LOCAL CIVIL AND CRIMINAL RULES

United States District Court
Southern District of Ohio

July 1, 2010

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INTRODUCTORY STATEMENT ON CIVILITY

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LOCAL CRIMINAL RULES

Model Federal Rules of Disciplinary Enforcement

Introductory Statement on Civility

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

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

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

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

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

3. **Respect for the legal system**. Those who have chosen to practice law as a profession have sworn to uphold a legal system which offers all people a fair and just way to resolve disputes. Inappropriate behavior – treating litigation as a "game" in which the party with the most overtly aggressive lawyer might prevail regardless of the merits of the case, or casting aspersions on the fairness or integrity of decisions by judges or juries when there is no legitimate basis to do so – brings disrespect upon

the legal system as a whole. We acknowledge that Judges and court staff who are noticeably impatient, impolite, or disrespectful to lawyers and litigants can cause the same undesirable effect. Lawyers and the Judges and court personnel of this District Court must all conduct themselves in ways which do not impugn the integrity and dignity of this Court.

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

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

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

LOCAL CIVIL RULES

I. SCOPE OF RULES

1.1 General Provisions

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

(b) **Effective Date.** The effective date of these Rules as amended is July 1, 2010.

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

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

(1) 1 U.S.C. §§ 1-5 shall, as far as applicable, govern the construction of these Rules.

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

(e) These Rules, supplemented by the "Electronic Filing Policies and Procedures Manual" (the "ECF Manual") as amended from time to time by the Clerk, govern use of the Electronic Case Filing ("ECF") system in this District. Technical terms used in these Rules have the meaning set out in the ECF Manual.

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS

3.1 Initial Filings

(a) **Civil Cover Sheet.** Every complaint or other document initiating a civil action shall be filed in paper with the Clerk. In addition, the Court requests an electronic copy of the document in portable document format ("pdf") on the medium required by the ECF Manual. This filing shall be accompanied by a completed civil cover sheet on a form available from the Clerk. The civil cover sheet is solely for administrative purposes, and matters appearing only on the civil cover sheet have no legal effect in the action. If the complaint or other document is tendered for filing without a completed civil cover sheet, the Clerk shall file the document and shall give notice of the omission to the party filing the document that the completed civil cover sheet must be promptly filed.

(b) **Related Cases.** It is the personal responsibility of plaintiff's counsel to identify on the civil cover sheet or other form provided by the Clerk's Office any previously-filed case or cases in the district that counsel knows or believes to be related. After the initial filing of a case, counsel for any party in that case may call to the Court's attention any other case by filing a notice of related case(s). For purposes of this Rule, civil cases may be deemed related by the Court if they:

(1) Arise from the same or substantially identical transaction, happening, or event; or

(2) Call for a determination of the same or substantially identical questions of law or fact; or

(3) Would entail a substantial duplication of effort and expense by the Court and the parties if heard by different judges; or

(4) Seek relief that could result in a party's being subject to conflicting orders of this Court.

(c) This Rule is intended to provide for the orderly division of the business of the Court and does not grant any right to any litigant.

3.2 Civil Action for False Claims

Any civil action brought pursuant to 31 U.S.C. § 3730(b) (the False Claims Act) shall be filed *in camera* by presenting such complaint, in the presence of a representative of the office of the United States Attorney for the Southern District of Ohio, in an appropriate envelope, to the Clerk who shall randomly assign a District Judge at the location where the complaint is to be filed in accordance with S. D. Ohio Civ. R. 82.1. The Clerk shall receive

and record the time and date of receipt on the face of the envelope containing the complaint, and shall hold the complaint under seal until notified that either (a) sixty (60) days or any Court-approved extension of time have elapsed, or (b) that the Government has made an election either to intervene in the action or not, at which time the Clerk shall deliver the complaint to the assigned Judge for an Order unsealing it and ordering it filed.

4.1 Preparation of Process

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

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

and present the required forms, together with the requisite written request for issuance (or *praecipe*) at the office of the Clerk for signature and sealing. Electronic versions of many forms are available on the Court's website; the Clerk shall, upon request and subject to current availability, provide reasonable supplies of all paper forms to any attorney or party.

4.2 Service or Waiver of Process

Plaintiffs should ordinarily attempt to obtain a waiver of service of process under Fed. R. Civ. P. 4(d) before attempting service of process. If a request for waiver is unsuccessful or is deemed inappropriate, the Court prefers parties to use the methods of service provided in Fed. R. Civ. P. 4 before using certified mail service under Ohio law. This Rule is confined to the domestic service of the summons and complaint in a civil action in this Court by certified mail or ordinary mail, pursuant to the law of Ohio, and is not intended to affect the procedure for other methods of service permitted by the Federal Rules of Civil Procedure or Ohio law. If a party elects to use Ohio certified mail service, it must be done as follows:

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

employee to show to whom delivered, date of delivery, and address where delivered. Plaintiff's attorney shall affix adequate postage to the envelope and deliver it to the Clerk who shall cause it to be mailed.

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

(c) If service of process is refused or was unclaimed, the Clerk shall forthwith notify, by mail, the attorney of record or if there is no attorney of record, the party at whose instance process was issued. If the attorney, or serving party, after notification, files with the Clerk a request for ordinary mail service, accompanied by an envelope containing the summons and complaint or other document to be served, with adequate postage affixed to the envelope, the Clerk shall send the envelope to the defendant at the address set forth in the caption of the complaint, or at the address set forth in instructions to the Clerk. The attorney or party at whose instance the mailing is sent shall also prepare for the Clerk's use a certificate of mailing which shall be signed by the Clerk or a Deputy Clerk and filed at the time of mailing. The attorney or party at whose instance the mailing is sent shall also endorse the answer day (twenty-one (21) days after the date of mailing shown on the certificate of mailing) on the summons sent by ordinary mail. If the ordinary mail is returned undelivered, the Clerk shall forthwith notify the attorney or serving party, electronically or by mail.

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

4.3 Service in *in Forma Pauperis* or Government- Initiated Cases

When the United States Marshal is directed by the Court to serve the summons and complaint, the Marshal may perform the functions of the "Clerk of Court" for the purpose of making service as described in Ohio R. Civ. P. 4.1.

4.4 Service in a Foreign Country

A request by a party to the Clerk to serve process in a foreign country by mail under Fed. R. Civ. P. 4(f)(2)(C)(ii) must be accompanied by a certificate of the trial attorney or an affidavit of a party proceeding *pro se* that the attorney or party has determined that service by mail is authorized by the domestic law of the country in which service is to be made.

5.1 General Format of Papers Presented for Filing

(a) **Form.** All pleadings, motions, briefs, and other papers presented to the Clerk for filing shall be on 8 ½" x 11" wide paper of good quality, flat and unfolded, without backing or binding, and shall be plainly typewritten, printed, or prepared by a clearly legible duplication process, and double-spaced, except for quoted material. Each page shall be numbered consecutively, and shall have appropriate side margins and a top margin of not less than one inch.

This Rule does not apply to: (1) exhibits submitted for filing, provided that all exhibits shall be neatly bound, and whenever possible reduced or folded to 8 ½" x 11" size, and (2) forms approved by this Court or approved for use in federal courts generally.

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

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

(c) **Electronic Filing**. Except as provided herein or unless otherwise authorized by the assigned judicial officer, all documents shall be filed electronically using the Electronic Filing System ("ECF") except that documents filed by pro se litigants and administrative transcripts in Social Security cases shall be filed on paper. Documents filed electronically shall conform substantially to the requirements of these Rules and to the format for the ECF system set out in the most current editions of the ECF Policies and Procedures Manual issued by the Clerk.

