LOCAL CIVIL & CRIMINAL RULES

United States District Court
Southern District of Ohio

May 1, 2006

www.ohsd.uscourts.gov

MEMORANDUM

April 19, 2006

To: Federal Practitioners

From: Michael R. Merz, Chief Magistrate Judge

Re: Amendments to the Local Rules of Practice

The Court's website has the full text of the local rules as amended, effective May 1, 2006. The amended rules embody the following changes:

1. Rule 23.3 was amended to eliminate the requirement that a motion for class certification be filed within 120 days of the pleading asserting existence of a class. Instead, relevant deadlines relating to class certification are to be discussed in the Fed. R. Civ. P. 26 conference and reflected in the Fed. R. Civ. P. 26(f) report.

2. Rule 26.2 on protecting personal privacy was revised to comply with the E-Government Act of 2002 and regulates redaction of parts of dates of birth, Social Security numbers, financial account information, names of minors, and other personal information which might contribute to identity theft. Counsel must maintain an unredacted copy.

3. Rule 37.2 was amended to require an attorney to certify efforts at extrajudicial resolution, rather than to embody such information in an affidavit. This was done to conform to Fed. R. Civ. P. 37.

4. Rule 79.3 governs the manner in which sealed documents are to be presented to the Clerk for filing or in camera inspection. It conforms this Rule to the Court's electronic filing process.

5. Rule 83.6 is an entirely new rule on Student Practice.

Comments about these amendments or suggestions for any other needed amendments to the Rules may be emailed to Local_Rules@ohsd.uscourts.gov.

INTRODUCTORY STATEMENT ON CIVILITY

LOCAL CIVIL RULES

LOCAL CRIMINAL RULES

Introductory Statement on Civility

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

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

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

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

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

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

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

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

in keeping with the highest and best traditions of the Southern District of Ohio.

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

LOCAL CIVIL RULES

I. SCOPE OF RULES

1.1 GENERAL PROVISIONS

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

(b) Effective Date. The effective date of these Rules as amended is May 1, 2006.

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

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

(e) These Local 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.

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.

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 Rule 4(d), Fed.R.Civ.P. 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 Fed. R. Civ. P. 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, Dec. 1994, (the "green card") showing the name of sender as "Clerk, United States District Court, Southern District of Ohio" at the appropriate address, with the certified mail number affixed to the front of the envelope. The instructions to the delivering postal employee shall require the employee to show to whom delivered, date of delivery, and address where delivered. Plaintiff's attorney shall affix adequate postage to the envelope and deliver it to the Clerk who shall cause it to be mailed.

(b) The Clerk shall enter the fact of mailing on the 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. (Rule 4.1, Ohio Rules of Civil Procedure.)

(c) If service of process is refused or was unclaimed, the Clerk shall forthwith notify, by mail, the attorney of record or if there is no attorney of record, the party at whose instance process was issued. If the attorney, or serving party, after notification, 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 (20 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.

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

5.1 GENERAL FORMAT OF PAPERS PRESENTED FOR FILING.

(a) Form. All pleadings, motions, briefs, and other papers presented to the Clerk for filing shall be on 8 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. Documents filed electronically shall conform substantially to the requirements of these Local Rules and to the format for the ECF system set out in the most current edition of the ECF 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 Rule 5(d), Fed. R. Civ. P. Such proof of service shall state the date and manner of service, including the name of the person(s) served and the address(es) to which service was directed, and shall be fully stated on or attached to the copy of the pleading or other document served upon a party or upon the trial attorney of each party.

(b) Delivery Electronically (Including Facsimile.) Delivery by electronic means through this Court's ECF system consented to by the person served, pursuant to Rule 5(b)(2)(D), Fed. R. Civ. P., or by facsimile transmission between the parties or the parties' counsel, shall constitute "delivery" and proper service under Rule 5(b), Fed. R. Civ. P.

(c) Notice of Withdrawal from the ECF system. An attorney seeking to revoke consent to receive electronic service using the ECF system, given pursuant to Fed. R. Civ. P. 5(b)(2)(D), shall provide written notice to the Clerk and to all counsel of record in each case in which the attorney has appeared no less than ninety (90) days prior to the effective date of such revocation. Absent such notice no revocation is effective.

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 Rule 26(a)(1), interrogatories, requests for documents or to permit entry upon land, or requests for admissions) such discovery document may be filed.

(b) Deposition transcripts 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 Rule 30(f), Fed. R. Civ. P.

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

III. PLEADINGS, MOTIONS AND ORDERS

6.1 EXTENSIONS OF TIME TO MOVE OR PLEAD.

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

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

7.1 PROCEDURE FOR DECIDING MOTIONS

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

(b) Procedure to Obtain Hearing or Oral Argument.

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

(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 eleven (11) 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. Section 1.

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

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

(4) Unreported Opinions. If unreported or unofficially published opinions are cited, copies of the opinions shall be 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 Rule 56(f), Fed. R. Civ. P., 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 <u>not</u> 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 Rule 30(e), Fed. R. Civ. P.

7.3 CONSENT TO MOTIONS

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

(b) Other Motions.
A party filing any other type of motion to which other parties might reasonably be expected to give their consent (such as a motion to amend pleadings, for leave to file a document *instanter*, 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 the Court, 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 Local Rule.

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

(3) A negative report is required.

(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 Local 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 Local Rule of the identity of such publicly owned corporation or affiliate, and the nature of its or its affiliate's substantial financial interest in the outcome of the litigation.

(c) Form and Time of Disclosure.

(1) The disclosure statement shall be made on a Form provided by the Clerk or 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 Local 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 Fed. R. Civ. P. or applicable statutes.

16.1 PRETRIAL PROCEDURES.

Each judge of the District shall be responsible for determining the procedure and content of preliminary pretrial conferences, scheduling orders and pretrial conferences under Rule 16, Fed. R. Civ. P. Any general or standing order of any judge or for any location of court which governs pretrial procedures and the content of pretrial conferences shall be transmitted by the Clerk to all parties to an action, together with any notice of a pretrial conference. In addition 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 Rule 16(b), Fed. R. Civ. P., and to modify scheduling orders upon a showing of good cause. Unless otherwise ordered, the following categories of cases shall be exempt, as inappropriate, from

the requirement that a scheduling order be issued under Rule 16(b), Fed. R. Civ. P.:

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

16.3 ALTERNATIVE DISPUTE RESOLUTION.

(a) Evaluation of Cases for ADR.

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

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

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

(b) Exclusion of Categories of Cases.

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

(c) Confidentiality.

(1) In addition to Fed. Evid. Rule 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 Judge of the District), 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

Local Rule, and any refusal to attend and participate in good faith by a party or their counsel shall be reported to the presiding judicial officers who may, after notice, impose sanctions or make such other Orders as are just.

IV. PARTIES

23.1 DESIGNATION OF "CLASS ACTION" IN THE CAPTION.

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

23.2 CLASS ACTION ALLEGATIONS.

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

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

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

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

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

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

23.3 MOTIONS FOR DETERMINATION AS A 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 Rule 33, Fed. R. Civ. P., requests for production of documents or things, pursuant to Rule 34, Fed. R. Civ. P., or requests for admission pursuant to Rule 36, Fed. R. Civ. P., shall provide sufficient space, of not less than one inch, after each such interrogatory or request for the answer, response, or objection thereto. Parties 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.

26.2 PROTECTING PERSONAL PRIVACY.

(a) Parties shall omit or, where inclusion is necessary, partially redact from court filings, social security numbers, full dates of birth, bank or other financial account numbers, names of minor children, or other personal information which might contribute to identity theft. If a date of birth or an account number must be referenced, unless the assigned judicial officer orders otherwise, and to comply with the policy of the Judicial Conference of the United States and the E-Government Act of 2002, Pub. L. No. 107347, parties shall use only the year, or the last four digits of the account. If names of minor children must be referenced it is appropriate to use the child's initials, or a generic abbreviation such as "CV" for "child victim."

(b) When a filing is redacted as permitted by subsection (a), the filing party's trial attorney must maintain an un-redacted copy of the filing. Upon request, it must be provided to the judge and to counsel for any party. Unrepresented parties must provide the Clerk of Court with an un-redacted copy of the filing.

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 Rule 30(d), Fed. R. Civ. P., and any proceeding under Rule 30(b), Fed. R. Civ. P., initiated or arising during the process of taking depositions outside of the Southern District of Ohio will be initiated or filed in this District and disposed of by the Judicial Officer responsible for discovery. This Rule applies to proceedings initiated by a party to the action involved and does not apply to such proceedings initiated by a deponent (not a party or officer or employee of a party or member of a partnership party). While it is recognized that Rule 30, Fed. R. Civ. P., extends the option to apply to the District Court in the district where the deposition is being taken and that option may not be denied by this Rule, application in such other districts generally tends to unduly increase the business of such

other district and tends to result in delaying the dispatch of its calendar by this Court. Proceedings initiated in other districts in violation of this rule may be subject to 28 U.S.C. Section 1927, or other applicable sanction.

36.1 REQUESTS FOR ADMISSION.

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

37.1 CONSULTATION AMONG COUNSEL; INFORMAL DISCOVERY DISPUTE CONFERENCE.

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

37.2 DISCOVERY MOTIONS.

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

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

VI. TRIALS

39.1 JUROR NOTE TAKING.

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

41.1 ASSIGNMENT OF PREVIOUSLY DISMISSED ACTION

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

43.1 EXAMINATION OF WITNESSES.

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

43.2 ATTORNEY TESTIFYING AS WITNESS.

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

45.1 WITNESS FEES.

The fees and mileage of witnesses shall be 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 Rule 5.2 of these Rules. 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.

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) and (c). All Magistrate Judges are specially designated within the

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

72.2 ASSIGNMENT OF DUTIES TO MAGISTRATE JUDGES.

Individual District Judges at each location of 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. *(See Appendix to these Rules.)*

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

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

77.1 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 Rule 67, Fed. R. Civ. P., prior to December 1, 1990.

79.1 CUSTODY OF FILES AND EXHIBITS.

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

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

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

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

(d) Corporate Residence, Venue When Indeterminate. A corporation which is

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

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

(f) 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 Local Rule, persons other than criminal defendants in the custody of the United States Marshal's Service entering any courthouse being used by this District Court are permitted to keep in their possession laptop computers, wireless telephones, electronic calendars, and other electronic devices commonly used to conduct business activities 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 Local Rule may be used anywhere in the courthouse so long as such use does not disrupt courtroom or other official proceedings. By way of illustration, the ringing of a

wireless telephone in a courtroom while proceedings are being conducted is considered disruptive. No device may be used to circumvent subsection (a) of this Local Rule prohibiting the use of cameras or recording devices where federal judicial proceedings are being conducted.

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

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

(f) No person, with the exception of employees of the U.S. Marshal's Service and case agents, may enter or remain in any courtroom or hearing room of this Court, or any Clerk's Office, while in possession of a firearm or other deadly weapon. All other persons in possession of firearms 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 shall consist of those attorneys currently admitted and those attorneys hereafter admitted, in accordance with these Rules or by order of this Court, to practice in this Court. Attorneys admitted *pro hac vice* are not permanent members of the bar of this Court.

(b) Eligibility. Any member in good standing of the Bar of the Supreme Court of Ohio is eligible for admission 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), shall file with the Clerk at least twenty (20) days prior to the examination for admission an application on the form provided by the Clerk. The applicant shall affirmatively certify that he or she is familiar with the Court's ECF system. The application shall also contain a certificate of two members of the bar of this Court, vouching for the good moral character and professional reputation of the applicant. Each candidate shall be present for examination at the next examination after the filing of the candidate's application. If the candidate fails to be present, it will be necessary to file a new application.

(2) Applicants in good standing as members of the permanent bar of 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 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 this Local Civ. Rule 83.3.

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

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

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

83.4 TRIAL ATTORNEY.

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

(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 shall be served upon the trial attorney. (Also see S.D. Ohio Civ. R. 5.2, "Certificate of Service"). Trial attorneys shall be responsible for notifying co-counsel or associate counsel of all matters affecting the action.

(c) Participation by Co-counsel. Any member in good standing of the bar of the highest court of any State, who is not otherwise eligible to become a member of the bar of this Court, may be permitted to appear and participate as counsel or co-counsel upon motion of the trial attorney for any party. A motion for permission to appear *pro hac vice* shall be accompanied by a current certificate of good standing by the highest court of any state, and the tender of a $50 fee to the Clerk of the Courts. Should the application not be granted, the tendered fee will be returned. Permission to appear *pro hac vice* may be withdrawn at any time. Such motion is not required for the purpose of having participating counsel's name appear on the pleadings. Unless otherwise ordered, all counsel admitted *pro hac vice* shall register with this Court for electronic filing. Admission *pro hac vice* does not entitle an attorney to appear as the "trial attorney" required by subsection (a) of this Local Rule.

(d) Substitution or Withdrawal of Trial Attorney. The substitution or withdrawal of a trial attorney shall be permitted only: (1) upon filing with the Court and

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

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 rules 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 as "of counsel."

(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 Local 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 the 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 Rule 11, Fed.R.Civ. P. or other rule or statute, to a hand-signed signature.

(d) Signature for Another Attorney. When one attorney signs on behalf of another the full signature of each must appear; signatures followed by initials are unacceptable because the Court must determine who 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) [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 (2/3) of the requirements for graduation; and

(2) have knowledge of the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Evidence, the Code of Professional Responsibility, and the Local 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 Judge of this Court or 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 Office 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 Judge of this Court;

(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 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 Local 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 Local Rule shall be filed with the Clerk and shall remain in effect for 18 months or until the results from the first bar examination 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 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 Judge or designee in the discretion of the Chief Judge or 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 lawyer 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 lawyer; 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 lawyer. Any filings made by the student shall be read, approved, and co-signed by the supervising lawyer. The Chief Judge or 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.

FORM FOR DESIGNATING COMPLIANCE WITH THE STUDENT PRACTICE RULE

Name of Student
Address, Phone, Fax and Email:

Name of Supervising Attorney
Addres, 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 Code of Professional Responsibility of the American Bar Association, 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 Local Rule 83.6 of the District Court for the Southern District of Ohio.

