to consent.

D. 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 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. 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.

E. APPEAL

Appeal from a judgment entered by a Magistrate will be to the United States Court of Appeals for the Sixth Circuit unless all parties agree to appeal to the District Judge to whom the case was assigned at the time they consent to disposition by a Magistrate. If the appeal is to a District Judge, there is a discretionary appeal from the District Judge's decision to the United States Court of Appeals for the Sixth Circuit. 28 U.S.C. Section 636(c)(3), (4), (5).

F. PROCEDURE ON APPEAL TO A DISTRICT JUDGE

A notice of appeal must be filed within the time prescribed by Rule 4(a), Fed. R. App. P. The Clerk of Court shall mail a copy of the notice of appeal to counsel for all other parties. If a party is not represented by counsel, the Clerk of Court shall mail a copy of the notice of appeal to the party's last known address. Within 10 days after filing the notice of appeal the appellant must, in accordance with Rule 10(b), Fed. R. App. P., order from the reporter a transcript of the relevant proceedings before the Magistrate. When the record for the appeal is complete, the Clerk of Court shall so notify the District Judge to whom the appeal is taken. Every effort should be made by the parties, counsel, and the Court to minimize the costs of the transcriptions and to simplify the record to make the appeal expeditious

and inexpensive. 28 U.S.C. Section 636(c)(4).
The appellant shall serve a brief within 20 days after the filing of the transcript. The appellee shall serve and file an answer brief within 20 days after service of the brief of the appellant. If the appellee has filed a cross-appeal, the answer brief or appellee-cross-appellant shall include the argument in support of the cross-appeal. The appellant may serve and file a reply brief within 10 days after service of the answer brief of the appellee. An appellee-cross-appellant may file a reply brief limited to the issues of the cross-appeal within 10 days after service of the reply brief of the appellant. Briefs must comply with S.D. Ohio R. 4.0.3.
If 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. When the District Judge files a decision disposing of the appeal, the Clerk of Court shall enter judgment which will serve as the mandate of the District Court. A notice of appeal from the District Judge's decision to the United States Court of Appeals for the Sixth Circuit must be taken within the time limits prescribed by Rule 4(a), Fed. R. App. P. Filed with the notice of appeal must be a petition for leave to appeal stating specific objections to the judgment. 28 U.S.C. Section 636(c)(5).
This Order supersedes Eastern Division Orders 82-1 (as amended by Order 85-1), 83-2 and 83-3, which are of no further force and effect.

IT IS SO ORDERED.

June 25, 1985

Joseph P. Kinneary, Judge
United States District Court

John D. Holschuh, Judge
United States District Court

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

IN RE: PETITION FORM FOR
28 U.S.C. SECTION 2254 ACTIONS
BY INCARCERATED PERSONS
(Habeas Corpus Cases)

Order 81-3
(District-Wide Order)

ORDER

All actions under 28 U.S.C. Section 2254 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: COMPLAINT FORM FOR
42 U.S.C. SECTION 1983 ACTIONS
BY INCARCERATED PERSONS
(Civil Rights Cases)

Order 81-4
(District-Wide Order)

ORDER

All actions under 42 U.S.C. Section 1983 filed in this district by incarcerated persons shall be submitted on the court-approved form supplied by the Clerk unless 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

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.

Order 81-5

(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 the 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 S. Hogan, Judge

David S. Porter, Judge

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

IN RE: PRESENTENCE REPORTS

Order 81-6
(District-Wide Order)

ORDER

Any copy of a presentence report which the court makes available, or has made available, to the United States Parole Commission or the Bureau of Prisons constitutes a confidential court document and shall be presumed to remain under the continuing control of the court during the time it is in the temporary custody of these agencies. Such copy shall be lent to the Parole Commission and the Bureau of Prisons only for the purpose of enabling those agencies to carry out their official functions, including parole release and supervision, and shall be returned to the court after such use, or upon request. Disclosure of a report is authorized only so far as necessary to comply with 18 U.S.C. Section 4208(b)(2).

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: CONDITIONS OF PROBATION

Order 81-7
(District-Wide Order)

ORDER

The Conditions of Probation as set forth in Probation Form No. 7 are affirmed as the conditions of probation prescribed by this Court. The standing conditions of probation for any person placed on probation shall require that the probationer:

1. Refrain from violation of any law (federal, state, and local) and get in touch immediately with the probation officer if arrested or questioned by a law-enforcement officer.
2. Associate only with law-abiding persons and maintain reasonable hours.
3. Work regularly at a lawful occupation and support the probationer's legal dependents, if any, to the best of the probationer's ability. When out of work the probationer shall notify the probation officer at once. The probationer shall consult the probation officer prior to job changes.
4. Not leave the judicial district without permission of the probation officer.
5. Notify the probation officer immediately of any change in the probationer's place of residence.
6. Follow the probation officer's instructions.
7. Report to the probation officer as directed.

Unless otherwise directed, every person who shall receive a grant of probation from this Court or who shall come under the jurisdiction of this Court as a person placed on probation by another district court, shall subscribe to the above conditions in writing, and the probation officer shall deliver to every such person a copy thereof. In addition, such written copy shall contain any special conditions of probation as may be directed by the Court.

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:
MODEL FEDERAL RULES OF DISCIPLINARY ENFORCEMENT

ORDER 81-1
(District-Wide Order)

ORDER

All Judges concurring, the previous Orders of this Court dated February 05, 1979 and March 07, 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 07, 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

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MODEL FEDERAL RULES OF DISCIPLINARY ENFORCEMENT

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

Rule 1

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 proceeding then pending against the attorney, the disposition of which shall be determined by the Court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

Rule II

DISCIPLINE IMPOSED BY OTHER COURTS.

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

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

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

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

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 proceedings 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 required for admission to practice law before this Court and that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the 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. DEPOSIT FOR COSTS OF PROCEEDING. Petitions for reinstatement under this Rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the Court to cover anticipated costs of the reinstatement proceeding.

F. CONDITIONS OF REINSTATEMENT. If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him, provided that the judgment 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.

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