(d) **Consequences of Electronic Filing.** Electronic transmission of a document to the ECF system together with transmission of a Notice of Electronic Filing from the Court constitutes filing of the document for all purposes under the Federal Rules of Civil Procedure, and the Local Rules of this Court, and constitutes entry of the document on the docket kept by the Clerk under Fed. R. Civ. P. 58 and 79. When a document is filed electronically, the official record is the electronic recording of the document as stored by the Court, and the filing party is bound by the document

as filed unless relief is granted under subsection (f) of this rule.

(e) **Filing Date and Time.** Except in the case of documents first filed in paper form and subsequently submitted electronically, a document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing from the Court. Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

(f) **Technical Failures and Inadvertent Filings.** A document mistakenly filed under the wrong case number will be deleted by the Clerk, who will electronically notify the filer. The document may then be immediately filed in the correct case record without seeking the consent of opposing counsel or the Court. An untimely filing as the result of a technical failure or other incorrect filing caused by some other error in using the ECF system may be corrected upon motion submitted pursuant to S. D. Ohio Civ. R. 7.3(b). In exigent circumstances, such as where a privileged document is mistakenly filed, relief may be sought by *ex parte* contact with a judicial officer. Counsel and parties should not assume that such relief is available on jurisdictional time limits (such as statutes of limitation or deadlines for appeal).

5.2 Certificate of Service; Delivery Electronically

(a) **Certificate of Service.** Proof of service of all pleadings and other papers required or permitted to be served (except in the case of an *ex parte* proceeding) shall be made in compliance with Fed. R. Civ. P. 5(d). Such proof of service shall state the date and manner of service, including the name of the person(s) served and the address(es) to which service was directed, and shall be fully stated on or attached to the copy of the pleading or other document served upon a party or upon the trial attorney of each party.

(b) **Delivery Electronically.** Parties may make service through the Court's CM/ECF system on other parties who are registered users of the system as provided in Fed. R. Civ. P. 5(b)(2)(E).

5.3 Statutory Three-judge Actions

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

2284.

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

5.4 Filing Discovery Documents

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

(b) Deposition transcripts shall be filed electronically if a party reasonably anticipates that they will be needed as evidence relating to a forthcoming motion or other proceeding. If ordered by a judicial officer, deposition transcripts shall also be filed in paper using condensed or "minuscript"® format, and two-sided copying. All deposition transcripts filed with the Clerk must include any signature page and statement of changes in form or substance made by the witness pursuant to Rule 30(e), and the certificate described in Fed. R. Civ. P. 30(f).

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

III. PLEADINGS, MOTIONS AND ORDERS

6.1 Extensions of Time to Move or Plead

(a) Each party to an action may obtain stipulated extensions of time not to exceed a total of twenty-one (21) days in which to file a motion in response to a pleading or any responsive pleading. This may be done by filing with the Clerk a written stipulation between the parties for such extensions, provided, however, that the aggregate time extended to any party for all extensions by stipulation during the action shall not exceed a total of twenty-one (21) days. A stipulation filed with the Clerk shall affirmatively state the new date for response agreed to by the parties and that no prior stipulated extensions to that party, together with the stipulated extension then filed, exceed a total of twenty-one (21) days. Neither the stipulation nor any Order to that effect need be submitted to the Court for such extensions. If no such stipulation is obtained, or if additional extensions beyond the stipulated periods are

requested, the party desiring an extension must obtain the approval of the Court.

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

7.1 Procedure for Deciding Motions

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

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

(1) **Evidentiary Hearings.** Upon the filing of any motion which requires an evidentiary hearing under the Federal Rules of Civil Procedure or any provision of law, the movant shall obtain a date for such hearing. Movant's counsel shall, to the extent practicable, consult with opposing counsel to select agreeable dates.

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

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

7.2 Motions and Other Papers

(a) **Legal Memoranda**

(1) **Supporting Memorandum and Certificate of Service.** All Motions and applications tendered for filing shall be accompanied by a memorandum in support thereof which shall be a brief statement of the grounds, with citation of authorities relied upon. Except in the case of a motion or application

permitted by law to be submitted *ex parte*, a certificate of service in accordance with S. D. Ohio Civ. R. 5.2 shall accompany all such papers.

(2) **Opposing and Reply Memoranda.** Any memorandum in opposition shall be served within twenty-one (21) days from the date of service set forth in the certificate of service attached to the Motion. Failure to file a memorandum in opposition may be cause for the Court to grant any Motion, other than one which would result directly in entry of final judgment or an award of attorney fees. A reply memorandum may be served within fourteen (14) days after the date of service of the memorandum in opposition. No additional memoranda beyond those enumerated will be permitted except upon leave of court for good cause shown.

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

(b) **Citation of Legal Authorities**

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

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

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

(4) **Unreported Opinions.** If unreported or unofficially published opinions are cited, copies of the opinions shall be made available upon request by the Court or opposing counsel.

(c) **Correspondence with the Court.** Letters to the Court are generally inappropriate and disfavored, unless (1) requested by the Court in a specific matter, or (2) advising the Court of the settlement of a pending matter. All other written communications shall be by way of formal motion or memorandum submitted in compliance with these Rules. All letters sent to the Court shall be contemporaneously served upon opposing counsel, unless otherwise ordered by the Court.

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

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

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

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

7.3 Consent to Motions

(a) **Motions for Extension of Time.** Prior to filing any motion for an extension of time, counsel shall consult with all parties (except prisoners appearing pro se) whose interests might be affected by the granting of such relief and solicit their consent to the extension. The motion shall affirmatively state that such consultation has

occurred or was attempted in good faith, and shall state whether the motion is unopposed. If the extension is not opposed, the movant shall ordinarily submit an agreed form of order to the Court in the form prescribed by S. D. Ohio Civ. R. 7.4.

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

7.4 Orders

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

_____
UNITED STATES DISTRICT JUDGE

or

_____
UNITED STATES MAGISTRATE JUDGE

7.1.1 Disclosure Statements and Disqualification Requests

(a) **Parties Required to Make Disclosure**

(1) With the exception of the United States Government or its agencies, all corporate parties and amici curiae to a civil or bankruptcy case or agency review proceeding, shall file a corporate affiliations/financial interest disclosure statement pursuant to this Rule.

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

(3) A negative report is required.

(b) **Financial Interest to be Disclosed**

(1) Whenever a corporation which is a party or which appears as *amicus curiae* has a parent corporation, or there is any publicly-held corporation which owns 10% or more of its stock, counsel for the corporate party shall advise

the Clerk in the manner provided by subdivision (c) of this Rule of the identity of the parent corporation and all publicly-held corporations which own 10% or more of its stock.

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

(c) **Form and Time of Disclosure**

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

(2) Although counsel and parties have an obligation to the Court to investigate and be accurate in making disclosures required by this Rule, these requirements are solely for administrative purposes and matters disclosed have no legal effect in the action.

(3) Parties required to file disclosure statements shall do so with their first appearance, pleading, petition, motion, response, or other request addressed to the Court. If the disclosure statement is required to be filed before all relevant facts have been fully investigated, it shall be specifically noted as potentially incomplete, and counsel shall thereafter complete the investigation and file a supplemental disclosure statement. Counsel shall also promptly file a supplemental statement upon any change in the information that the disclosure statement requires.

(d) **Requests for Disqualification**. In addition to addressing the corporate affiliations/financial interests, all counsel are directed to consider at the earliest opportunity whether there may be any reason for a judicial officer of this Court to disqualify himself or herself, pursuant to 28 U.S.C. § 144 or § 455, and to advise the Court in writing as early as possible in the case about any such concerns.