_____ _____

(Date) **(Signature)**

_____ _____

(Law School) **(Position)**

CERTIFICATION OF CHIEF JUDGE OR DESIGNEE

The following items relating to the certification of _____ _, a law student enrolled in _____, 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 Local Rule 83.6 have been met, and _____ 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 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 _____, 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 (Local Rule 83.6) of the Southern District of Ohio. I have read Local Rule 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 Local Rule 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 June 14, 2004.

1.2 APPLICABILITY OF THE LOCAL CIVIL RULES

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

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

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

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

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

1.3 LOCAL CIVIL RULES NOT APPLICABLE.

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

1.1(a), 3.1, 3.2, 4.2, 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.

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 (2) copies of the initial presentence investigation report to counsel for the defendant, and disclose one (1) copy to counsel for the Government. Defense counsel shall promptly provide one (1) copy to the Defendant.

(c) Within seventeen (17) days after disclosure of the initial presentence report, either by the posting or certified mail or personal delivery, the parties shall communicate to the Probation Officer and each other such objections as they have to matters

either contained in or omitted from the report. Such communication may be oral or written, but the Probation Officer may require that any oral objection be promptly confirmed in writing. All objections to the presentence report should be clearly identified in order that they may be resolved to the extent practicable through informal procedures, including telephone conferences. During the disclosure period, written objections should be filed with the Probation Officer and not with the Court.

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

(e) Following any conference held pursuant to paragraph (d) of this Rule, but not later than thirty-eight (38) days following disclosure of the initial presentence report, the Probation Officer shall transmit the final presentence investigation report to the Judge and the parties [two (2) copies to counsel for the Defendant and one (1) copy to counsel for the Government], either by posting of certified mail or by personal delivery, pursuant to Rule 32, Fed R. Crim. P. The final report shall include an addendum identifying (1) all unresolved objections previously memorialized in writing; (2) a brief statement of the grounds for each such objection; (3) the Probation Officer's comments on each such objection after considering such conferences and discussion among the parties has occurred; and, if known, (4) an indication whether the parties are anticipated to wish to present evidence to the Court on any such objection at the sentencing hearing. The Probation Officer shall certify that the final presentence report is true and accurate to the best of his or her knowledge and belief, and that the Probation Officer has furnished all material revisions to the initial presentence report and the entire addendum to the Defendant's counsel, and counsel for the Government. Defendant's counsel shall promptly deliver copies of all such material to the Defendant.

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

(g) If the Probation Officer communicates to the Court any material described in Rule 32(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 Rule 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 ten (10) days after receiving the final presentence report, provided that thirty-five (35) days have passed since disclosure of the initial report or Defendant waives this time requirement. Except with regard to any unresolved objections previously memorialized in writing, the final presentence report may be accepted by the Court as its 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 Rule 32, Fed. R. Crim. P., provided such waiver is documented in the Record. Time frames set forth in this Rule and in Rule 32, Fed. R. Crim. P., may also be modified by the Court for good cause shown.

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

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

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

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

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

(b) 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 Local 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. Section 2254 and otherwise which challenge a state court order imposing a sentence of death.

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

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

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

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

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

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

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

58.1 FORFEITURE OF COLLATERAL IN LIEU OF APPEARANCE.

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

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

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

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

MODEL FEDERAL RULES OF DISCIPLINARY ENFORCEMENT

TABLE OF CONTENTS

MODEL FEDERAL RULES
OF DISCIPLINARY ENFORCEMENT

The United States District Court for the Southern District of Ohio, in furtherance of its inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it, or admitted for the purpose of a particular proceeding (*pro hac vice*) promulgates the following Rules of Disciplinary Enforcement 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 30 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in (D) hereof that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.

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

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

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

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

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

injustice; or

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

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

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

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

Rule III

Disbarment on Consent or Resignation in Other Courts.

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

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

Rule IV

Standards for Professional Conduct.

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

B. Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Code of Professional Responsibility adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Code of Professional Responsibility adopted by this court is the Code of Professional Responsibility

adopted by the highest court of the state in which this Court sits, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives 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 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 or so consenting;

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

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

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

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

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

Rule VII

Reinstatement.

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

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

C. Hearing on Application. Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the Chief Judge of this Court. Upon receipt of the petition, the Chief Judge shall promptly refer the petition to counsel and shall assign the matter for prompt hearing before one or more Judges of this Court, provided however that if the disciplinary proceeding was predicated upon the complaint of a Judge of this Court the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge, or, if there are less than three Judges eligible to serve or the Chief Judge was the complainant, by the Chief Judge of the Court of Appeals for this Circuit. The Judge or Judges assigned to the matter shall within 30 days after referral schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency and learning in the law 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 in any matter. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

Rule XIII

Duties of the Clerk

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

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

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

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

Rule XIV

Jurisdiction.

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

Rule XV

Effective Date.

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

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

Filed 3-25-91

ORDER OF GENERAL REFERENCE

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

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

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

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

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

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

6. All cases arising under the Miller Act.

7. All garnishment matters.

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

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

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

SO ORDERED.

Carl B. Rubin
United States District Judge

S. Arthur Spiegel
United States District Judge

Herman J. Weber
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN THE MATTER OF THE MEDIATION AND SETTLEMENT OF CASES.

GENERAL ORDER REGARDING ON-GOING MEDIATION PROGRAM

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

I. ON-GOING MEDIATION PROGRAM

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

II. MEDIATION COORDINATOR

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

III. PROCEDURE

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

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

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

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

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

IV. CONTINUANCE OR CANCELLATION OF MEDIATION

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

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

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

IT IS SO ORDERED

Date: March 16th, 2005

Sandra S. Beckwith
Chief United States District Judge

Susan J. Dlott
United States District Judge

Michael H. Watson
United States District Judge

S. Arthur Spiegel
United States District Judge

Herman J. Weber
United States District Judge

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

IN RE SOCIAL SECURITY APPEALS

MAGISTRATE JUDGES' GENERAL ORDER CONCERNING SOCIAL SECURITY APPEALS

To provide for the efficient adjudication of appeals to this Court of decisions of the Commissioner of Social Security under the Social Security Act, it is here **ORDERED** with respect to all such appeals:

1. All prior general orders of the United States Magistrate Judges at Cincinnati with respect to all such cases are hereby **RESCINDED**.

2. The Commissioner shall file and serve an answer and a certified copy of the administrative record, including transcript, within sixty (60) days after service of process.

3. Within forty-five (45) days of service of the answer and administrative record, the plaintiff shall file and serve a "Statement of Errors" upon which plaintiff seeks reversal or remand. This statement shall be organized in the form of a memorandum in support of plaintiff's position and shall also include page references to the administrative record, as well as citations of applicable law. Statements of Error shall present the detail ordinarily expected in a motion for summary judgment.

4. Within thirty (30) days of service of the Statement of Errors, the Commissioner shall file and serve a "Memorandum in Opposition" to plaintiff's Statement of Errors. This memorandum shall be organized in the form of a memorandum in opposition to the plaintiff's position and in support of the Commissioner's decision, and shall also include page references to the administrative record as well as

citations of applicable law and supporting authority.

5. The plaintiff may file and serve a reply memorandum within ten (10) days of service of the Commissioner's Memorandum in Opposition.

6. All cases will be decided on the memoranda and the administrative record, except that the Court reserves the right to hold oral argument, by telephone or otherwise, in any such case.

7. In cases decided by the Magistrate Judge upon consent under 28 U.S.C. § 636(c), appeals shall be taken as provided by law. In cases in which the Magistrate Judge makes a Report and Recommendation to a District Judge, the time for filing objections shall be the ten (10) day period provided by 28 U.S.C. § 636(b), Fed. R. Civ. P. 72, and all other applicable provisions of law.

8. The practice of seeking lengthy (*e.g.*, 30 day) extensions of time to file and serve Statements of Error or Objections on conclusory grounds (*e.g.*, "heavy caseload") is strongly discouraged.

9. This General Order is effective immediately and applies to cases currently pending before the Court.

February 1, 2005

Timothy S. Hogan
United States Magistrate Judge

Timothy S. Black
United States Magistrate Judge

FILE STAMPED 7/3/1991

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

IN RE: EASTERN DIVISION

UNITED STATES MAGISTRATE JUDGES Order No. 91-3

ORDER

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

A. REFERENCE TO MAGISTRATE JUDGES

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

B. PRELIMINARY PRETRIAL CONFERENCES, STATUS CONFERENCES AND SETTLEMENT CONFERENCES

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

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

C. **SCHEDULING ORDERS**

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

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

If proof of service is filed within 120 days, but the defendant does not answer and no default is taken, the Magistrate Judge shall issue an order, after 180 days from the date the complaint was filed has passed, requiring plaintiff to show cause why the action should not be dismissed under Local Rule 55.1(b).

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

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

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

D. NON-DISPOSITIVE MOTIONS

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

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

1. Reference to Magistrate Judges

The District Judge may, without consent of the parties, designate the Magistrate Judge to whom a case is assigned to serve as a special master pursuant to Rule 53, Fed. R. Civ. P., 28 U.S.C. §636(b)(2), 42 U.S.C. §2000e-5(f)(5), or any other statute or rule authorizing such appointment, and may refer any motion, application for post-trial relief made by an individual convicted of a criminal offense, or prisoner petition challenging conditions of confinement, to the Magistrate Judge for the conduct of any necessary evidentiary hearing, and the issuance of a report and recommendation, as

authorized by 28 U.S.C. §636(b)(1)(B).

2. **Conferences and Hearings**

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

3. **Masters' reports and reports and recommendations**

As soon as practicable after the conclusion of all proceedings, including evidentiary hearings, which are necessary to the submission of any matter referred to a Magistrate Judge under this section, the Magistrate Judge shall prepare and file with the Clerk a written Master's Report or Report and Recommendation. The Clerk shall serve a copy of the report on all parties.

The failure to object timely to a Magistrate Judge's report constitutes a waiver of any objection thereto, both for purposes of permitting the District Judge to adopt the Report and enter a decision or judgment thereon, and for purposes of appeal.

F. **APPEALS FROM AND OBJECTION TO MAGISTRATE JUDGES' DECISIONS**

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

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

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

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

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

6. Case-dispositive orders. Objections to case dispositive orders must be

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

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

8. Prisoner petitions and conditions of confinement trials. Appeals from a Magistrate Judge's report and recommendation following evidentiary hearing on a prisoner's petition under 28 U.S.C. §§2254 or 2255 or a trial of a prisoner's petition challenging his conditions of confinement are governed by Rule 72(b), Fed. R. Civ. P. ("Within 10 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections. . . .") Response(s) to the objection must be filed within ten (10) days after being served with it. Any reply must be filed within seven (7) days of the filing and service of the response.

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

10. Record supporting objections. Under Rule 53(e)(1), Fed. R. Civ. P., the Magistrate Judge must file a transcript with the Magistrate Judge's special master report. Under Rule 72(b), Fed. R. Civ. P., a party objecting to a Magistrate Judge's report and recommendation "shall promptly arrange for the transcription of the record, or portions of

it as all parties may agree upon or the Magistrate Judge deems sufficient unless the district judge otherwise directs."

II. ASSIGNMENT OF CERTAIN CRIMINAL MATTERS TO MAGISTRATE JUDGES

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

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

III. ADDITIONAL DUTIES OF THE UNITED STATES MAGISTRATE JUDGES

A. CIVIL PROCEEDINGS

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

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

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

B. MISCELLANEOUS PROCEEDINGS

Magistrate Judge may perform any of the following duties:

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

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

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

A. STATEMENT ABOUT CONSENT PRIOR TO PRELIMINARY PRETRIAL.

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

B. REFERENCE TO MAGISTRATE JUDGE WHEN ALL PARTIES CONSENT

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

C. APPEAL FROM JUDGMENT ENTERED BY MAGISTRATE JUDGE

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

D. ORAL ARGUMENT BEFORE DISTRICT JUDGE

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

E. VOLUNTARINESS

The parties are free to withhold consent without adverse substantive

consequences. The Clerk of Court shall maintain any written communications from the parties regarding consent separate from the case file and shall not communicate any party's decision regarding consent to a District Judge or Magistrate Judge unless and until all parties to the case consent to disposition by a Magistrate Judge.

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

IT IS SO ORDERED.

July , 1991

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

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

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

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

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

IN RE: **ORDER 95-2**

UNITED STATES MAGISTRATE JUDGES **EASTERN DIVISION**

ORDER

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

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

IT IS SO ORDERED.

John D. Holschuh, Chief Judge
United States District Court

James L. Graham, Judge
United States District Court

George C. Smith, Judge
United States District Court

Sandra S. Beckwith, Judge
United States District Court

Joseph P. Kinneary, Senior Judge
United States District Court

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

IN RE:
PRETRIAL CONFERENCES

EASTERN DIVISION
Order No. 01-1

GENERAL ORDER ON PRETRIAL

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

I REFERENCE TO A MAGISTRATE JUDGE

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

II CONFERENCE OF THE PARTIES

Consistent with Rule 26(f) of the Federal Rules of Civil Procedure, the parties

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

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

III PRELIMINARY PRETRIAL CONFERENCE

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

A. VENUE

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

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

B. JURISDICTION

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

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

C. PARTIES

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

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

D. PLEADINGS AND PRELIMINARY MOTIONS

1. Jury demand or waiver.

2. Pending or contemplated preliminary dispositive motions.

3. Amendments to pleadings

E. ISSUES IN THE CASE

1. Identification and discussion of claims and defenses.

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

F. DISCOVERY AND DISCLOSURES

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

2. Expert discovery

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

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

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

3. Discovery necessary to consider settlement of the case.

G. ESTIMATED TIME TO FINAL PRETRIAL CONFERENCE AND TRIAL

H. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION

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

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

I. NEED FOR ADDITIONAL PRETRIAL CONFERENCES

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

J. OTHER MATTERS

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

K. PRETRIAL ORDER

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

IV FINAL PRETRIAL CONFERENCE

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

provided by the Court.