10.1 Procedure for Notification of Any Claim of Unconstitutionality

(a) In any action, suit, or proceeding in which the United States or agency, officer, or employee thereof is not a party and in which the constitutionality of an Act of

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

(b) Any notice provided under this Rule, or lack of notice, will not serve as a substitute for, or as a waiver of, any pleading requirement set forth in the Federal Rules of Civil Procedure or applicable statutes.

16.1 Pretrial Procedures

Each judge of the District shall be responsible for determining the procedure and content of preliminary pretrial conferences, scheduling orders and pretrial conferences under Fed. R. Civ. P. 16. In any notice of pretrial conference, the Clerk shall include a specific reference to the place on the Court's website where a litigant can find any general or standing order of any judge or for any location of court which governs pretrial procedures and the content of pretrial conferences. In addition to copies posted on the Court's website, copies of all such general or standing orders shall be made available, upon request and without charge, by the Clerk at each location of court to any trial attorney or pro se litigant to any proceeding pending before the Court.

16.2 Pretrial Scheduling Orders

Scheduling orders will be issued in conjunction with preliminary pretrial procedures established by the judges of this Court, which normally will be implemented within ninety (90) days after the filing of an action. In any action assigned to a Magistrate Judge for that purpose, the Magistrate Judge is empowered to enter scheduling orders under Fed. R. Civ. P. 16(b), 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 Fed. R. Civ. P. 16(b):

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

16.3 Alternative Dispute Resolution

(a) Evaluation of Cases for ADR

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

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

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

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

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

(c) **Confidentiality**

(1) In addition to Fed. R. Evid. 408, and any other applicable privilege, pursuant to 28 U.S.C. § 652(d) evidence of conduct or statements made in settlement negotiations is not admissible to prove liability for or invalidity of a claim or its amount. In order to promote candor and protect the integrity of this Court's ADR processes, in addition to other protections afforded by law all communications made by any person (including, but not limited to parties, counsel, and judicial officers or other neutral participants) during ADR proceedings conducted under the authority of this Court are confidential, and are subject to disclosure only as provided in subsection (c)(3) of this Rule. Any participant in the process, whether or not that participant is a party to the case in which the ADR proceeding has been attempted or has occurred, may

seek an Order to prevent disclosure of any communication deemed confidential by this Rule.

(2) Communications deemed confidential by this Rule include, but are not limited to, statements or expressive conduct occurring during the ADR proceeding itself, such as offers to compromise, statements about the value of a case or claim, statements about the strength or weakness of a claim or defense, and statements concerning the possible resolution of all or part of a case. Confidential communications also include communications made in connection with selecting an ADR process, initiating the process, and selecting or retaining a mediator or other neutral.

(3) Communication deemed confidential by this Rule may be disclosed, if such disclosure is not otherwise prohibited by law, only in the following circumstances:

(A) Following an actual or attempted ADR proceeding, neutrals are permitted to report to the Court information intended to aid in further management of the case, including: (i) whether the case has settled, or may settle in the near future without further Court management; (ii) if the case has not settled, suggestions about case management (such as the desirability of further pretrial discovery followed by the scheduling of additional ADR proceedings, or followed by rulings on one or more issues); (iii) information about the parties' conduct if the neutral concludes that a party did not participate in good faith in the ADR proceeding or otherwise violated a Court order or Disciplinary Rule relating to the proceeding; and (iv) any other information which the parties authorize the neutral to communicate to the Court; or

(B) All participants to the ADR process, including parties, counsel, and neutrals, consent in writing to the disclosure of the communication; or

(C) A judicial officer assigned to the case determines that such disclosure is needed in connection with possible sanctions for misconduct relating to the ADR proceeding; or

(D) The judicial officer who would otherwise enter judgment in the case or, in the event of the unavailability of that judicial officer, the Chief District Judge, conducts an *in camera* hearing or comparable proceeding and determines both the following: (i) that evidence of the content of the communication is not otherwise available and that there is a compelling need for the evidence which substantially outweighs the policy favoring confidentiality; and (ii) the evidence

will be used to establish or disprove a claim of criminal or professional misconduct or malpractice made against a neutral, counsel, or party relating to the ADR proceeding; or will be used in a proceeding in which fraud, duress, or incapacity is in issue regarding the validity or enforceability of an agreement reached during the ADR proceeding; or maintaining the confidentiality of the communication will pose a significant threat to public health or safety; or

(E) The disclosure is otherwise required by law.

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

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

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

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

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

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

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

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

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

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

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

IV. PARTIES

23.1 Designation of "Class Action" in the Caption

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

23.2 Class Action Allegations

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

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

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

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

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

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

23.3 Motions for Determination as Class Action

In all cases with class action allegations, the parties shall include in their Fed. R. Civ. P. 26(f) report proposed deadlines for completing discovery relevant to those allegations and for filing a motion to certify a class, and a proposed date for class action determination. No motion to certify a class shall be filed before the Rule 26(f) conference except by agreement of the parties or order of the court.

V. DEPOSITIONS AND DISCOVERY

26.1 Form of Discovery Documents

(a) The party serving interrogatories pursuant to Fed. R. Civ. P. 33, requests for production pursuant to Fed. R. Civ. P. 34, or requests for admission pursuant to Fed. R. Civ. P. 36, shall provide sufficient space, of not less than one inch, after each such interrogatory or request for the answer, response, or objection thereto. Parties are encouraged to serve discovery requests upon the responding person or party by email attachment or by providing a disc, in order to eliminate unnecessary retyping of questions or requests.

(b) Parties responding or objecting to discovery requests shall either set forth their answer, response, or objection in the space provided, or shall quote each such interrogatory or request in full immediately preceding the statement of any answer, response, or objection thereto. Any privilege log shall cross reference the specific request to which each assertion of privilege pertains. A privilege log shall list documents withheld in chronological order, beginning with the oldest document for which a privilege is claimed.

(c) The parties shall number each interrogatory, request, answer, response, or objection sequentially, regardless of the number of sets of interrogatories or requests, throughout the entire course of the action.

30.1 Depositions

(a) **Withdrawal of Depositions**

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

(b) **Depositions Outside of the Southern District of Ohio**

Except in the case of non-party witnesses not subject to the subpoena power of this Court, any motion under Fed. R. Civ. P. 30(d), and any proceeding under Fed. R. Civ. P. 30(b), initiated or arising during the process of taking depositions outside of the Southern District of Ohio will be initiated or filed in this District and disposed of by the judicial officer responsible for discovery. This Rule applies to proceedings initiated by a party to the action involved and does not apply to such proceedings initiated by a deponent (not a party or officer or employee of a party or member of a partnership party). While it is recognized that Fed. R. Civ. P. 30 extends the option to apply to the District Court in the district where the deposition is being taken and that option may not be denied by this Rule, application in such other districts generally tends to unduly increase the business of such other district and tends to result in delaying the dispatch of its calendar by this Court. Proceedings initiated in other districts in violation of this rule may be subject to 28 U.S.C. § 1927, or other applicable sanction.

36.1 Requests for Admission

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

37.1 Consultation among Counsel; Informal Discovery Dispute Conference

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

37.2 Discovery Motions

To the extent that extrajudicial means of resolution of differences have not disposed of the matter, parties seeking discovery or a protective order may then move for a protective order or a motion to compel discovery pursuant to Fed. R. Civ. P. 26(c) or 37(a). Such motion

shall be accompanied by a supporting memorandum and by a certification of counsel setting forth the extrajudicial means which have been attempted to resolve differences. Only those specific portions of the discovery documents reasonably necessary to a resolution of the motion shall be included as an attachment to it.

38.1 Notation of "Jury Demand" in a Pleading

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

VI. TRIALS

39.1 Juror Note Taking

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

41.1 Assignment of Previously Dismissed Action

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

43.1 Examination of Witnesses

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

43.2 Attorney Testifying as Witness

If any attorney anticipates that he or she or a member of the attorney's firm may be required to testify as a witness under circumstances which would not require disqualification as

counsel under the applicable Rule of Professional Conduct, such attorney shall immediately notify the Court and opposing counsel in writing and set forth: (1) the issues on which the attorney or a member of the attorney's firm may be required to testify, and (2) a general plan for handling the testimony.

45.1 Witness Fees

The fees and mileage of witnesses shall be advanced by the party on whose behalf the witness is subpoenaed, subject to recovery as costs at the end of the case if permitted by applicable law.

47.1 Communication with Jurors

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

VII. JUDGMENT

54.1 Taxation of Costs

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

(b) **Procedure.** A bill of costs shall be prepared on forms approved by and available from the Clerk, or on a pleading which is substantially similar. The bill of costs shall be verified by the trial attorney submitting it, who shall certify that the costs listed were actually incurred. "Guidelines" for the taxation of costs are available from the Clerk, and may be consulted for information on the practices customarily followed in this Court; but such Guidelines are not to be considered controlling law. Service of the bill of costs shall include the certificate required by S. D. Ohio Civ. R. 5.2. Costs shall be taxed by the Clerk after all parties have had an opportunity to be heard on the motion schedule provided in S. D. Ohio Civ. R. 7.2.

54.2 Motions for Attorney Fees

Motions for attorney fees under Fed. R. Civ. P. 54 must be filed not later than forty-five (45) days after the entry of judgment.

55.1 Defaults and Default Judgments

(a) If a party makes proper service of a pleading seeking affirmative relief but, after the time for making a response has passed without any response having been served and filed, that party does not request the Clerk to enter a default, the Court may by written order direct the party to show cause why the claims in that pleading should not be dismissed for failure to prosecute.

(b) If a party obtains a default but does not, within a reasonable time thereafter, either file a motion for a default judgment or request a hearing or trial on the issue of damages, the Court may by written order direct the party to show cause why the claims upon which default was entered should not be dismissed for failure to prosecute.

(c) Nothing in this Rule shall be construed to limit the Court's power, either under Fed. R. Civ. P. 41 or otherwise, to dismiss a case, or to dismiss one or more claims or parties, for failure to prosecute.

58.1 Entry of Court Orders

(a) All orders, decrees, judgments and proceedings of the Court filed in accordance with these Rules using the ECF system will constitute entry on the docket kept by the Clerk under Fed. R. Civ. P. 58 and 79. All signed orders will be filed electronically by the court or court personnel. Any order filed electronically without the original signature of a judge has the same force and effect as if the judge had affixed his or her signature to a paper copy of the order and it had been entered on the docket in a conventional manner.

(b) A Filing User submitting a document electronically that requires the signature of a judicial officer must promptly deliver the document in such form as the Court requires.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

65.1 Temporary Restraining Orders and Preliminary Injunctions

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

the conference. The trial attorney shall also comply with the service requirements of subsection (b).

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

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

67.1 Bond Requirements in General

In all civil actions and criminal proceedings, the Clerk shall accept as surety, upon bonds and other undertakings, a surety company approved by the Treasury Department, cash or an individual personal surety residing within this district. Unless otherwise ordered by the Court, any personal surety must qualify as the owner of real estate within this district of the full net value of the face amount of the bond. Attorneys or other officers of this Court shall not serve as sureties.

IX. DISTRICT COURT AND CLERK

72.1 Magistrate Judges

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

72.2 Assignment of Duties to Magistrate Judges

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

72.3 Effect of Magistrate Judge Ruling Pending Appeal to a District Judge

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

77.1 Notice of Orders

Immediately upon the entry of an order or judgment in a proceeding assigned to the ECF system the Clerk will transmit to Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of such Notice constitutes the notice required by Fed. R. Civ. P. 77(d). In accordance with the Federal Rules of Procedure, the Clerk must give notice in paper form to a person who has not consented to electronic service.

77.2 Funds

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

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

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

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

(3) In lieu of depositing funds in the Registry of the Court, an interested party may apply to the Court for appointment of escrow agents. With court

approval, such agents may deposit funds in a financial institution in an interest-bearing account insured by an agency of the United States and provide for the disposition of interest earned on such funds.

(c) **Fees for Handling Funds**

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

79.1 Custody of Files and Exhibits

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

79.2 Disposition of Exhibits, Depositions and Other Materials

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

(b) **Disposal by the Clerk.** All depositions, exhibits or other materials not withdrawn by counsel shall be disposed of by the Clerk as waste at the expiration of the withdrawal period.

79.3 Sealed Documents

(a) Unless otherwise ordered or specifically provided in these Rules, all documents which are (1) submitted for an *in camera* inspection by the Court, (2) covered by a protective or other order requiring that they be filed under seal, or (3) the subject of a motion for such an order, shall be submitted to the Clerk for filing in a securely sealed envelope. Proposed orders regarding such documents are not to be filed electronically, but shall be e-mailed to the chambers of the judicial officer presiding over the case for the judge's review and signature.

(b) The face of the envelope containing such documents shall contain a conspicuous

notation that it contains "DOCUMENTS UNDER SEAL" or the equivalent. It shall also contain the case caption, a descriptive title of the document, unless such information is to be, or has been, included among the information ordered sealed and the date of any order or reference to any statute permitting the item to be sealed.

(c) The Clerk's file stamp and appropriate related information or markings shall be made on the face of the envelope. The Clerk shall file the document in accordance with any judicial order for sealing, or statute permitting filing under seal, and the Clerk's internal procedures for filing of sealed documents. If not prohibited by the order for sealing, the document shall be scanned, uploaded to the system, and reviewed for quality assurance. Once quality assurance is completed, the documents shall be destroyed unless otherwise ordered by the court, or a request is made for the return of the document by the filing party. If the request is granted, the filing party shall provide the court with the proper mailing materials for return of the document.

(d) Should the document be ordered unsealed and maintained in the case record, the Clerk shall change the electronic restriction of the document, which preserves the actual date of the filing of the document.

79.4 Control of Exhibits

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

X. VENUE; GENERAL PROVISIONS

82.1 Venue of Actions Within the District

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

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

Eastern Division: **Columbus**: Athens, Belmont, Coshocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Guernsey, Harrison, Hocking, Jackson, Jefferson, Knox, Licking, Logan, Madison, Meigs, Monroe, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Union, Vinton and Washington.

Eastern Division: **Steubenville:** The Jury Plan of the District provides that a District Judge may try a case in the Eastern Division in Steubenville or any other location in the counties of Belmont, Guernsey, Jefferson, Harrison, Monroe, Morgan, Noble or Washington, with prospective jurors to be drawn from the aforementioned eight (8) counties.

Western Division: **Cincinnati:** Adams, Brown, Butler, Clermont, Clinton, Hamilton, Highland, Lawrence, Scioto and Warren.

Western Division: **Dayton:** Champaign, Clark, Darke, Greene, Miami, Montgomery, Preble and Shelby.