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

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

A. AMENDMENTS TO THE PLEADINGS

B. THE SEPARATION OF ISSUES

C. ADMISSIBILITY OF EVIDENCE

D. THE DATE AND PROBABLE LENGTH OF TRIAL

E. THE DESIRABILITY OF TRIAL BRIEFS

F. SETTLEMENT

G. OTHER MATTERS

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

H. FINAL PRETRIAL ORDER

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

V FAILURE TO COMPLY

The failure of any party or trial attorney to comply with the provisions of this

General Order may result in dismissal or default, as may be appropriate.

IT IS SO ORDERED.

James L. Graham, Judge
United States District Court

George C. Smith, Judge
United States District Court

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

Algenon L. Marbley, Judge
United States District Court

Joseph P. Kinneary, Senior Judge
United States District Court

John D. Holschuh, Senior Judge
United States District Court

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

IN THE MATTER OF
SETTLEMENT WEEK

EASTERN DIVISION ORDER
NO. 01-2

GENERAL ORDER ON SETTLEMENT WEEK

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

I. SETTLEMENT WEEK COORDINATOR

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

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

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

III. SETTLEMENT WEEK MEDIATION PROCEEDINGS

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

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

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

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

James L. Graham, Judge
United States District Court

George C. Smith, Judge
United States District Court

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

Algenon L. Marbley, Judge
United States District Court

Joseph P. Kinneary, Senior Judge
United States District Court

John D. Holschuh, Senior Judge
United States District Court

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

IN RE SOCIAL SECURITY APPEALS

MAGISTRATE JUDGES' GENERAL ORDER CONCERNING SOCIAL SECURITY APPEALS (EASTERN DIVISION)

1. The February 15, 2001, *Magistrate Judges' General Order concerning Social Security Appeals* is hereby **RESCINDED**.

2. All such cases filed at the Columbus seat of court on or after January 2, 2003, shall be assigned to a Magistrate Judge sitting in Columbus, Ohio.

3. The commissioner shall file and serve an answer and a certified copy of the administrative record, including transcript, within sixty (60) days after service of process.

4. Within thirty (30) days of service of the answer and administrative record, the plaintiff shall file and serve a "Statement of Errors" upon which plaintiff seeks reversal or remand. This statement shall be organized in the form of a memorandum in support of plaintiff's position and shall also include page references to the administrative record as well as citations of applicable law. Statements of Errors shall present the detail ordinarily expected in a motion for summary judgment.

5. Within thirty (30) days of service of the Statement of Errors, the commissioner shall file and serve a "Memorandum in Opposition" to plaintiff's Statement of Errors. This memorandum shall be organized in the form of a memorandum in opposition to the plaintiff's position and in support of the commissioner's decision, and shall also include page references to the administrative record as well as citations of applicable law.

6. The plaintiff may file and serve a reply memorandum within fifteen (15) days of service of the commissioner's Memorandum in Opposition.

7. Each such case will be decided on the memoranda and the administrative record, except that the Court reserves the right to hold oral argument, by telephone or otherwise, in any such case.

8. In cases decided by the Magistrate Judge upon consent under 28 U.S.C. §636(c), appeals shall be taken as provided by law. In cases in which the Magistrate Judge makes a Report and Recommendation to a District Judge, the time for filing objections shall be the ten (10) day period provided by 28 U.S.C. §636(b), F.R. Civ. P. 72 and all other applicable provisions of law.

9. This general order shall be effective upon filing.

Norah McCann King
Chief United States Magistrate Judge

Mark R. Abel
Mark R. Abel
United States Magistrate Judge

Terence P. Kemp
Terence P. Kemp
United States Magistrate Judge

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

GENERAL ORDER NO.1
Amended as of February 1, 2003
PRETRIAL AND TRIAL PROCEDURES

This General Order replaces General Order No. 1, as adopted December 1, 2000.

On or after the effective date of this Amended General Order, all counsel of record are charged with knowledge of the procedures and requirements contained therein.

This Order is effective February 1, 2003, for all purposes for cases pending on that date on the docket of Judge Rice, Judge Rose, Judge Merz, or Judge Ovington to the extent practicable.

January , 2003.

Walter Herbert Rice, Chief Judge
UNITED STATES DISTRICT COURT

January , 2003.

Thomas M. Rose
UNITED STATES DISTRICT JUDGE

January , 2003.

Michael R. Merz
UNITED STATES MAGISTRATE JUDGE

January , 2003.

Sharon L. Ovington
UNITED STATES MAGISTRATE JUDGE

PREPARATION FOR TRIAL

These instructions are intended to familiarize you with the procedures in the United States District Court in Dayton before The Honorable Walter Herbert Rice, The Honorable Thomas M. Rose, The Honorable Michael R. Merz, and The Honorable Sharon L. Ovington and to simplify your own procedures.

These procedures are designed to expedite the administration of justice without impeding in any way your ability, as an advocate, to present your client's case fully and fairly.

For your assistance, the following information is included herein:

I. PRETRIAL MATTERS

A. Rule 26(f) Conference and Report and Mandatory Disclosure[1]

1. Rule 26(f) Conference

As soon as all counsel are identified, but in any event no later than receipt of notice of the preliminary pretrial conference, all counsel shall agree on a date for the conference required by Fed. R. Civ. P. 26(f), which must be held not later than twenty-one days before the preliminary pretrial conference.

2. Rule 26(f) Report

The parties shall file the written report required by Fed. R. Civ. P. 26(f) not later than fourteen days after the conference, but in any event no later than 7 days

[1]Under Fed. R. Civ. P. 26(a)(1)(E), the following categories of cases are exempt from the requirements for a discovery conference, a discovery plan, and mandatory disclosure: (i) an action for review on an administrative record (e.g., Social Security benefits and certain ERISA cases), (ii) a petition for habeas corpus, (iii) a *pro se* prisoner action, (iv) an action to enforce or quash an administrative subpoena, (v) an action by the United States to recover benefit payments, (vi) a government student loan case, (vii) a proceeding ancillary to actions in other courts, and (viii) an action to enforce an arbitration award.

before the preliminary pretrial conference. The report must be substantially in the form annexed hereto and include the parties' views and proposals concerning:

(1) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement as to when disclosures under Rule 26(a)(1) were made or will be made;

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(3) what changes should be made in the limitations on discovery imposed the Federal Rules of Civil Procedure and what other limitations should be imposed; and

(4) any other orders that should be entered by the court under Rule 26(c) or under Rule 16(b) and (c).

3. Mandatory Disclosure

Unless otherwise agreed in the Rule 26(f) report the parties shall make the disclosures required by Fed. R. Civ. P. 26(a)(1) not later fourteen days after the discovery conference.

B. <u>Preliminary Pretrial or Scheduling Conference</u>

The Court will schedule a preliminary pretrial or scheduling conference to occur within sixty days of the date when all counsel are identified. This conference will be conducted in person or by telephone as noted in the pretrial notice. The conference will deal with the following matters, wherever applicable:

1) <u>The Status of Settlement Negotiations</u>

If no negotiations have taken place, the Court will set a date for plaintiff's counsel to serve a settlement demand upon opposing counsel. Various means of alternative dispute resolution will be discussed with regard to their applicability to the case. Counsel will be

encouraged to contact the Court at any time if either counsel feels the Court can assist in facilitating settlement.

2) Discovery Plan and Discovery Cut-off Date

A review will be had of the Rule 26(f) report prepared by the parties.

The parties may wish to conduct limited discovery directed to a potentially dispositive motion to dismiss addressed to the pleadings (alleged lack of subject matter jurisdiction, lack of *in personam* jurisdiction, failure to state a claim upon which relief can be granted, qualified immunity in a civil rights case, etc.), pursuant to Fed. R. Civ. P. 12(b), 12(c), or one filed under Rule 56, and, consequently, to defer further discovery until this Court makes a ruling upon said motion. Such an agreed-upon approach must be included in the Rule 26(f) report.

A discovery cut-off date will be established, generally 90 to 120 days prior to trial. Parties who undertake to extend discovery beyond the cut-off date do so at the risk the Court may not permit its completion prior to trial. There will be no supervision or intervention by the Court, such as a ruling on a Fed. R. Civ. P. 37 request for sanctions, after the discovery cut-off date, without a showing of extreme circumstances. No trial setting will be vacated due to the failure to complete essential pretrial discovery, except under the most unusual of circumstances.

3) Witness Lists, Lay and Expert

A date will be set for filing a list of lay witnesses with the Court, together with a brief synopsis of their expected testimony. Lay witnesses who have not been timely identified will not be permitted to testify.

A date will likewise be set for filing a list of expert witnesses, and the service of expert reports complying with Fed. R. Civ. P. 26(a)(2). The purpose of these reports is to permit the opposing party to determine if deposing the expert is necessary and to prepare for that deposition. Expert witnesses who are not timely identified or who do not furnish timely and complete reports will not be permitted to testify. Neither will experts be permitted to testify to opinions or other matter not disclosed in their reports.

The purpose of this filing of witness lists is to permit timely completion of discovery. Supplementation of the lists after timely filing shall be only upon motion and for good cause shown, i.e., that the identity of the witness and/or the need for the witness's testimony could not have been previously determined upon the exercise of due diligence by counsel. These lists are not meant to be preliminary witness lists. Rather, they are to be final lists, insofar as discovery has revealed the necessity of testimony by these witnesses. Such a supplementation may well result in a brief extension of the discovery cut-off date for the other side to conduct discovery of any newly added witness. Counsel are advised to conduct their discovery early and in timely fashion in order to make the witness lists served upon opposing counsel as exact and as final as possible, because this Court will grant leave to supplement the witness list only upon a showing of good cause.

Rebuttal witnesses, the need for whose testimony can reasonably be anticipated prior to trial, shall also be identified in the original list.

4) Motions

A review of then-pending and any expected motions will be had, a briefing schedule will be fixed, and a hearing date set, if necessary. Leave of Court will be granted to file whatever

additional motions are deemed necessary, whether or not directed to the pleadings, including motions for summary judgment, provided same are filed by a date certain to be set at the conference.

The District Judges reserve the authority, at any time, to refer any or all pretrial motions, whether dispositive or non-dispositive, to a Magistrate Judge.

5) Additional Conferences

If, in the opinion of Court and counsel, additional conferences are necessary for monitoring settlement negotiations, for discovery, or for the Court to receive an adequate status report on the pretrial stages of the case, a date will be fixed at this conference. Either counsel may at any time request an additional preliminary pretrial or settlement conference. In all cases which will be tried to the Bench, every effort will be made to have settlement conferences conducted by a different judicial officer from the trier of fact.

6) Final Pretrial Order

A date will be set for the filing of a Joint Proposed Final Pretrial Order (generally five to seven days prior to the final pretrial conference), in the form adopted hereby and provided with the preliminary pretrial or scheduling conference order.

Unless otherwise agreed by counsel or by Order of the Court, the following procedures shall be used for the preparation of the Joint Proposed Final Pretrial Order:

a) Counsel for plaintiff(s) shall submit to counsel for defendant(s) a first draft of the Joint Proposed Final Pretrial Order (without, of course, the material which is within the knowledge of defendants, such as lists of witnesses, exhibits, etc.) Such draft shall be mailed or

otherwise delivered at least fifteen working days before the filing date for the Joint Proposed Final Pretrial Order.

b) Counsel for defendant(s) shall add all of the materials necessary to complete the Joint Proposed Final Pretrial Order, thus making a second draft of the Joint Proposed Final Pretrial Order, clearly delineating those matters which have been changed and added. Such second draft shall be mailed or otherwise delivered to counsel for plaintiff(s) at least ten working days before the Joint Proposed Final Pretrial Order is to be filed.

c) Upon receipt of the second draft from counsel for defendant(s), counsel for plaintiff(s) shall telephone counsel for defendant(s) and they shall agree upon a date, time, and place for a meeting for the resolution of differences and the final drafting of the Joint Proposed Final Pretrial Order. Such meeting shall be at least five working days before the Joint Proposed Final Pretrial Order is to be filed.

d) The Joint Proposed Final Pretrial Order shall then be completed and timely filed by counsel for plaintiff(s) unless the parties otherwise agree.

The Court wishes to emphasize that the Joint Proposed Final Pretrial Order must be jointly prepared; in the absence of such a Joint Proposed Final Pretrial Order, no final pretrial conference will be conducted, the trial will be continued, and counsel will be subject to sanctions, including possible dismissal for failure to prosecute, unless good cause is shown. The instructions in the attached form of Final Pretrial Order have the force of Court Order.

7) The Setting of a Definite Date for the Final Pretrial Conference and for the Trial Itself.

A final pretrial conference will be held within seven to thirty days of the trial date. At that conference the Court will review the Joint Proposed Final Pretrial Order, which will have been filed with the Clerk's Office. At the conclusion of the pretrial conference, the Court will approve the Joint Proposed Final Pretrial Order, with any additions or deletions, and will cause same to be journalized with appropriate notation, as an Order of the Court.

Trial counsel are expected to be present or available by phone for the final pretrial conference, unless previously excused by the Court, in which event, co-counsel may attend in their stead. Clients need not be present or otherwise available by phone, provided counsel has ultimate negotiating authority for his client. No attorney who has not participated in the final pretrial conference may act as trial counsel without Court permission.

At the conclusion of the Preliminary Pretrial Conference, the Court will prepare and file a Preliminary Pretrial Conference Order (Scheduling Order) covering the areas suggested in the form attached hereto.

C. Contingent Consent to Magistrate Judge for Trial

In order to guarantee the availability of a judicial officer to try your case on the date set in the Preliminary Pretrial Conference Order, the Court requests each trial attorney, in cases not otherwise referred to a Magistrate Judge, to discuss with his or her client the possibility of consenting to referral of this case to a Magistrate Judge on a contingent basis for trial only. If such contingent consent is given, the case will remain on Judge Rice's or Judge Rose's docket for all purposes including discovery, motion practice, and trial, unless the assigned District Judge becomes

unexpectedly unavailable for trial (e.g. because of other trial settings, criminal or civil), in which event the assigned Magistrate Judge will try the case. Counsel are requested to advise Judge Rice or Judge Rose's Courtroom Deputy Clerk in writing of their client's decision on this matter within twenty days of the Preliminary Pretrial Conference.