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

(d) **Corporate Residence, Venue When Indeterminate**. A corporation which is deemed to reside in this judicial district pursuant to 28 U.S.C. § 1391(c) is further deemed to reside in that county in which its principal place of business within the district is located, or, if none, in that county with which it has the most significant contacts. If such a corporation's county of residence cannot be determined under this rule, an action against such corporation shall be filed at a location of court determined in accordance with the following rules, in order of preference: (1) A county in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial party of property that is the subject to the action is located; or (2) any location of court.

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

(f) **Habeas Corpus Actions.** A habeas corpus action shall be filed at the location of Court which serves the county in which the state court judgment which is the subject of the habeas petition was filed.

83.1 Free Press - Fair Trial Provisions

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

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

83.2 Courtroom and Courthouse Security and Decorum

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

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

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

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

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

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

83.3 Admission to the Bar

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

(b) **Eligibility** Any member in good standing of the bar of the Supreme Court of Ohio is eligible for admission as a permanent member of the bar of this Court.

(c) **Application for Admission**

(1) All candidates for admission to the bar of this Court, other than those eligible under subsection (c)(2) and (c)(3) of this Rule, must file with the Clerk at least seven (7) days prior to the examination for admission an application on the form provided by the Clerk. The candidate must affirmatively certify that he or she is familiar with the Court's ECF system. The application must also contain a certificate of two permanent members of the bar of this Court, vouching for the good moral character and professional reputation of the candidate. Each candidate must 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) Applicants in good standing as members of the permanent bar of the United States District Court for the Northern District of Ohio for at least two years immediately preceding their application to become members of the bar of this Court are not required to submit the certificate of two permanent members of the bar of this Court, or to take and pass the examination for admission. Such applicants must, however, comply with all other requirements of Rule 83.3.

(3) Attorneys for the United States of America who are authorized by statute to appear in all federal courts are permitted to appear on behalf of the United States upon filing an application for admission on the form provided by the Clerk, and providing a current certificate of good standing from the highest court of the State in which the attorney is admitted to practice. Attorneys for

the United States are not required to take and pass the examination for admission, submit the certificate of two permanent members of the bar of this Court, or pay the application fee for admission. Unless otherwise ordered, attorneys for the United States must register with this Court for electronic filing.

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

(e) **Applications for leave to appear *pro hac vice*.** In its discretion, the Court may grant leave to appear *pro hac vice* to any attorney who is a member in good standing of the bar of the highest court of any State. Any attorney seeking that type of admission must do so by way of a motion filed in each case in which the attorney wishes to appear. That motion must (1) be signed by a permanent member of the bar of this Court; (2) be accompanied by the filing fee prescribed by the Court for *pro hac vice* admission except as provided in subsection (g)(4) of this Rule; and (3) be accompanied by a certificate of good standing from the highest court of a State (and not from another federal court) that has been issued not more than three months prior to the date of the motion. If the attorney seeking *pro hac vice* admission is eligible for permanent admission to the bar of this Court, the application must also be accompanied by a written affirmation signed by the attorney that he or she will seek permanent admission as promptly as is practicable. Only one filing fee need be tendered if the attorney is seeking leave to appear *pro hac vice* in cases which have been consolidated under Fed. R. Civ. P. 42(a) for all purposes including trial. The names of attorneys who are not members of the bar of this Court and who have not been admitted *pro hac vice* may appear on Court filings, but such attorneys may not sign any document filed with the Court in that case or conduct any proceeding before the Court or any deposition taken in the case. Their names will also not appear as counsel on the Court's docket and they will not receive any notices or mailings from the Court.

(f) **Rights and responsibilities of attorneys admitted *pro hac vice*.** Any attorney admitted *pro hac vice* is subject to the same requirements as are permanent members of the bar of this Court, including those requirements relating to registration for electronic filing. The Court may, in accordance with governing substantive law, revoke an attorney's *pro hac vice* status at any time. Unless otherwise ordered pursuant to S.D.Ohio Civ. R. 83.4(a), an attorney admitted *pro hac vice* may not serve as the trial attorney for any party.

(g) **Fees**

(1) Upon admission or upon application for readmission following disbarment

or suspension from the bar of this Court, the attorney must pay to the Clerk such fees as are prescribed by the Judicial Conference of the United States and by order of this Court. Any fee prescribed by order of this Court must be paid into the Court's Attorney Admission 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) Each attorney applying for initial admission to the bar of this Court must tender to the Clerk any fee prescribed for such admission by order of this Court. Should the applicant not pass the bar admission examination administered by this Court, the fee will not be returned to the applicant except for good cause shown by the applicant. An applicant who wishes to re-take the bar admission examination at the next available opportunity is not required to tender any such fee again unless the previously tendered fee was returned.

(3) Each attorney previously disbarred or suspended from the bar of this Court, must tender to the Clerk any fee prescribed for readmission by order of this Court upon application for readmission to the bar of this Court. Such readmission is subject to the Order for Readmission of this Court.

(4) All attorneys seeking admission *pro hac vice* pursuant to subsection (e) of this Rule must tender to the Clerk any fee prescribed for admission *pro hac vice* by order of this Court. This fee shall not be collected from attorneys representing governmental agencies of the United States, members of the Ohio Attorney General's Office or attorneys employed by the Ohio Public Defender who appear in either civil or criminal matters.

(5) All such fees collected by the Clerk must be deposited for the use of the bar and the Court in the Court's Attorney Admission 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.

(h) **Disciplinary Enforcement**. The conduct of attorneys admitted to practice before this Court, including attorneys admitted *pro hac vice,* and the supervision of their conduct by this Court is governed by the Model Federal Rules of Disciplinary Enforcement (with the exception of Rules XI and XII). (See Appendix to these Rules.)

83.4 Trial Attorney and Co-counsel

(a) **Designation and Responsibility**. Unless otherwise ordered, in all actions filed in, transferred to or removed to this Court, all parties other than *pro se* parties must be represented at all times by a "trial attorney" who is a permanent member of the bar

of this Court in good standing. Each filing made on behalf of such parties must identify and be signed by the trial attorney. The trial attorney must attend all hearings, conferences and the trial itself unless excused by the Court from doing so. Admission *pro hac vice* does not entitle an attorney to appear as a party's trial attorney, but the Court may, in its discretion and upon motion that shows good cause, permit an attorney who has been so admitted to act as a trial attorney.

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

(c) **Withdrawal or Substitution of Trial Attorney.** A trial attorney may be allowed to withdraw, or a new trial attorney substituted, only by filing either a notice or motion under subsections (c)(1) and (c)(2) of this Rule. The Court may impose terms or conditions upon any withdrawal or substitution. The Court will ordinarily not permit a trial attorney to withdraw from an action within twenty-one (21) days of trial or the date set for a hearing on any motion for judgment or dismissal. The substitution of a trial attorney, even if it is allowed within twenty-one (21) days of a trial or hearing, does not automatically entitle a party to the postponement of the trial or hearing.

(1) Substitution of a new trial attorney. The current trial attorney may withdraw either from the case or from the designation as trial attorney by filing a notice that is signed by (1) the current, withdrawing trial attorney; (2) the client; and (3) a new, substituting trial attorney. If the substituting trial attorney is a member of the same partnership, legal professional association, or governmental attorney group as the trial attorney to be substituted for and the notice affirmatively states that the substitution is made with the client's knowledge and consent, the client's signature is not required. Alternatively, if the withdrawing trial attorney is a governmental attorney who has undergone a change in employment status which renders him or her ineligible to continue to represent the governmental parties in the case, a new trial attorney may be substituted through the filing of a notice that so states, which is signed by new trial counsel, and which affirmatively indicates that the substitution is made with the client's knowledge and consent.