In cases otherwise referred to a Magistrate Judge for pretrial management, parties are separately advised of their right to consent to Magistrate Judge trial jurisdiction. The Court's General Order of Assignment and Reference permits them to exercise consent jurisdiction in any case referred to them upon unanimous consent of the parties.

Any party has the right to decline consent; failure to consent will have no adverse substantive or procedural consequences.

D. Foreign Counsel

All parties not appearing *in propria persona* are required to be represented by a designated "trial attorney" who must be an attorney at law who is a permanent member of the bar of this Court in good standing or admitted *pro hac vice.*

Counsel not otherwise eligible to serve as the trial attorney, who are admitted to practice before any United States District Court, may upon motion be admitted *pro hac vice* in the Southern District of Ohio to serve as trial attorney in a specific case. Such admission will be conditional only and may be withdrawn at any time for failure to observe the rules of this District and the General Orders of this Court or for failure to comply with Fed. R. Civ. P. 11, 16, 26 or 37. *See* S.D. Ohio L. R. 83.5 and *Flynt v. Leis*, 439 U.S. 438 (1978).

Attorneys admitted *pro hac vice* to serve as the designated trial attorney must obtain local counsel admitted to the Bar of this Court to participate as co-counsel. Such local co-counsel shall participate in a meaningful fashion in the preparation and trial of the cause, unless excused by this Court. Admission *pro hac vice* may be withdrawn for failure to obtain local co-counsel.

Unless excused by this Court, local counsel are expected to be intimately familiar with the litigation on which they are retained and fully prepared to take responsibility for any pleadings and other court filings signed and submitted by them. Further, unless excused by this Court, such local co-counsel shall participate in a meaningful fashion in the preparation and trial of the cause.

E. Discovery

The term "discovery" includes any depositions for presentation at trial in lieu of appearance.

While this Court does not wish to formalize or to institutionalize a procedure that would in any way detract from the obligation of counsel to "walk the last mile" to informally resolve discovery disputes between and among themselves, as required by Fed. R. Civ. P. 37(a)(2)(B) and S.D. Ohio L.R. 37.1 and 37.2, this Court is always open to a phone call from any counsel to this Court's secretary or law clerk requesting a telephone conference call, between all counsel of record, to address either an urgent discovery dispute arising during a deposition or a more systemic discovery impasse arising during the course of general pretrial discovery. Such an approach might quickly allow the Court and the parties to get to the central issues involved in the impasse, without

the costly and time consuming procedures inherent in the filing of motions, contra memoranda, and the like.

In any case in which Judge Rice or Judge Rose has retained responsibility for the management of pretrial discovery, he should be the judicial officer first contacted by counsel; should the District Judge determine that he is not or will not, within a reasonable time, be available for such a telephone conference, he may ask the assigned Magistrate Judge to conduct same.

Judge Rice and Judge Rose reserve the authority, at any time, to refer any action to a Magistrate Judge for management of discovery. If such a referral is made, all matters pertaining to pretrial discovery must be directed to that judicial officer. For example, the Magistrate Judge would determine, in the first instance, appropriate sanctions either for any violation of the agreed-upon discovery plan or for any other incident or situation in which the imposition of sanctions is appropriate under Fed. R. Civ. P. 37. In addition, the Magistrate Judge would be charged to resolve, upon a schedule to be determined between him and counsel of record, any impasse occasioned by the good faith inability to agree upon a joint discovery plan.

F. Motions

Other than motions required by law to be set for a hearing, with notice given to all counsel, and motions upon which a specific request for a hearing has been made and granted by the Court, all motions shall be submitted without oral argument on the memoranda filed with the Clerk, on the schedule set forth in S.D. Ohio L.R. 7.2, unless otherwise ordered.

Leave of Court is required for the filing of any motion beyond the time set forth in this Court's Preliminary Pretrial Conference Order. Should the Court grant such leave and if the

motion is sustained (thus canceling the trial if the motion is a dispositive one) or, in the alternative, overruled, but the filing of said motion and the time necessary to brief and/or to argue the same causes a continuance (postponement) of the trial date, the Court, in the exercise of its discretion, may award the party against whom the motion is directed the expenses incurred, caused by the untimely filing of the motion, in preparing for the canceled or continued trial. Said expenses may include attorney fees. Such expenses will be limited to the cost of preparation for the trial itself and will not include any expenses incurred in opposing the motion.

If a trial is merely continued (postponed), as opposed to canceled upon a ruling on such a motion (dispositive or not), the Court will not award expenses for any trial preparation that may be used at the subsequent trial.

G. Limitations Upon Briefs and Memoranda

Briefs and/or memoranda in support of or in opposition to any motion in this Court shall not exceed twenty pages without first obtaining leave of Court, which leave must be requested at least three working days in advance of said deadline. The request should include a proposed page length and the reasons for exceeding the usual page limit. If leave of Court is granted, counsel must also comply with the table of contents and summary requirements of S. D. Ohio Civ. R. 7.2. All briefs and memoranda shall comply with the formal requirements of S.D. Ohio L.R. 7.2.

II. TRIAL PRACTICE

A. Preparation of Exhibits

Counsel for each of the parties will assemble all documents, photographs, or other materials expected to be used at trial. Copies of such documents must be physically furnished to opposing counsel not later than seventy-two hours prior to the Final Pretrial Conference unless a different time is prescribed in the Preliminary Pretrial Conference Order. Any deviation from this procedure, in a situation wherein exhibits are unusually voluminous, in which event counsel may wish merely to make his exhibits available for inspection and/or copying by opposing counsel, will be permitted only upon leave of Court being first obtained.

It is not necessary to bring exhibits to the Final Pretrial Conference or to file them with the Court. Counsel are required to list all exhibits in the Joint Proposed Final Pretrial Order.

However, each counsel will deposit two complete sets of his exhibits with the Courtroom Deputy Clerk, not later than the close of business three (3) working days prior to trial. In a non-jury case, a third set of exhibits, for the use of the Court's law clerk, must be so deposited.[2]

The following procedure will be followed: All exhibits will be assembled in 3-ring binders, marked as listed in the Joint Proposed Final Pretrial Order, with each exhibit bearing a numbered exhibit sticker and with the same number on a tab extended beyond the binder on the right side thereof. Each page of a multi-page exhibit shall be numbered with a distinctive number (e.g. as applied by a BATES-numbering machine). All exhibits will be sequentially numbered with Arabic numerals as follows: Joint exhibits will be designated JX ___ on white exhibit labels; plaintiff exhibits will be designated PX _____ on yellow exhibit labels; and defendant exhibits will

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[2] The second (and third in non-jury cases) set of exhibits may contain Xeroxed or equivalent sets of photographs.

be designated DX ____ on blue exhibit labels. Third-party exhibits may be numbered with a distinctive identifying letter prefix.

If any sketches, models, diagrams, etc., of any kind will be used during trial or in argument, they must be exhibited to opposing counsel not later than the Final Pretrial Conference.

Exhibits deposited with the Courtroom Deputy Clerk and appropriately marked may be used by any party at trial.

Each party should offer its exhibits into evidence at one time, immediately prior to resting its case, except that an exhibit to be examined by the jury must be offered and admitted prior to examination. The admissibility of all exhibits referred to during trial and offered by the parties, other than those examined by the jury, will be ruled upon by the Court, at the latest, prior to that party's resting. Either side may offer any marked exhibit, regardless of which party marked it.

There is no requirement that counsel object to any exhibit at the Final Pretrial Conference.

B. Depositions

Counsel will specify in the Joint Proposed Final Pretrial Order those portions of any deposition which will be read at trial in lieu of live testimony. The deposition itself must be filed with the Clerk not later than the date of the Final Pretrial Conference. Opposing counsel will note objections to any portion of the deposition in advance of the trial, and the Court will rule on the objections either prior to the commencement of the trial or, at the latest, prior to the reading of the deposition in open Court.

Videotape presentations must include a method for cutting off either sound or the entire picture from the jury, in situations where the Court must rule on objections to testimony. In addition to the videotape itself, a typewritten transcript must be provided to the Court and opposing counsel as an aid in following the videotape presentation and in ruling upon any objections contained in the deposition. Objections contained in the videotape deposition will be dealt with by the Court in the manner as set forth in the preceding paragraph.

Any deposition that might conceivably be used solely for impeachment must be filed with the Clerk prior to the Final Pretrial Conference.

C. Trial Briefs

Trial briefs must be filed and served not later than one week prior to the commencement of trial. All briefs shall comply with S.D. Ohio L. R. 5.1, with citations and references conforming to S.D. Ohio L. R. 7.2(b). Counsel should use their trial briefs to instruct the Court in advance of trial in any area of law upon which counsel will rely at trial. Therefore, the briefs should contain arguments, with citations to legal authority, in support of any evidentiary or other legal questions which may reasonably be anticipated to arise at trial.

D. Motions Directed to Trial

All motions in limine, directed to the presentation of evidence at trial, must be filed not later than ten days prior to the Final Pretrial Conference.

All written motions presented during trial, which later form the subject of oral argument to the Court, must be filed with the Clerk of Court's Office, either immediately before presentation to the Court or immediately after the oral argument.

E. Proposed Findings of Fact and Conclusions of Law

In trials to the Court, counsel must, not later than the Final Pretrial Conference, file those proposed findings of fact and conclusions of law which such counsel believes the Court should render.[3] Post-trial briefs, accompanied by any desired supplemental findings of fact and/or conclusions of law, may be limited to specific questions assigned by the Court during or after trial and shall be filed in accordance with a briefing schedule set by the Court with counsel.

F. Proposed Jury Instructions

Proposed jury instructions and verdict forms must be submitted to the Court and opposing counsel not later than one week prior to the commencement of trial. This requirement may be waived by the Court only upon a showing of good cause. Each instruction should be on a separate 8.5" x 11" sheet of paper identified as "Plaintiff(s) (Defendant(s)) Requested Instruction No. _____." All instructions must contain a citation of authority upon which counsel relies. The original of the request for special instructions must be filed with the Clerk of Court's Office, prior to presentation to the Court.[4]

The Court uses as sources for its instructions O'Malley, Grenig, and Lee's FEDERAL JURY PRACTICE AND INSTRUCTIONS, 5th Edition; OHIO JURY INSTRUCTIONS; the Sixth Circuit Pattern Jury Instructions; and instructions given in prior cases of a similar nature which are kept on file.

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[3] In addition to filing a paper original with the Clerk, please provide the Court with an electronic copy on 3.5 inch diskette or CD-ROM in any standard word-processing format, preferably WordPerfect®.

[4] In addition to filing a paper original with the Clerk, please provide the Court with an electronic copy on 3.5 inch diskette or CD-ROM in any standard word-processing format, preferably WordPerfect®.

Samples of jury instructions previously given by the Court in similar cases are available upon request.

Judge Rose requires the parties to submit an agreed statement of the case not later than one week before trial.

G. Courtroom Practice

Conduct of counsel during the trial of cases will be governed by the following instructions:

1) Counsel Tables

The plaintiff in all civil cases and the United States Government in criminal cases will occupy the counsel table nearest the jury. Defendants in both civil and criminal cases will occupy the counsel table furthest from the jury.

2) Court Sessions

Trials will usually start at 9 a.m. The morning session will continue until approximately noon. There will be a morning recess of approximately fifteen minutes at approximately 10:30 a.m. The afternoon session will start one hour after the end of the morning session unless otherwise announced. The afternoon session will usually end at approximately 4:30 p.m. There will be a fifteen minute recess at approximately 3 p.m.

It is expected that the parties and all counsel will be available at least 15-20 minutes prior to the beginning of the morning and afternoon sessions.

The District Judges will ordinarily conduct trials Monday through Thursday, reserving Fridays for criminal and civil matters not related to the trial in progress. The Magistrate

Judges hold criminal dockets on Wednesdays and may need to interrupt a trial in progress for that reason.

3) **Qualification of Jury**

The general voir dire examination will be conducted by the Court, with the entirety of the prospective panel being questioned, following which counsel for the respective parties may question the prospective jurors on matters peculiarly applicable to the nature of and the issues presented in the case at trial. In addition, counsel may, in non-repetitious fashion, further explore any matters on which the Court has questioned which they feel have not been adequately discussed, or may explore any information in the individual jury questionnaires. The Court retains discretion to limit counsels' inquiry. Counsel must address questions to the entire panel of prospective jurors. An individual juror may be questioned only if such juror responds affirmatively to questions put to the entire panel, if counsel is following up on or further exploring a question asked or an area discussed by the Court, or if necessary to inquire into a matter disclosed by a prospective juror in that individual's jury questionnaire. Challenges for cause shall be directed to the entire panel.

4) **Peremptory Challenges**

a) Peremptory challenges will be exercised outside of the presence of the jury, alternately, with the plaintiff or the Government exercising the first challenge. Any prospective juror on the panel may be so challenged. In a civil case, each side is entitled to three peremptory challenges.

b) If either party "passes," that party will have thereby "used" one challenge.

c) At the conclusion of the peremptory challenges, the Courtroom Deputy Clerk will announce the composition of the jury.

d) The judges differ slightly in the handling of peremptory challenges. However, with any judicial officer, challenges to the manner in which an opposing party has exercised peremptory challenges (e.g. a *Batson* argument that said challenges are racially discriminatory) shall be made before the jury is sworn and before the extra venire persons are excused; otherwise, they are waived. Counsel should consult with the individual presiding judicial officer as to that Judge's preference in the manner of exercising peremptory challenges.

5) Size of the Jury

Judge Rice will seat a jury of eight in civil cases with a requirement of unanimity. Judges Rose, Merz, and Ovington will do the same unless otherwise ordered in the Final Pretrial Order.

6) Interrogation by Counsel

Counsel need not interrogate from the lectern nor request specific permission from the Court to approach a witness.[5] Since all evidence will have been previously deposited with the Courtroom Deputy Clerk, counsel will request the Clerk to hand specific documents to the witness. Documents intended for impeachment purposes, which are not admitted into evidence, will be handed to the Courtroom Deputy Clerk for suitable marking and then handed by the clerk to the witness.