(2) Motion for Withdrawal and/or Substitution. In any case in which the requirements of the preceding subsection cannot be met, the withdrawal of the current trial attorney, either from the case or from the designation as trial attorney, must occur by way of motion and order. Any motion to withdraw from further representation of the client must meet the following requirements: (1) it must be served upon the client and the certificate of

service must so state; (2) it must assert that good cause, as defined by the Rules of Professional Conduct, exists to permit the withdrawal; and (3) it must be accompanied by an affidavit or other evidence supporting the assertion of good cause. If the evidence relied upon in support of the motion would be detrimental to the client's interest if disclosed to the other parties, the withdrawing attorney must move for an order that the evidence be filed *in camera* and under seal. The Court will not ordinarily grant a motion for leave to withdraw until the client has been given an opportunity to respond to the motion unless the motion demonstrates that the client agrees to the withdrawal and/or has terminated the services of the withdrawing attorney. Unless an order to the contrary is issued or the Court grants the motion for leave to withdraw, the attorney seeking leave to withdraw must continue to perform the functions of the trial attorney while the motion is pending. If the current trial attorney wishes to withdraw from that designation but not from the case, and a notice of substitution that complies with the preceding subsection cannot be filed, trial counsel must file a motion showing good cause for the withdrawal. The Court will not ordinarily grant such a motion unless a new trial attorney has been designated.

(d) **Co-Counsel**. Any attorney who has appeared in a case in any capacity other than as trial attorney is considered to be co-counsel for the party or parties on whose behalf the appearance has been entered. Co-counsel may withdraw by way of a notice of withdrawal signed by the withdrawing attorney and by the trial attorney for the party on whose behalf co-counsel has previously appeared. By signing such a notice, the trial attorney represents that the client has authorized the withdrawal. If the trial attorney is unwilling or unable to sign such a notice, co-counsel who wish to withdraw must file a motion that complies with subsection (c)(2) of this Rule.

83.5 Signatures on Filings

(a) **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 S. D. Ohio Civ. R. 83.4, followed by the designation "Trial Attorney," together with his or her name, full office address, telephone number and area code, and electronic (e-mail) address. Ohio Supreme Court Registration numbers shall be included immediately after the name in the signature and address block on all filings. Firm names and the names of co-counsel may appear on pleadings and motions for information purposes only.

(b) **Filing Users**. Attorneys admitted to the permanent bar of this Court may register as Filing Users of this Court's ECF system. Those admitted *pro hac vice*, pursuant to S. D. Ohio Civ. R. 83.4(c), shall unless otherwise ordered register as Filing Users of this Court's ECF system. If the Court permits, a

party to a pending proceeding who is not represented by an attorney may register as a Filing User solely for the purposes of that action. If an attorney appears on that party's behalf thereafter, that attorney must advise the Clerk promptly following that attorney's appearance to terminate the party's registration as a Filing User.

(c) **Electronic Signature.** The actual signature of a Filing User shall be represented, for ECF purposes, by "s/" followed by the typed name of the attorney or other Filing User. Signature in such a manner is equivalent, for all purposes including Fed. R. Civ. P. 11 or any other rule or statute, to a hand-signed signature.

(d) **Signature for Another Attorney.** When one attorney signs on behalf of another attorney, the full signature of each must appear; signatures followed by initials are unacceptable because the Court must determine who actually signed the document. (E.g., "s/ Joan Doe by s/ Richard Roe per telephone authorization.")

(e) **Unauthorized Use of Passwords Prohibited.** No Filing User or other person shall knowingly permit or cause a Filing User's password to be used by anyone other than an authorized agent of the actual Filing User.

83.6 Student Practice Rule

(a) **Compliance With Rule**. Certain law students, employed by or utilized by the Federal Public Defender or the United States Attorney or their designees, or enrolled in a law school clinical program, may participate as a Legal Intern in civil and non-felony cases in this Court subject to their compliance with all of the requirements of this Rule.

(b) **Eligibility.** An eligible student must:

(1) Either

(a) Be certified by the Ohio Supreme Court as a Legal Intern; or

(b) Be duly enrolled in a law school approved by the American Bar Association and have completed at least two-thirds of the requirements for graduation; and

(2) Have knowledge of the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Evidence, the Rules of Professional Conduct, and the Rules of this Court;

(3) Be supervised by a supervising attorney as defined in paragraph (c) of this Rule;

(4) Be certified by the Dean of the law school where the student is enrolled, or the Dean's designee, as being of good character, sufficient legal ability, and adequately trained to fulfill the responsibilities of a Legal Intern to both the client and the Court;

(5) Be certified by the Chief District Judge or his/her designee to practice pursuant to this Rule; and

(6) Decline personal compensation or remuneration of any kind for his or her legal services other than expenses approved by the supervising attorney. Any application by or on behalf of the supervising attorney for legal fees must itemize the services performed and time spent by the Legal Intern.

(c) **Supervising Attorney**. A supervisor must be admitted to practice in this Court and must:

(1) Either

(a) Have faculty or adjunct faculty status at a law school at which a portion of the supervisor's duties includes supervision of students in a clinical program; or

(b) Be employed by the United States Attorney or the Federal Public Defender and have the litigation experience and the time and ability to supervise a Legal Intern. Any exception to the requirements of this Rule must be approved by the Chief District Judge;

(2) Be present with the student at all times in court and at other proceedings in which testimony is taken;

(3) Co-sign all pleadings or other documents filed with the Court and be responsible for all filings made via the Court's ECF system;

(4) Assume full personal and professional responsibility, for the benefit of the represented clients, for a student's guidance and any work undertaken and for the quality of the student's work, and be available for consultation with represented clients;

(5) Assist and counsel the student in activities mentioned in paragraph

(e) of this rule and review such activities with the student, all to the extent required for proper practical training of the student and the protection of the client; and

(6) Supplement oral or written work of the student as necessary to insure proper representation of the client.

(d) **Certification and Authorization**

(1) **Student.** The student shall apply for certification to practice under this Rule by filing a "Form for Designating Compliance with the Student Practice Rule for the Southern District of Ohio." Alternatively, if the student is a Legal Intern certified by the Ohio Supreme Court, a copy of the certification may be submitted.

This Court's certification of a student to practice under this Rule shall be filed with the Clerk and shall remain in effect for eighteen (18) months or until the results from the first Bar Examination of this Court for which the law student is eligible to sit are released. If the student passes the State Bar Examination, then the certification shall continue until the results of the first admittance examination for this District are released. If the student fails to pass the District's Bar Examination, the certification shall expire. If the student passes this District's Bar Examination, said certification shall continue until that student is formally admitted to practice in this Court. Certification to appear generally may be withdrawn by the Chief District Judge or his/her designee in the discretion of the Chief District Judge or his/her designee and without the need to show cause. In a particular case the certificate may be withdrawn by the presiding judicial officer in the discretion of the judicial officer and without the need to show cause.

(2) **Client and Supervising Attorney Authorization**. The student must be authorized to appear in each case in which he or she participates. A "Client and Supervising Attorney Authorizations for Appearance by Law Student" form must be completed and filed in each case.

(e) **Activities**. A certified student may under the personal and direct supervision of his or her supervisor:

(1) Represent any client in any civil, administrative, or non-felony criminal case if the client on whose behalf the student is appearing has consented in writing to that representation and the supervising attorney has given written approval of that representation as set forth

in paragraph (d)(2) of this Rule; however, the presiding judicial officer retains the authority to limit a student's participation in any individual case; and

(2) In connection with matters in this Court, engage in other activities on behalf of the client under the general supervision of the supervising attorney; however, a student shall make no binding commitments on behalf of a client absent prior client and supervisor approval. In any matters, including depositions, in which testimony is taken the student must be accompanied by the supervising attorney. Any filings made by the student shall be read, approved, and co-signed by the supervising attorney. The Chief District Judge or his/her designee and also the presiding judicial officer retain the authority to establish exceptions to such activities.

(3) Prior to oral participation by a certified student in a hearing or trial, the supervising attorney shall provide the presiding judicial officer with a written statement of the scope of participation anticipated on the part of the certified student.

(4) Because the supervising attorney is the attorney of record, no notice of withdrawal shall be required to be filed by the law student.

FORMS FOR IMPLEMENTING RULE 83.6

Form for Designating Compliance with the Student Practice Rule

Name of Student
Address, Phone, Fax and Email

Name of Supervising Attorney
Address, Phone, Fax, and Email

Name of Law School student is attending: _____

Number of semesters or credits successfully completed:_____

LAW STUDENT'S CERTIFICATION:

I certify that I have completed at least two-thirds (2/3) of the requirements necessary to complete the degree program of [name of] law school; that I am familiar with and will comply with the Rules of Professional Conduct of the Ohio Supreme Court, the Federal \

Rules of Civil and Criminal Procedure, Federal Rules of Evidence, the Local and Disciplinary Rules of this Court, and any other federal rules relevant to the case in which I am appearing; and that I will receive no compensation for services I may render.

_____ _____

(Date) (Signature)

LAW SCHOOL DEAN'S CERTIFICATION:

I certify that this student has completed at least two-thirds (2/3) of the academic requirements necessary to obtain a law degree, and is, to the best of my knowledge, of good character and competent legal ability, and adequately trained to perform as an eligible law student under S. D. Ohio Civ. R. 83.6.

_____ _____

(Date) (Signature)

_____ _____

(Law School) (Position)

CERTIFICATION OF CHIEF JUDGE OR HIS/HER DESIGNEE:

The following items relating to the certification of [name], a law student enrolled in [name of law school], have been received by this Court and reviewed by me:

1. Form for Designating Compliance with the Student Practice Rule

2. Law Student's Certification

3. Law School Dean's Certification

I find that the certification requirements of S. D. Ohio Civ. R. 83.6 have been met, and [name] is hereby certified as a Legal Intern admitted to practice in this Court in accordance with the authorizations and restrictions set forth in S. D. Ohio Civ. R. 83.6.

_____

Chief Judge or His/Her Designee

CLIENT & SUPERVISING ATTORNEY AUTHORIZATIONS FOR APPEARANCE BY LAW STUDENT:

Form to be completed by the client for whom a law student is rendering services; or by the United States Attorney or the Federal Public Defender if the services are rendered for the United States Attorney or the Federal Public Defender. (If more than one client is involved, approvals from each shall be attached. If a class action is involved, approvals from class members named in the caption shall be attached.)

I authorize [name], a law school student, to appear in court or at other proceedings and to prepare documents on my behalf. I am aware that (he)(she) is not a lawyer and that (he)(she) will appear under the supervision of an attorney licensed to practice before this Court, pursuant to the Student Practice Rule, S. D. Ohio Civ. R. 83.6. I have read S. D. Ohio Civ. R. 83.6, a copy of which is attached to this authorization.

_____ _____

(Date) (Signature of Client)

Form to be completed by the Law Student's Supervising Attorney

I will carefully supervise all of this student's work. I authorize this student to appear in court and at other proceedings and to prepare documents. I will accompany the student at such appearances, sign all documents prepared by the student, assume professional responsibility for the student's work, and be prepared to supplement, if necessary, any statements made by the student to the court or to opposing counsel. I certify that I meet the requirements of S. D. Ohio Civ. R. 83.6(c)(1) to serve as a supervising attorney.

_____ _____

(Date) (Signature of Attorney)

LOCAL CRIMINAL RULES

I. SCOPE OF RULES

1.1 General Provisions

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

(b) **Effective Date.** The effective date of these Rules is July 1, 2010.

1.2 Applicability of the Local Civil Rules

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

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

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

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

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

1.3 Local Civil Rules Not Applicable

The following Local Civil Rules are not applicable in criminal actions unless otherwise ordered: 1.1(a), 3.1, 3.2, 4.2, 7.1.1, 10.2, 16.1, 16.2, 16.3, 23.1, 23.2, 23.3, 26.1, 30.1, 36.1, 37.1, 37.2, 38.1, 54.1, 65.1, 82.1.

II. FILING IN CRIMINAL CASES

12.1 Pleadings and Pretrial Motions

(a) The charging documents, including the complaint, information, indictment and superseding indictment, shall be filed either in the traditional manner in paper or as a scanned document that contains an image of any legally required signature. All subsequent documents must be filed electronically except as provided in these Rules or as ordered by the Court.

(b) A person may review all filings at the Clerk's office which have not been

sealed by the Court. A person having PACER access may retrieve docket sheets in criminal cases. Until further notice, absent agreement of all parties and a finding by the trial judge that such access is warranted, documents filed in criminal cases shall be made available electronically only to counsel for the Government and counsel for defendants, and will not be available to the general public through the ECF system.

(c) **Consequences of Electronic Filing**. Electronic transmission of a document to the ECF system together with transmission of a Notice of Electronic Filing from the Court constitutes filing of the document for all purposes under the Federal Rules of Criminal Procedure, and the Local Rules of this Court, and constitutes entry of the document on the docket kept by the Clerk under Fed. R. Crim. P. 49 and 55. When a document is filed electronically, the official record is the electronic recording of the document as stored by the Court, and the filing party is bound by the document as filed unless relief is granted under subsection (f) of S. D. Ohio Civ. R. 5.1.

(d) All orders, decrees, judgments and proceedings of the Court filed in accordance with these Rules using the ECF system will constitute entry on the docket kept by the Clerk under Fed. R. Crim. P. 49 and 55.

(e) **Related Cases.** It is the personal responsibility of the Untied States Attorney or Assistant United States Attorney to identify related cases on the "Defendant Information Relative to a Criminal Action" form (Form AO 257) or other form provided by the Clerk's Office. For purposes of this Rule, cases may be deemed related by the Court if they appear to arise from the same or a substantially identical transaction, happening, or event, including any alleged conspiracy. This Rule is intended to provide for the orderly division of the business of the Court and does not grant any right to any litigant.

12.4.1 Disclosure Statements and Disqualification Requests

(a) No filing is required of individuals who are criminal defendants. Corporate defendants in criminal cases shall file statements as provided in Fed. R. Crim. P. 12.4. If such a filing occurs before all facts have been fully investigated, the disclosure statement shall be expressly noted as potentially incomplete. Counsel shall promptly thereafter investigate and supplement an incomplete disclosure statement.

(b) **Disqualification.** In addition to addressing corporate disclosures, all counsel are directed to consider at the earliest opportunity whether there may be any reason for a judicial officer of this Court to disqualify himself or herself, pursuant to 28 U.S.C. § 144 or § 455, and to advise the Court in writing as

early as possible in the case about any such concerns.

III. PROBATION AND SENTENCING

32.1 Presentence Reports

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

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

(c) Within twenty-one (21) days after disclosure of the initial presentence report, either by certified mail or personal delivery, the parties shall communicate to the Probation Officer and each other such objections as they have to matters either contained in or omitted from the report. Such communication may be oral or written, but the Probation Officer may require that any oral objection be promptly confirmed in writing. All objections to the presentence report should be clearly identified in order that they may be resolved to the extent practicable through informal procedures, including telephone conferences. During the disclosure period, written objections should be filed with the Probation Officer and not with the Court.