7) Qualifying Expert Witnesses

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[5]Judges Rose and Merz require counsel specifically to request permission to approach a witness.

The Court will allow each counsel to qualify his or her own expert witnesses.

H. Pre-summation (Final Argument) Conference:

The Court will hold a conference with counsel, in Chambers and on the record, prior to the final argument in jury cases for the following purposes:

1) Counsel may be heard on proposed jury charges presented by either side and/or on the tentative charges submitted by the Court. Counsels' attention is directed to Fed. R. Civ. P. 51.

2) Counsel and the Court will determine the length of the summations to the jury.

III. CIVILITY AND PROFESSIONALISM

The Court expects counsel to behave civilly and in a professional manner both toward the Court and toward each other in all aspects of this litigation. Any violation of this expectation, whether occurring in open Court, in the Judge's Chambers, in the taking of depositions or otherwise and elsewhere, may be cause for sanctions. This Court adopts and expects counsel to adhere to the attached Code of Professionalism enacted by the Dayton Bar Association. Counsel are referred to the Introductory Statement on Civility in the Local Rules.

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

Plaintiff(s)

:

vs. Case Number:

:

Defendant(s)

PRELIMINARY PRETRIAL CONFERENCE ORDER

The captioned cause came on to be heard upon preliminary pretrial conference on _____.

PERTINENT SETTINGS

1. Settlement demand by Plaintiff upon Defendant to be made by: _____

2. "Cut-off date for filing of motions directed to pleadings (including motions to dismiss filed pursuant to Fed. R. Civ. P. 12): _____

   Following this date, amendment to pleadings and motions directed to pleadings may be made only upon leave of Court, with notice to opposing counsel.

3. Not later than the date specified, the Plaintiff will be furnishing to the Defendant a medical package, consisting of reports, medical bills, lists of special damages, certification of wage loss, hospital bills, hospital records, other bills and expenses, etc. Plaintiff's counsel is under a continuing duty to update or supplement the "medical package" as further information becomes available. _____

4. Rule 16 discovery conference, by telephone: _____

5. Identification of lay witnesses with synopsis of their testimony to be filed by: _____

6. The dates to reveal the identify of expert witnesses, together with a copy of the expert's report are:

Plaintiff(s) primary experts to Defendant(s): _____
Plaintiff(s) rebuttal experts to Defendant(s): _____
Defendant(s) primary experts to Plaintiff(s): _____
Defendant(s) rebuttal experts to Plaintiff(s): _____

7. Requests for admissions: _____

8. "Cut-off" deadline for discovery**: _____

9. "Cut-off" date for filing of motions not directed to pleadings (including motions for summary judgment): _____

This deadline is inflexible and will not be extended except under the most extraordinary of circumstances (on Judge Rice's docket only).

10. Joint Final Pretrial Order by parties to be filed no later than: _____

11. Trial exhibits to be exchanged by: _____

12. Final Pretrial Conference to be held:

In Chambers on: _____

By Telephone Conference Call on: _____

The attorneys listed below need not appear in chambers for such pretrial conference but need only wait by their telephones at the appointed time. If any other attorneys will be substituted for those listed for such calls, it is the responsibility of counsel to NOTIFY CHAMBERS BEFORE SUCH CALL IS MADE.

13. Trial on the merits,

before the Court, beginning: _____

to a Jury, beginning: _____

14. Further status conference set for: _____

15. The Law Clerk assigned to this case is: _____

**The date of the discovery cut-off will generally be 90 to 120 days prior to the trial date. There will be no continuation of discovery beyond the discovery cut-off date, absent express approval of the Court obtained upon a showing of good cause. While counsel may agree between themselves to a limited continuation of discovery beyond the discovery cut-off date, upon an amendment to the discovery plan approved and filed with this Court, there will be no supervision or intervention by the Court, such as a Fed. R. Civ. P. 37 request for sanctions, after the discovery cut-off date, without a showing of extreme circumstances. Counsel, therefore, face the possibility that the Court may not permit the completion of discovery, or the filing of a motion based thereon, prior to trial.

No trial setting will be vacated due to the failure to complete essential pretrial discovery, except under the most unusual of circumstances.

The term "discovery" includes any depositions for presentation at trial in lieu of appearance.

The discovery "cut-off" deadline means that all discovery must be concluded, as opposed to simply requested, by the discovery "cut-off" date. Purely as a hypothetical example, a request for the production of documents, with a 28-day response time, must be served upon the opposing party in sufficient time to allow said party to respond prior to the discovery "cut-off" date.

Except for good cause shown, no extension of the discovery "cut-off" deadline will be allowed if such extension would impact adversely on the trial date set herein.

In order to make certain that progress towards disposition of the captioned cause does not become "gridlocked" by discovery disputes, this Court would offer an invitation to counsel of record, should such a discovery dispute arise and, further, should the parties have exhausted all extra-judicial means of resolving same, to call the assigned Judge's office, in order to advise the Courtroom Deputy of the need for a brief discovery conference. That Judge (or the Magistrate, should the Court not be available) will then convene a brief discovery conference in the hope of resolving the impasse without the necessity of filing motions to compel, motions for protective order, etc.

Exhibits consisting of multiple page documents not internally numbered MUST contain consecutive Bates-stamped numbering.

Local counsel are expected to be intimately familiar with the litigation on which they are retained, fully prepared to take responsibility for any pleadings and other court filings signed and submitted by them. Further, unless excused by this Court, such local co-counsel shall participate in a meaningful fashion in the preparation and trial of the cause.

This Court expects counsel to behave civilly and in a professional manner both toward the Court and toward each other in all aspects of this litigation. Any violation of this expectation, whether occurring in open Court, in the Judge's Chambers, in the taking of depositions or otherwise

and elsewhere may be cause for sanctions. This Court adopts and expects counsel to adhere to the attached Code of Professionalism enacted by the Dayton Bar Association.

In order to guarantee the availability of a judicial officer to try your case on the date set in this entry, it is the request of the Court that each counsel speak with his/her client as to the possibility of consenting to a referral to the assigned Magistrate Judge for purposes of trial only. In this fashion, the undersigned will handle all aspects of this litigation including the trial (if he or she is available). If the undersigned is otherwise committed in trial on the date set for trial herein, Judge Merz or Judge Ovington will be able to try this case. Absent a referral to the Magistrate Judge (and it is always the right of the party to so refuse), the undersigned will try this case on the date set, or upon a very short-term trailing docket thereafter, even if it means trying more than one case at a given time. Please notify the Court in writing as to your client's wishes in this regard not later than twenty days from the date of the preliminary pretrial conference.

IT IS SO ORDERED.

WALTER HERBERT RICE, CHIEF JUDGE
UNITED STATES DISTRICT COURT
OR

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

OR

_____

MICHAEL R. MERZ
UNITED STATES MAGISTRATE JUDGE
OR

_____

SHARON L. OVINGTON
UNITED STATES MAGISTRATE JUDGE

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

JOHN DOE,

Plaintiff(s), : Case No. C-3-00-000

- vs - District Judge Walter Herbert Rice
or
District Judge Thomas M. Rose

RICHARD ROE, or
Magistrate Judge Michael R. Merz

Defendant(s). : or
Magistrate Judge Sharon L. Ovington

FINAL PRETRIAL ORDER

(A Final Pretrial Order following this form must be jointly prepared and submitted by counsel to the Clerk of this Court not later than the date set forth in the Preliminary Pretrial Conference Order.)

This action came before the Court at a final pretrial conference held on _____ at ___ a.m./p.m., pursuant to Rule 16, Federal Rules of Civil Procedure.

I. APPEARANCES:

For Plaintiff(s):

For Defendant(s):

II. NATURE OF ACTION AND JURISDICTION:

A. This is an action for

B. The jurisdiction of the Court is invoked under Title _____ United States Code, Section _____.

C. The subject matter jurisdiction of the Court (is) (is not) disputed. [If disputed, state by which party and on what basis.]

III. TRIAL INFORMATION:

A. The estimated length of trial is _____ days.

B. Trial to _____ has been set for _____.

IV. AGREED STATEMENTS AND LISTS:

A. General Nature of the Claims of the Parties:

(1) PLAINTIFF CLAIMS: (suggested type of simple language)

"Plaintiff asserts in Count 1 a right of recovery for defendants' negligence as follows;

"Plaintiff asserts in Count 2 a right of recovery for defendants' wanton and willful misconduct as follows;

"Plaintiff asserts in Count 3 a right to punitive damages and attorney fees for the following reasons:

(2) DEFENDANT CLAIMS: (suggested type of simple language)

Defendant denies liability as asserted in Counts ___ for the following reasons:

Defendant as an affirmative defense asserts:

(3) ALL OTHER PARTIES' CLAIMS

B. Uncontroverted Facts

Suggested Language:

"The following facts are established by admissions in the pleadings or by stipulations of counsel (set forth and number uncontroverted or uncontested facts.)

C. Issues of Fact and Law

Suggested Language:

(1) "CONTESTED ISSUES OF FACT: The contested issues of fact remaining for decision are: (list)"

(2) "CONTESTED ISSUES OF LAW: The contested issues of law in addition to those implicit in the foregoing issues of fact, are: (set forth)

OR: There are no special issues of law reserved other than those implicit in the foregoing issues of fact."

If the parties are unable to agree on what the contested issues of fact or law are, their respective contentions as to what the issues are shall be set forth separately and clearly labeled.

D. Witnesses

Suggested Language:

(1) "Plaintiff will call or will have available for testimony at trial those witnesses listed in Appendix A hereof."

(2) "Defendant will call or will have available for testimony at trial those Witnesses listed on Appendix B hereof."

(3) _____will call or will have available for testimony at trial those witnessed listed on Appendix C hereof."

(4) "The parties reserve the right to call rebuttal witnesses whose testimony could not reasonably be anticipated without prior notice to opposing counsel."

INSTRUCTIONS:

(1) A brief one or two sentence synopsis of the witnesses' testimony must be given -- i.e., "Will testify to pain and suffering," "Will testify to lost profits, etc."

(2) Leave to call additional witnesses may be granted by the Court in unusual situations. Counsel seeking such leave must file a Motion to Add Witnesses and serve a copy upon opposing counsel with names, addresses, and an offer of proof of such witness' testimony within twenty-four hours after the need to call such witness becomes known.

(3) The witnesses need not be called in the order listed.

E. Expert Witnesses

Suggested Language:

"Parties are limited to the following number of expert witnesses, including treating physicians, whose names have been disclosed and reports furnished to the other side:

Plaintiff (a) Defendant(s)

F. Exhibits

The parties will offer as exhibits those items listed herein and numbered with Arabic numerals as follows:

(1) Joint Exhibits -- Appendix D (marked "JX ____")

(2) Plaintiff Exhibits Appendix E (marked "PX _____")

(3) Defendant Exhibits Appendix F (marked "DX____")

(4) Third-Party Exhibits -- appendix G (use Arabic numerals prefixed by initial of party.

INSTRUCTIONS:

The above exhibits will be deposited with the Court's Deputy Clerk not later than three working days prior to trial.

See Section II(A) of instructions, entitled "Trial Practice --- Preparation of Exhibits."

G. Depositions

Suggested Language:

"Testimony of the following witnesses will be offered by deposition/videotape"; OR

"No testimony will be offered by deposition/videotape."

INSTRUCTIONS:

See Section II(B) of Instructions entitled "Trial Practices --- Depositions."

H. Discovery

Suggested Language:

"Discovery has been completed" OR

"The following provisions have been made for discovery."

See Section I(C) of Instructions entitled "Discovery."

I. Pending Motions

Suggested Language:

"The following motions are pending at this time" OR

"There are no pending motions at this time."

J. Miscellaneous orders

INSTRUCTIONS: Set forth any orders not properly includable elsewhere.

V. MODIFICATION

Suggested Language:

"This final pretrial order may be modified at the trial of this action, or prior thereto, to prevent manifest injustice. Such modification may be made by application of counsel, or on motion of the Court."

VI. SETTLEMENT EFFORTS

Suggested Language:

"The parties have made a good faith effort to negotiate a settlement," or otherwise described the status of settlement negotiations.

VII. TRIAL TO A JURY

PROPOSED INSTRUCTIONS ---

Suggested Language:

"The parties will submit proposed Jury Instructions not later than one week prior to the commencement of trial."

See Section II(F) of these Instructions, entitled "Trial Practice - Proposed Jury Instructions."

Counsel for Plaintiff(s)

Counsel for Defendant(s)

Counsel for _____

Approved following Final Pretrial Conference:

_____

Walter Herbert Rice, Chief Judge

UNITED STATES DISTRICT COURT

OR

Thomas M. Rose
UNITED STATES DISTRICT JUDGE

OR

Michael R. Merz
UNITED STATES MAGISTRATE JUDGE

OR

Sharon L. Ovington
UNITED STATES MAGISTRATE JUDGE

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

Plaintiff(s),	:	Case No.
-vs-	:	District Judge Magistrate Judge
Defendant(s).	:	

RULE 26(f) REPORT OF THE PARTIES[6]

Pursuant to Fed. R. Civ. P. 26(f), the parties met on _____. The meeting was attended by:

_____ counsel for plaintiff(s)_____

_____ counsel for plaintiff(s)_____

_____ counsel for plaintiff(s)_____

_____ counsel for defendant(s)_____

_____ counsel for defendant(s)_____

_____ counsel for defendant(s)_____

_____ counsel for defendant(s)_____

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[6]This Report must be filed not later than seven (7) days before the preliminary pretrial conference.

2. The parties:

___ have provided the pre-discovery disclosures required by Rule 26(a)(1), including a medical package (if applicable).

____ will exchange such disclosures by _____

____ are exempt from disclosure under Rule 26(a)(1)(E).

3. The parties:

____ unanimously consent to the jurisdiction of the assigned United States Magistrate Judge pursuant to 28 U.S.C. 5 636(c).

____ do not unanimously consent to the jurisdiction of the assigned United States Magistrate Judge pursuant to 28 U.S.C. 5 636(c).

____ unanimously give contingent consent to the jurisdiction of the assigned United States Magistrate Judge pursuant to 28 U.S.C. 5 636(c), for trial purposes only in the event that the assigned District Judge is unavailable on the date set for trial (e.g., because of other trial settings, civil or criminal).

4. Recommended cut-off date for filing of motions directed to the pleadings: _____

5. Recommended cut-off date for filing any motion to amend the pleadings or to add additional parties: _____

6. Recommended discovery plan:

a. Describe the subjects on which discovery is to be sought and

the nature, extent and scope of discovery that each party needs to: (1) make a settlement evaluation, (2) prepare for case dispositive motions and (3) prepare for trial:

b. What changes should be made, if any, in the limitations on discovery imposed under the Federal Rules of Civil Procedure or the local rules of this Court, including the limitations to 25 interrogatories/requests for admissions and the limitation of 10 depositions, each lasting no more than one day consisting of seven (7) hours?

c. Additional recommended limitations on discovery

d. Recommended date for disclosure of lay witnesses: _____

e. Describe the areas in which expert testimony is expected and indicate whether each expert has been or will be specifically retained within the meaning of Fed. R. Civ. P. 26(a)(2).

f. Recommended date for making primary expert designations:

1. Plaintiff(s): _____

2. Defendant(s) _____

g. Recommended date for making rebuttal expert designations:

1. Plaintiff(s): _____

2. Defendant(s) _____

h. Recommended discovery cut-off date: _____

7. Recommended dispositive motion date: _____

8. Recommended date for a status conference (if any):

9. Suggestions as to type and timing of efforts at Alternative Dispute Resolution.

10. Recommended date for a final pretrial conference. _____

11. Has a settlement demand been made? _____ A response?

Date by which a settlement demand can be made: _____

Date by which a response can be made: _____

11. Other matters pertinent to scheduling or management of this litigation:

To be signed by the counsel for all parties and individually by any parties proceeding *pro se.*

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

GENERAL ORDER NO.1
Amended as of December 1, 2000
PRETRIAL AND TRIAL PROCEDURES

This General Order replaces General Order No. 1, as adopted February 1, 1998.

On or after the effective date of this Amended General Order, all counsel of record are charged with knowledge of the procedures and requirements contained therein.

This Order is effective December 1, 2000, for all purposes for cases pending on that date on the docket of Judge Rice, Judge Dlott, or Judge Merz, to the extent practicable.

November 30, 2000

Walter Herbert Rice, Chief Judge
UNITED STATES DISTRICT COURT

November 30, 2000

Susan J. Dlott
UNITED STATES DISTRICT JUDGE

November 30, 2000

Michael R. Merz
UNITED STATES MAGISTRATE JUDGE

PREPARATION FOR TRIAL

These instructions are intended to familiarize you with the procedures in the United States District Court in Dayton before The Honorable Walter Herbert Rice, The Honorable Susan J. Dlott, and The Honorable Michael R. Merz and to simplify your own procedures.

These procedures are designed to expedite the administration of justice without impeding in any way your ability, as an advocate, to present your client's case fully and fairly.

For your assistance, the following information is included herein:

I. **PRETRIAL MATTERS**

A. Preliminary Pretrial or Scheduling Conference

B. Contingent Consent to Magistrate Judge Trial

C. Foreign Counsel

D. Discovery

E. Motions

F. Limitations Upon Briefs and Memoranda

II. **TRIAL PRACTICE**

A. Preparation of Exhibits

B. Depositions

C. Trial Briefs

D. Motions Directed to Trial

E. Proposed Findings of Fact & Conclusions of Law

F. Proposed Jury Instructions

G. Courtroom Practice

I. PRETRIAL MATTERS

A. Discovery Conference, Joint Discovery Plan, and Mandatory Disclosure[1]

1. Discovery Conference

As soon as all counsel are identified, but in any event no later than receipt of notice of the preliminary pretrial conference, all counsel shall agree on a date for the discovery conference required by Fed. R. Civ. P. 26(f), which must be held not later than 21 days before the preliminary pretrial conference.

2. Joint Discovery Plan

The parties shall file the discovery plan required by Fed. R. Civ. P. 26(f) not later than 14 days after the discovery conference, but in any event no later than 7 days before the preliminary pretrial conference . The plan must include the parties' views and proposals concerning:

(1) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement as to when disclosures under Rule 26(a)(1) were made or will be made;

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[1]Under Fed. R. Civ. P. 26(a)(1)(E), the following categories of cases are exempt from the requirements for a discovery conference, a discovery plan, and mandatory disclosure: (i) an action for review on an administrative record (e.g., Social Security benefits and certain ERISA cases), (ii) a petition for habeas corpus, (iii) a *pro se* prisoner action, (iv) an action to enforce or quash an administrative subpoena, (v) an action by the United States to recover benefit payments, (vi) a government student loan case, (vii) a proceeding ancillary to actions in other courts, and (viii) an action to enforce an arbitration award.

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(3) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and

(4) any other orders that should be entered by the court under Rule 26(c) or under Rule 16(b) and (c).

3. Mandatory Disclosure

Unless otherwise agreed in the discovery plan, the parties shall make the disclosures required by Fed. R. Civ. P. 26(a)(1) not later 14 days after the discovery conference.

B. Preliminary Pretrial or Scheduling Conference

The Court will schedule a preliminary pretrial or scheduling conference to occur within 60 days of the date when all counsel are identified. Generally, this conference will be conducted entirely by means of a telephone conference call, unless otherwise noted in the pretrial notice. Judge Dlott will conduct her conferences in person. The conference will deal with the following matters, wherever applicable:

1) The Status of Settlement Negotiations

If no negotiations have taken place, the Court will set a date for plaintiff's counsel to serve a settlement demand upon opposing counsel. Various means of alternative dispute resolution will be discussed with regard to their applicability to the case. Counsel will be encouraged to contact the Court at any time if either counsel feels the Court can assist in facilitating settlement.

2) **Discovery Plan and Discovery Cut-off Date**

A review will be had of the joint discovery plan prepared by the parties.

The parties may wish to conduct limited discovery directed to a potentially dispositive motion to dismiss addressed to the pleadings (alleged lack of subject matter jurisdiction, lack of *in personam* jurisdiction, failure to state a claim upon which relief can be granted, qualified immunity in a civil rights case, etc.), pursuant to Fed. R. Civ. P. 12(b), 12(c), or one filed under Rule 56, and, consequently, to defer further discovery until this Court makes a ruling upon said motion. Such an agreed-upon approach must be included in the discovery plan discussed herein.

A discovery cut-off date will be established, generally 90 to 120 days prior to trial. Parties who undertake to extend discovery beyond the cut-off date do so at the risk the Court may not permit its completion prior to trial. There will be no supervision or intervention by the Court, such as a ruling on a Fed. R. Civ. P. 37 request for sanctions, after the discovery cut-off date, without a showing of extreme circumstances. No trial setting will be vacated due to the failure to complete essential pretrial discovery, except under the most unusual of circumstances.

3) **Witness Lists, Lay and Expert**

A date will be set for filing a list of lay witnesses with the Court, together with a brief synopsis of their expected testimony. Lay witnesses who have not been timely identified will not be permitted to testify.

A date will likewise be set for filing a list of expert witnesses, and the service of expert reports complying with Fed. R. Civ. P. 26(a)(2). The purpose of these reports is to permit the

opposing party to determine if deposing the expert is necessary and to prepare for that deposition. Expert witnesses who are not timely identified or who do not furnish timely and complete reports will not be permitted to testify. Neither will experts be permitted to testify to opinions or other matter not disclosed in their reports.

The purpose of this filing of witness lists is to permit timely completion of discovery. Supplementation of the lists after timely filing shall be only upon motion and for good cause shown, i.e., that the identity of the witness and/or the need for the witness's testimony could not have been previously determined upon the exercise of due diligence by counsel. These lists are not meant to be preliminary witness lists. Rather, they are to be final lists, insofar as discovery has revealed the necessity of testimony by these witnesses. Such a supplementation may well result in a brief extension of the discovery cut-off date for the other side to conduct discovery of any newly-added witness. Counsel are advised to conduct their discovery early and in timely fashion in order to make the witness lists served upon opposing counsel as exact and as final as possible, because this Court will grant leave to supplement the witness list only upon a showing of good cause.

Rebuttal witnesses, the need for whose testimony can reasonably be anticipated prior to trial, shall also be identified in the original list.

4) Motions

A review of then-pending and any expected motions will be had, a briefing schedule will be fixed, and a hearing date set, if necessary. Leave of Court will be granted to file whatever additional motions are deemed necessary, whether or not directed to the pleadings, including motions for summary judgment, provided same are filed by a date certain to be set at the conference.

The District Judges reserve the authority, at any time, to refer any or all pretrial motions, whether dispositive or non-dispositive, to Magistrate Judge Merz.

5) Additional Conferences

If, in the opinion of Court and counsel, additional conferences are necessary for monitoring settlement negotiations, for discovery, or for the Court to receive an adequate status report on the pretrial stages of the case, a date will be fixed at this conference. Either counsel may at any time request an additional preliminary pretrial or settlement conference. In all cases which will be tried to the Bench, every effort will be made to have settlement conferences conducted by a different judicial officer from the trier of fact.

6) Final Pretrial Order

A date will be set for the filing of a Joint Proposed Final Pretrial Order (generally five to seven days prior to the final pretrial conference), in the form adopted hereby and provided with the preliminary pretrial or scheduling conference order.

Unless otherwise agreed by counsel or by Order of the Court, the following procedures shall be used for the preparation of the Joint Proposed Final Pretrial Order:

a) Counsel for plaintiff(s) shall submit to counsel for defendant(s) a first draft of the Joint Proposed Final Pretrial Order (without, of course, the material which is within the knowledge of defendants, such as lists of witnesses, exhibits, etc.) Such draft shall be mailed or otherwise delivered at least fifteen (15) working days before the filing date for the Joint Proposed Final Pretrial Order.

b) Counsel for defendant(s) shall add all of the materials necessary to complete the Joint Proposed Final Pretrial Order, thus making a second draft of the Joint Proposed Final Pretrial Order, clearly delineating those matters which have been changed and added. Such second draft shall be mailed or otherwise delivered to counsel for plaintiff(s) at least ten (10) working days before the Joint Proposed Final Pretrial Order is to be filed.

c) Upon receipt of the second draft from counsel for defendant(s), counsel for plaintiff(s) shall telephone counsel for defendant(s) and they shall agree upon a date, time, and place for a meeting for the resolution of differences and the final drafting of the Joint Proposed Final Pretrial Order. Such meeting shall be at least five (5) working days before the Joint Proposed Final Pretrial Order is to be filed.

d) The Joint Proposed Final Pretrial Order shall then be completed and timely filed by counsel for plaintiff(s) unless the parties otherwise agree.

The Court wishes to emphasize that the Joint Proposed Final Pretrial Order must be jointly prepared; in the absence of such a Joint Proposed Final Pretrial Order, no final pretrial conference will be conducted, the trial will be continued, and counsel will be subject to sanctions, including possible dismissal for failure to prosecute. The instructions in the attached form of Final Pretrial Order have the force of Court Order.

7) The Setting of a Definite Date for the Final Pretrial Conference and for the Trial Itself.

A final pretrial conference will be held within seven to twenty days of the trial date. At the pretrial, the Court will review the Joint Proposed Final Pretrial Order, which will have been

filed with the Clerk's Office. At the conclusion of the pretrial conference, the Court will approve the Joint Proposed Final Pretrial Order, with any additions or deletions, and will cause same to be journalized with appropriate notation, as an Order of the Court.

Trial counsel are expected to be present or available by phone for the final pretrial conference, unless previously excused by the Court, in which event, co-counsel may attend in their stead. Clients need not be present or otherwise available by phone, provided counsel has ultimate negotiating authority for his client. No attorney who has not participated in the final pretrial conference may act as trial counsel without Court permission.

At the conclusion of the Preliminary Pretrial Conference, the Court will prepare and file a Preliminary Pretrial Conference Order (Scheduling Order) covering the areas suggested in the form attached hereto.

C. Contingent Consent to Magistrate Judge Trial

In order to guarantee the availability of a judicial officer to try your case on the date set in the Preliminary Pretrial Conference Order, the Court requests each trial attorney, in cases not otherwise referred to Magistrate Judge Merz, to discuss with his or her client the possibility of consenting to referral of this case to Magistrate Judge Merz on a contingent basis for trial only. If such contingent consent is given, the case will remain on Judge Rice or Judge Dlott's docket for all purposes including discovery, motion practice, and trial, unless the assigned District Judge becomes unexpectedly unavailable for trial (e.g. because of other trial settings, criminal or civil), in which event Magistrate Judge Merz will try the case. Counsel are requested to advise Judge Rice or Judge

Dlott's Courtroom Deputy Clerk of their client's decision on this matter within twenty days of the Preliminary Pretrial Conference.

In cases otherwise referred to Magistrate Judge Merz for pretrial management, parties are separately advised of their right to consent to magistrate judge trial jurisdiction. Judge Dlott's General Order of Reference to Magistrate Judge Merz permits him to exercise consent jurisdiction in any case referred to him upon unanimous consent of the parties.

Any party has the right to decline consent; failure to consent will have no adverse substantive or procedural consequences.

D. Foreign Counsel

All parties not appearing *in propria persona* are required to be represented by a designated "trial attorney" who must be an attorney at law who is both a permanent member of the bar of this Court in good standing and member in good standing of the bar of the Supreme Court of Ohio.

Counsel not otherwise eligible to serve as the trial attorney, who are admitted to practice before any United States District Court, may upon motion be admitted *pro hac vice* in the Southern District of Ohio to serve as trial attorney in a specific case. Such admission will be conditional only and may be withdrawn at any time for failure to observe the rules of this District and the General Orders of this Court or for failure to comply with Fed. R. Civ. P. 11, 16, 26 or 37. See S.D. Ohio L. R. 83.5 and *Flynt v. Leis*, 439 U.S. 438 (1978).