(d) Thereafter, the Probation Officer shall conduct such further investigation and make such revisions to the initial presentence report as may be deemed appropriate. The Probation Officer shall respond to all unresolved objections. If any party holds a good faith belief that a further conference may yet resolve or narrow any objection, it shall be the obligation of the objecting party to seek a conference with the Probation Officer and the other party. Any such conference shall be held within thirty-one (31) days following disclosure of the initial presentence report. All unresolved objections shall be memorialized in writing by the objecting party to the Probation Officer within seven (7) days after such conference.

(e) Following any conference held pursuant to paragraph (d) of this Rule, but not later than forty-two (42) days following disclosure of the initial presentence report, the Probation Officer shall transmit the final presentence investigation report to the Judge and the parties [two copies to counsel for the Defendant and one copy to counsel for the Government], either by posting of certified

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

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

(g) If the Probation Officer communicates to the Court any material described in Fed. R. Crim. P. 32(d)(3), which is believed to be of such a nature as ought not to be made available to the Defendant and the Defendant's counsel, the Probation Officer shall upon request by the Court promptly prepare a written summary of such material in order to assist the Court in complying with its obligations under Fed. R. Crim. P.
32(i)(1)(B).

(h) Following receipt of the final report, the Court may schedule additional conferences on the remaining objections, or may proceed to conduct the sentencing hearing not less than fourteen (14) days after receiving the final presentence report, provided that thirty-five (35) days have passed since disclosure of the initial report or Defendant waives this time requirement. Except with regard to any unresolved objections previously memorialized in writing, the final presentence report may be accepted by the Court as its findings of fact. The Court, however, for good cause shown may allow a new objection to be raised at any time before the imposition of sentence. In resolving disputed issues of fact, the Court may consider any reliable information presented by the Probation Officer, the Defendant, or the Government.

(i) The Defendant may waive the minimum periods in this Rule and in Fed. R.

Crim. P. 32 provided such waiver is documented in the Record. Time frames set forth in this Rule and in Fed. R. Crim. P. 32 may also be modified by the Court for good cause shown.

(j) The presentence report, statements, addenda and related documents shall be deemed to have been disclosed at the earliest of the following events: (1) on the date designated as the availability date in the Disclosure Notification letter; (2) when a copy of the document is physically presented; (3) one day after the immediate availability of the document is orally communicated; (4) seven (7) days after notice of the immediate availability is mailed; or (5) seven (7) days after the document is sent by certified mail by the Probation Officer.

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

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

32.2 Production of Probation and Pretrial Services Records; Testimony of Probation and Pretrial Services Officers

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

(b) The Director of the Administrative Office of the United States Courts has promulgated regulations establishing procedures for the production or disclosure of documents and the testimony of judiciary personnel in legal proceedings. Those regulations are applicable in this Court except as otherwise provided in this Rule. The regulations may be reviewed at www.uscourts.gov/courts/regulations.htm.

(c) When disclosure of Probation or Pretrial Services records or a request for the testimony of a Probation or Pretrial Services Officer is sought by way of subpoena or other judicial process, the Chief of Probation or Pretrial Services shall consult with the Chief Judge of this Court with respect to responding to the subpoena or other judicial process. If the request relates to Pretrial Services, the Chief Judge may refer the matter to the District Judge or Magistrate Judge responsible for the pretrial handling of the case. If the request relates to the Probation Office, the Chief Judge may refer the matter

to the District Judge or Magistrate Judge who passed sentence.

IV. OTHER RULES

49.1 Serving and Filing Papers

(a) Immediately upon the entry of an order or judgment in a proceeding assigned to the ECF system, the Clerk will transmit to Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of such Notice constitutes the notice required by Fed. R. Crim. P. 49(c). In accordance with the Federal Rule, the Clerk must give notice in paper form to a person who has not consented to electronic service.

(b) A document containing the signature of a defendant in a criminal case may be filed either (1) in paper form, or (2) in a scanned format that contains an image of the defendant's signature. If filed in paper the party filing the document shall also give notice of manual filing through the ECF system. Counsel shall retain the signed original of any document containing the defendant's signature which has been filed electronically for five years or for the period within which the Clerk would maintain original material under S. D. Ohio Civ. R. 79.2, whichever period is longer. Counsel shall exhibit the original document upon reasonable request by the Court or counsel for the Government.

57.1 Publicity and Disclosures

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

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

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

(1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status and, if the accused has not been apprehended, an attorney associated with

the prosecution may release any information necessary to aid in the accused's apprehension or to warn the public of any dangers the accused may present;

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

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

(4) The identity, testimony, or credibility of prospective witnesses, except that the attorney or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(5) The possibility of a plea of guilty to the offense charged or a lesser offense;

(6) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

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

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

57.2 Procedures in Death Penalty Cases

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

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

(c) **Duty of Clerk**. The Clerk shall immediately forward to the Clerk of the Court of Appeals a copy of petitioner's statement as required by Subsection

(b) and immediately shall notify by telephone the Clerk of the Court of Appeals upon issuance of a final order in the case. When the notice of appeal is filed, the Clerk shall immediately transmit the available records to the Court of Appeals.

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

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

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

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

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

58.1 Forfeiture of Collateral in Lieu of Appearance

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

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

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

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

83.4 Withdrawal in a Criminal Case

The trial attorney in a criminal case, whether retained or appointed, is responsible for continued representation of the client on appeal until specifically relieved by the Sixth Circuit Court of Appeals (See 6th Cir. R. 101). The trial attorney must consult with his or her client as to whether the client wishes to appeal. If the client wishes to appeal, the trial attorney must file a notice of appeal and assist the client in preparing any other necessary filings to proceed on appeal.

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 I

Attorneys Convicted of Crimes

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

2. an order to show cause directing that the attorney inform this Court within thirty (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 thirty (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 this Court.

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 of misconduct is pending, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

Rule IV

Standards for Professional Conduct

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

B. Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Rules of Professional Conduct 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 Rules of Professional Conduct adopted by this court are the Rules of Professional Conduct adopted by the highest court of the state in which this Court sits, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives or bar associations within the state.

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, referral, or otherwise setting forth the reasons therefor.

C. To initiate formal disciplinary proceedings, counsel shall obtain an order of this Court upon a showing of probable cause requiring the respondent-attorney to show cause within thirty (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 the disciplinary proceeding is predicated upon the complaint of a Judge of this Court, the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge, or, if there are less than three Judges eligible to serve or the Chief Judge is the complainant, by the Chief Judge of the Court of Appeals for this Circuit.

Rule VI

Disbarment on Consent While Under Disciplinary Investigation or Prosecution

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

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

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

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

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

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

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

Rule VII

Reinstatement

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

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

C. Hearing on Application. Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the Chief Judge of this Court. Upon receipt of the petition, the Chief Judge shall promptly refer the petition to counsel and shall assign the matter for prompt hearing before one or more Judges of this Court, provided however that if the disciplinary proceeding was predicated upon the complaint of a Judge of this Court the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge, or, if there are less than three Judges eligible to serve or the Chief Judge was the complainant, by the Chief Judge of the Court of Appeals for this Circuit. The Judge or Judges assigned to the matter shall within thirty (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 or the public interest.

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

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

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

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

Rule VIII

Attorneys Specially Admitted

Whenever an attorney applies to be admitted or is admitted 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 a lawyer so appointed who is or has been engaged as an adversary of the respondent-lawyer 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 (10) 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.