Attorneys admitted *pro hac vice* to serve as the designated trial attorney must obtain local counsel admitted to the Bar of this Court to participate as co-counsel. Such local co-counsel

shall participate in a meaningful fashion in the preparation and trial of the cause, unless excused by this Court. Admission *pro hac vice* may be withdrawn for failure to obtain local co-counsel.

Unless excused by this Court, local counsel are expected to be intimately familiar with the litigation on which they are retained, fully prepared to take responsibility for any pleadings and other court filings signed and submitted by them. Further, unless excused by this Court, such local co-counsel shall participate in a meaningful fashion in the preparation and trial of the cause.

E. Discovery

The term "discovery" includes any depositions for presentation at trial in lieu of appearance.

While this Court does not wish to formalize or to institutionalize a procedure that would in any way detract from the obligation of counsel to "walk the last mile" to informally resolve discovery disputes between and among themselves, as required by Fed. R. Civ. P. 37(a)(2)(B) and S.D. Ohio L.R. 37.1 and 37.2, this Court is always open to a phone call from any counsel to this Court's secretary or law clerk requesting a telephone conference call, between all counsel of record, to address either an urgent discovery dispute arising during a deposition or a more systemic discovery impasse arising during the course of general pretrial discovery. Such an approach might quickly allow the Court and the parties to get to the central issues involved in the impasse, without the costly and time consuming procedures inherent in the filing of motions, contra memoranda, and the like.

In any case in which Judge Rice or Judge Dlott has retained responsibility for the management of pretrial discovery, he or she should be the judicial officer first contacted by counsel;

should the District Judge determine that he or she is not or will not, within a reasonable time, be available for such a telephone conference, he or she may ask Magistrate Judge Merz or any other Dayton-based Magistrate Judge to conduct same.

Judge Rice and Judge Dlott reserve the authority, at any time, to refer any action to a magistrate judge for management of discovery. If such a referral is made, all matters pertaining to pretrial discovery must be directed to that judicial officer. For example, the Magistrate Judge would determine, in the first instance, appropriate sanctions either for any violation of the agreed-upon discovery plan or for any other incident or situation in which the imposition of sanctions is appropriate under Fed. R. Civ. P. 37. In addition, the Magistrate Judge would be charged to resolve, upon a schedule to be determined between him and counsel of record, any impasse occasioned by the good faith inability to agree upon a joint discovery plan.

F. Motions

Other than motions required by law to be set for a hearing, with notice given to all counsel, and motions upon which a specific request for a hearing has been made and granted by the Court, all motions shall be submitted without oral argument on the memoranda filed with the Clerk, on the schedule set forth in S.D. Ohio L.R. 7.2, unless otherwise ordered.

Leave of Court is required for the filing of any motion beyond the time set forth in this Court's Preliminary Pretrial Conference Order. Should the Court grant such leave and if the motion is sustained (thus canceling the trial if the motion is a dispositive one) or, in the alternative, overruled, but the filing of said motion and the time necessary to brief and/or to argue the same causes a continuance (postponement) of the trial date, the Court, in the exercise of its discretion, may

award the party against whom the motion is directed the expenses incurred, caused by the untimely filing of the motion, in preparing for the canceled or continued trial. Said expenses may include attorney fees. Such expenses will be limited to the cost of preparation for the trial itself and will not include any expenses incurred in opposing the motion.

If a trial is merely continued (postponed), as opposed to canceled upon a ruling on such a motion (dispositive or not), the Court will not award expenses for any trial preparation that may be utilized at the subsequent trial.

G. Limitations Upon Briefs and Memoranda

Briefs and/or memoranda in support of or in opposition to any motion in this Court shall not exceed twenty pages without first obtaining leave of Court. If leave of Court is granted, counsel must include a brief synopsis of the basic arguments, including relevant citations of authority, at the beginning of any brief or memorandum exceeding twenty pages in length. All briefs and memoranda shall comply with the formal requirements of S.D. Ohio L.R. 7.2.

II. TRIAL PRACTICE

A. Preparation of Exhibits

Counsel for each of the parties will assemble all documents, photographs, or other materials expected to be used at trial. Copies of such documents must be physically furnished to opposing counsel not later than seventy-two hours prior to the Final Pretrial Conference. Any deviation from this procedure, in a situation wherein exhibits are unusually voluminous, in which

event counsel may wish merely to make his exhibits available for inspection and/or copying by opposing counsel, will be permitted only upon leave of Court being first obtained.

It is not necessary to bring exhibits to the Final Pretrial Conference or to file them with the Court prior to the close of business three (3) working days before trial. Counsel are required, however, to list all exhibits in the Joint Proposed Final Pretrial Order.

The following procedure will be followed: a) All exhibits will be assembled in 3-ring binders, marked as listed in the Joint Proposed Final Pretrial Order, with each exhibit bearing a numbered exhibit sticker and with the same number on a tab extended beyond the binder on the right side thereof. Each page of a multi-page exhibit shall be numbered with a distinctive number (e.g. as applied by a BATES numbering machine). All exhibits will be sequentially numbered with Arabic numerals as follows: Joint exhibits will be designated JX ___ on white exhibit labels; plaintiff exhibits will be designated PX _____ on yellow exhibit labels; and defendant exhibits will be designated DX ____ on blue exhibit labels. Third-party exhibits may be numbered with a distinctive identifying letter prefix.

Each counsel will deposit two complete sets of his exhibits with the Courtroom Deputy Clerk, not later than the close of business three (3) working days prior to trial. In a non-jury case, a third set of exhibits, for the use of the Court's law clerk, must be so deposited.[2]

If any sketches, models, diagrams, etc., of any kind will be used during trial or in argument, they must be exhibited to opposing counsel not later than the Final Pretrial Conference.

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[2] The second (and third in non-jury cases) set of exhibits may contain Xeroxed or equivalent sets of photographs.

Exhibits deposited with the Courtroom Deputy Clerk and appropriately marked may be used by any party at trial.

Each party should offer its exhibits into evidence at one time, immediately prior to resting its case, except that an exhibit to be examined by the jury must be offered and admitted prior to examination. The admissibility of all exhibits referred to during trial and offered by the parties, other than those examined by the jury, will be ruled upon by the Court, at the latest, prior to that party's resting. Either side may offer any marked exhibit, regardless of which party marked it.

There is no requirement that counsel object to any exhibit at the Final Pretrial Conference.

B. Depositions

Counsel will specify to opposing counsel and to the Court, at the Final Pretrial Conference, those portions of any deposition which will be read at trial in lieu of live testimony. The deposition itself must be filed with the Clerk not later than the date of the Final Pretrial Conference. Opposing counsel will note objections to any portion of the deposition in advance of the trial, and the Court will rule on the objections either prior to the commencement of the trial or, at the latest, prior to the reading of the deposition in open Court.

Videotape presentations must include a method for cutting off either sound or the entire picture from the jury, in situations where the Court must rule on objections to testimony. In addition to the videotape itself, a typewritten transcript must be provided to the Court and opposing counsel as an aid in following the videotape presentation and in ruling upon any objections contained

in the deposition. Objections contained in the videotape deposition will be dealt with by the Court in the manner as set forth in the preceding paragraph.

Any deposition that might conceivably be used solely for impeachment must be filed with the Clerk prior to the Final Pretrial Conference.

C. Trial Briefs

Trial briefs must be filed and served not later than one week prior to the commencement of trial. All briefs shall comply with S.D. Ohio L. R. 5.1, with citations and references conforming to S.D. Ohio L. R. 7.2(b). Counsel should use their trial briefs to instruct the Court in advance of trial in any area of law upon which counsel will rely at trial. Therefore, the briefs should contain arguments, with citations to legal authority, in support of any evidentiary or other legal questions which may reasonably be anticipated to arise at trial.

D. Motions Directed to Trial

All motions in limine, directed to the presentation of evidence at trial, must be filed not later than ten days prior to the Final Pretrial Conference.

All written motions presented during trial, which later form the subject of oral argument to the Court, must be filed with the Clerk of Court's Office, either immediately before presentation to the Court or immediately after the oral argument.

E. Proposed Findings of Fact and Conclusions of Law

In trials to the Court, counsel must, not later than the Final Pretrial Conference, file those proposed findings of fact and conclusions of law which such counsel believes the Court should

render.[3] Post-trial briefs, accompanied by any desired supplemental findings of fact and/or conclusions of law, may be limited to specific questions assigned by the Court during or after trial and shall be filed in accordance with a briefing schedule set by the Court with counsel.

F. Proposed Jury Instructions

Requests for special instructions and special verdicts must be submitted to the Court and opposing counsel not later than one week prior to the commencement of trial. This requirement may be waived by the Court only upon a showing of good cause. Each instruction should be on a separate 8.5" x 11" sheet of paper identified as "Plaintiff(s) (Defendant(s)) Requested Instruction No. _____." All instructions must contain a citation of authority upon which counsel relies. The original of the request for special instructions must be filed with the Clerk of Court's Office, prior to presentation to the Court.[4]

The Court uses as sources for its instructions Devitt, Blackmar, Wolff, & O'Malley's FEDERAL JURY PRACTICE AND INSTRUCTIONS, 4th Edition; OHIO JURY INSTRUCTIONS; the Sixth Circuit Pattern Jury Instructions; and instructions given in prior cases of a similar nature which are kept on file.

Samples of jury instructions previously given by the Court in similar cases are available upon request.

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[3] In addition to filing a paper original with the Clerk, please provide the Court with an electronic copy on 3.5 inch diskette in any standard word-processing format, if possible.

[4] In addition to filing a paper original with the Clerk, please provide the Court with an electronic copy on 3.5 inch diskette in any standard word-processing format, if possible.

G. Courtroom Practice

Conduct of counsel during the trial of cases will be governed by the following instructions:

1) Counsel Tables

The plaintiff in all civil cases and the United States Government in criminal cases will occupy the counsel table nearest the jury. Defendants in both civil and criminal cases will occupy the counsel table furthest from the jury.

2) Court Sessions

Trials will usually start at 9 a.m. The morning session will continue until approximately noon. There will be a morning recess of approximately fifteen minutes at approximately 10:30 a.m. The afternoon session will start one hour after the end of the morning session unless otherwise announced. The afternoon session will usually end at approximately 4:30 p.m. There will be a fifteen minute recess at approximately 3 p.m.

It is expected that the parties and all counsel will be available at least 15-20 minutes prior to the beginning of the morning and afternoon sessions.

The Court will ordinarily conduct trials Monday through Thursday, reserving Fridays for criminal and civil matters not related to the trial in progress.

3) Qualification of Jury

The general voir dire examination will be conducted by the Court, with the entirety of the prospective panel being questioned, following which counsel for the respective parties may question the prospective jurors on matters peculiarly applicable to the nature of and the issues

presented in the case at trial. In addition, counsel may, in non-repetitious fashion, further explore any matters on which the Court has questioned which they feel have not been adequately discussed, or may explore any information in the individual jury questionnaires. The Court retains discretion to limit counsels' inquiry. Counsel must address questions to the entire panel of prospective jurors. An individual juror may be questioned only if such juror responds affirmatively to questions put to the entire panel, if counsel is following up on or further exploring a question asked or an area discussed by the Court, or if necessary to inquire into a matter disclosed by a prospective juror in that individual's jury questionnaire. Challenges for cause shall be directed to the entire panel.

4) <u>Peremptory Challenges</u>

a) Peremptory challenges will be exercised outside of the presence of the jury (in a conference room in Judge Rice's and Judge Dlott's Court; at sidebar in Magistrate Judge Merz's Court), alternately, with the plaintiff or the Government exercising the first challenge. Any prospective juror on the panel may be so challenged. In a civil case, each side is entitled to three peremptory challenges.

b) If either party "passes," that party will have thereby "used" one challenge.

c) At the conclusion of the peremptory challenges, the Courtroom Deputy Clerk will announce the composition of the jury.

d) Judge Rice, Judge Dlott, and Magistrate Judge Merz differ slightly in the handling of peremptory challenges. However, with any judicial officer, challenges to the manner in which an opposing party has exercised peremptory challenges (e.g. a *Batson* argument that said challenges are racially discriminatory) shall be made before the jury is sworn and before the extra

venire persons are excused; otherwise, they are waived. Counsel should consult with the individual presiding judicial officer as to that Judge's preference in the manner of exercising peremptory challenges.

5) Size of the Jury

Judge Rice will seat a jury of eight in civil cases with a requirement of unanimity. Judge Dlott and Judge Merz will do the same unless otherwise ordered in the Final Pretrial Order.

6) Interrogation by Counsel

Counsel need not interrogate from the lectern nor request specific permission from the Court to approach a witness.[5] Since all evidence will have been previously deposited with the Courtroom Deputy Clerk, counsel will request the Clerk to hand specific documents to the witness. Documents intended for impeachment purposes, which are not admitted into evidence, will be handed to the Courtroom Deputy Clerk for suitable marking and then handed by her or him to the witness.

[5] Judge Dlott requires counsel to interrogate from the lectern and requires that counsel specifically request permission from the Court to approach a witness.

7) **Qualifying Expert Witnesses**

The Court will allow each counsel to qualify his or her own expert witnesses.

H. Pre-summation (Final Argument) Conference:

The Court will hold a conference with counsel, in Chambers and on the record, prior to the final argument in jury cases for the following purposes:

1) Counsel may be heard on proposed jury charges presented by either side and/or on the tentative charges submitted by the Court. Counsels' attention is directed to Fed. R. Civ. P. 51.

2) Counsel and the Court will determine the length of the summations to the jury.

III. CIVILITY AND PROFESSIONALISM

The Court expects counsel to behave civilly and in a professional manner both toward the Court and toward each other in all aspects of this litigation. Any violation of this expectation, whether occurring in open Court, in the Judge's Chambers, in the taking of depositions or otherwise and elsewhere, may be cause for sanctions. This Court adopts and expects counsel to adhere to the attached Code of Professionalism enacted by the Dayton Bar Association. Counsel are referred to the Introductory Statement on Civility in the Local Rules.

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

Plaintiff(s)

:

vs. Case Number:

:

Defendant(s)

PRELIMINARY PRETRIAL CONFERENCE ORDER

The captioned cause came on to be heard upon preliminary pretrial conference on _____.

PERTINENT SETTINGS

1. Settlement demand by Plaintiff upon Defendant to be made by: _____

2. "Cut-off date for filing of motions directed to pleadings (including motions to dismiss filed pursuant to Fed. R. Civ. P. 12): _____

   Following this date, amendment to pleadings and motions directed to pleadings may be made only upon leave of Court, with notice to opposing counsel.

3. Not later than the date specified, the Plaintiff will be furnishing to the Defendant a medical package, consisting of reports, medical bills, lists of special damages, certification of wage loss, hospital bills, hospital records, other bills and expenses, etc. Plaintiff's counsel is under a continuing duty to update or supplement the "medical package" as further information becomes available. _____

4. Rule 16 discovery conference, by telephone: _____

5. Identification of lay witnesses with synopsis of their testimony to be filed by: _____

6. The dates to reveal the identify of expert witnesses, together with a copy of the expert's report are:

   Plaintiff(s) to Defendant(s): _____

   Defendant(s) to Plaintiff(s): _____

7. Requests for admissions: _____

8. "Cut-off" deadline for discovery**: _____

9. "Cut-off" date for filing of motions not directed to pleadings (including motions for summary judgment): _____

   This deadline is inflexible and will not be extended except under the most extraordinary of circumstances (on Judge Rice's docket only).

10. Joint Final Pretrial Order by parties to be filed no later than: _____

11. Trial exhibits to be exchanged by: _____

12. Final Pretrial Conference to be held:

In Chambers on: _____

By Telephone Conference Call on: _____

The attorneys listed below need not appear in chambers for such pretrial conference but need only wait by their telephones at the appointed time. If any other attorneys will be substituted for those listed for such calls, it is the responsibility of counsel to NOTIFY CHAMBERS BEFORE SUCH CALL IS MADE.

13. Trial on the merits,
before the Court, beginning: _____

to a Jury, beginning: _____

14. Further status conference set for: _____

15. The Law Clerk assigned to this case is: _____

**The date of the discovery cut-off will generally be 90 to 120 days prior to the trial date. There will be no continuation of discovery beyond the discovery cut-off date, absent express approval of the Court obtained upon a showing of good cause. While counsel may agree between themselves to a limited continuation of discovery beyond the discovery cut-off date, upon an amendment to the discovery plan approved and filed with this Court, there will be no supervision or intervention by the Court, such as a Fed. R. Civ. P. 37 request for sanctions, after the discovery cut-off date, without a showing of extreme circumstances. Counsel, therefore, face the possibility that the Court may not permit the completion of discovery, or the filing of a motion based thereon, prior to trial.

No trial setting will be vacated due to the failure to complete essential pretrial discovery, except under the most unusual of circumstances.

The term "discovery" includes any depositions for presentation at trial in lieu of appearance.

The discovery "cut-off" deadline means that all discovery must be concluded, as opposed to simply requested, by the discovery "cut-off" date. Purely as a hypothetical example, a request for the production of documents, with a 28-day response time, must be served upon the opposing party in sufficient time to allow said party to respond prior to the discovery "cut-off" date.

Except for good cause shown, no extension of the discovery "cut-off' deadline will be allowed if such extension would impact adversely on the trial date set herein.

In order to make certain that progress towards disposition of the captioned cause does not become "gridlocked" by discovery disputes, this Court would offer an invitation to counsel of record, should such a discovery dispute arise and, further, should the parties have exhausted all extra-judicial means of resolving same, to call the assigned Judge's office, in order to advise the Courtroom Deputy of the need for a brief discovery conference. That Judge (or the Magistrate, should the Court not be available) will then convene a brief discovery conference in the hope of resolving the impasse without the necessity of filing motions to compel, motions for protective order, etc.

Exhibits consisting of multiple page documents not internally numbered MUST contain consecutive Bates stamped numbering.

Local counsel are expected to be intimately familiar with the litigation on which they are retained, fully prepared to take responsibility for any pleadings and other court filings signed and submitted by them. Further, unless excused by this Court, such local co-counsel shall participate in a meaningful fashion in the preparation and trial of the cause.

This Court expects counsel to behave civilly and in a professional manner both toward the Court and toward each other in all aspects of this litigation. Any violation of this expectation, whether occurring in open Court, in the Judge's Chambers, in the taking of depositions or otherwise and elsewhere may be cause for sanctions. This Court adopts and expects counsel to adhere to the attached Code of Professionalism enacted by the Dayton Bar Association.

In order to guarantee the availability of a judicial officer to try your case on the date set in this entry, it is the request of the Court that each counsel speak with his/her client as to the possibility of consenting to a referral to Magistrate Judge Merz for purposes of trial only. In this fashion, the undersigned will handle all aspects of this litigation including the trial (if he or she is available). If the undersigned is otherwise committed in trial on the date set for trial herein, Judge Merz will be able to try this case. Absent a referral to the Magistrate Judge (and it is always the right of the party to so refuse), the undersigned will try this case on the date set, or upon a very short-term trailing docket thereafter, even if it means trying more than one case at a given time. Please notify the Court in writing as to your client's wishes in this regard not later than 20 days from the date of the preliminary pretrial conference.

IT IS SO ORDERED.

WALTER HERBERT RICE, CHIEF JUDGE
UNITED STATES DISTRICT COURT
OR

SUSAN J. DLOTT
UNITED STATES DISTRICT JUDGE
OR

MICHAEL R. MERZ
UNITED STATES MAGISTRATE JUDGE

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

JOHN DOE,

Plaintiff(s), : Case No. C-3-00-000

- vs - District Judge Walter Herbert Rice
or
District Judge Susan J. Dlott
RICHARD ROE, Or
Magistrate Judge Michael R. Merz

Defendant(s). :

FINAL PRETRIAL ORDER

(A Final Pretrial Order following this form must be jointly prepared and submitted by counsel to the Clerk of this Court not later than the date set forth in the Preliminary Pretrial Conference Order.)

This action came before the Court at a final pretrial conference held on _____ at ___ a.m./p.m., pursuant to Rule 16, Federal Rules of Civil Procedure.

I. APPEARANCES:

For Plaintiff(s):

For Defendant(s):

II. NATURE OF ACTION AND JURISDICTION:

A. This is an action for

B. The jurisdiction of the Court is invoked under Title _____ United States Code, Section _____.

C. The subject matter jurisdiction of the Court (is) (is not) disputed. [If disputed, state by which party and on what basis.]

III. TRIAL INFORMATION:

A. The estimated length of trial is _____ days.

B. Trial to _____ has been set for _____.

IV. AGREED STATEMENTS AND LISTS:

A. General Nature of the Claims of the Parties:

(1) PLAINTIFF CLAIMS: (suggested type of simple language)

"Plaintiff asserts in Count 1 a right of recovery for defendants' negligence as follows;

"Plaintiff asserts in Count 2 a right of recovery for defendants' wanton and willful misconduct as follows;

"Plaintiff asserts in Count 3 a right to punitive damages and attorney fees for the following reasons:

(2) DEFENDANT CLAIMS: (suggested type of simple language)

Defendant denies liability as asserted in Counts ___ for the following reasons:

Defendant as an affirmative defense asserts:

(3) ALL OTHER PARTIES' CLAIMS

B. Uncontroverted Facts

Suggested Language:

"The following facts are established by admissions in the pleadings or by stipulations of counsel (set forth and number uncontroverted or uncontested facts.)

C. Issues of Fact and Law

Suggested Language:

(1) "CONTESTED ISSUES OF FACT: The contested issues of fact remaining for decision are: (list)"

(2) "CONTESTED ISSUES OF LAW: The contested issues of law in addition to those implicit in the foregoing issues of fact, are: (set forth)
OR: There are no special issues of law reserved other than those implicit in the foregoing issues of fact."

If the parties are unable to agree on what the contested issues of fact or law are, their respective contentions as to what the issues are shall be set forth separately and clearly labeled.

D. Witnesses

Suggested Language:

(1) "Plaintiff will call or will have available for testimony at trial those witnesses listed in Appendix A hereof."

(2) "Defendant will call or will have available for testimony at trial those Witnesses listed on Appendix B hereof."

(3) _____will call or will have available for testimony at trial those witnesses listed on Appendix C hereof."

(4) "The parties reserve the right to call rebuttal witnesses whose testimony could not reasonably be anticipated without prior notice to opposing counsel."

INSTRUCTIONS:

(1) **A** brief one or two sentence synopsis of the witnesses' testimony must be given -- i.e., "Will testify to pain and suffering," "Will testify to lost profits, etc."

(2) Leave to call additional witnesses may be granted by the Court in unusual situations. Counsel seeking such leave must file a Motion to Add Witnesses and serve a copy upon opposing counsel with names, addresses, and an offer of proof of such witness' testimony within twenty-four (24) hours after the need to call such witness becomes known.

(3) The witnesses need not be called in the order listed.

E. Expert Witnesses

Suggested Language:

"Parties are limited to the following number of expert witnesses, including treating physicians, whose names have been disclosed and reports furnished to the other side:

Plaintiff (a) Defendant(s)

F. Exhibits

The parties will offer as exhibits those items listed herein and numbered with Arabic numerals as follows:

(1) Joint Exhibits -- Appendix D (marked "JX ____")

(2) Plaintiff Exhibits Appendix E (marked "PX _____")

(3) Defendant Exhibits Appendix F (marked "DX____")

(4) Third-Party Exhibits -- appendix G (use Arabic numerals prefixed by initial of party.

INSTRUCTIONS:

The above exhibits will be deposited with the Court's Deputy Clerk not later than three working days prior to trial.

See Section II(A) of instructions, entitled 'Trial Practice --- Preparation of Exhibits."

G. Depositions

Suggested Language:

"Testimony of the following witnesses will be offered by deposition/videotape; OR

"No testimony will be offered by deposition/videotape."

INSTRUCTIONS:

See Section II(B) of Instructions entitled "Trial Practices --- Depositions."

H. Discovery

Suggested Language:

"Discovery has been completed," OR

"The following provisions have been made for discovery."

See Section I(C) of Instructions entitled "Discovery."

I. Pending Motions

Suggested Language:

"The following motions are pending at this time," OR

"There are no pending motions at this time."

J. Miscellaneous orders

INSTRUCTIONS: Set forth any orders not properly includable elsewhere.

V. MODIFICATION

Suggested Language:

"This final pretrial order may be modified at the trial of this action, or prior thereto, to prevent manifest injustice. Such modification may be made by application of counsel, or on motion of the Court."

VI. SETTLEMENT EFFORTS

Suggested Language:

"The parties have made a good faith effort to negotiate a settlement," or otherwise described the status of settlement negotiations.

VII. TRIAL TO A JURY

PROPOSED INSTRUCTIONS ---

Suggested Language:

"The parties will submit proposed Jury Instructions not later than one week prior to the commencement of trial."

See Section II(F) of these Instructions, entitled "Trial Practice - Proposed Jury Instructions."

Counsel for Plaintiff(s)

Counsel for Defendant(s)

Counsel for _____

Approved following Final Pretrial Conference:

_____

Walter Herbert Rice, Chief Judge
UNITED STATES DISTRICT COURT

OR

_____

Susan J. Dlott
UNITED STATES DISTRICT JUDGE

OR

_____

Michael R. Merz
UNITED STATES MAGISTRATE JUDGE

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

IN RE UNITED STATES MAGISTRATE JUDGES
MICHAEL R. MERZ AND
SHARON L. OVINGTON

GENERAL ORDER OF ASSIGNMENT AND REFERENCE

Assignment of Cases of Magistrate Judges

All civil and miscellaneous cases filed at the Dayton location of court shall be randomly assigned upon filing to one of the two resident District Judges and one of the two resident Magistrate Judges. The Clerk shall note the assignment on the case file. This assignment does not constitute a reference to the assigned magistrate judge for any purpose, but merely selects the magistrate judge to whom referrals in the case, if any, shall be made.

General Reference to Magistrate Judges

Criminal Matters

The following criminal matters are referred to the United States Magistrate Judges:

1. Issuance of search warrants, seizure warrants, trap and trace orders, beeper warrants, and any other orders for the securing of evidence, except wiretap orders, the issuance of which requires approval of an Article III judge.

2. Issuance of arrest warrants or summonses on complaints under Fed. R. Crim P. 4.

3. The conduct of initial appearances, preliminary examinations, and bond or detention hearings in felony cases.

4. Proceedings for the waiver of speedy presentation to the grand jury.

5. All proceedings in petty offense cases and in Class A misdemeanor cases unless the defendant declines to consent to magistrate judge jurisdiction. Pursuant to 18 U.S.C. §3401, Magistrate Judges Merz and Ovington are specially designated to exercise jurisdiction in misdemeanor cases in this District.

The magistrate judges shall exercise criminal jurisdiction on a monthly rotation basis, beginning with Magistrate Judge Merz as the "duty judge" in the month in which Magistrate Judge Ovington assumes office and the following month. The Magistrate Judge who conducts the initial appearance in any case shall remain as the assigned judge regardless of the rotation period. The Magistrate Judges are authorized to transfers cases among themselves on mutual consent and to perform criminal duties in one another's stead in the absence or unavailability of the magistrate judge on duty.

Civil Matters

Pursuant to 28 U.S.C. §636(b), the following categories of cases filed at the Dayton location of court on or after the date on which Magistrate Judge Ovington assumes office, are hereby ordered referred to the United States Magistrate Judge to whom the case has been assigned who is authorized to perform in each such case any and all functions authorized for full-time United States Magistrate Judges by statute. In each such case the Magistrate Judge shall proceed in accordance with Fed. R. Civ. P. 72.

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

The referred categories of cases are:

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

2. **Emergency Matters:** If the assigned District Judge is absent and expected to be absent for more than twenty-four hours and an emergency matter is filed in a case assigned to that District Judge, said matter is hereby referred to the assigned Magistrate Judge to undertake any and all procedures necessary to resolve the emergency matter expeditiously. If the parties unanimously consent under 28 U.S.C. §636(c), the assigned Magistrate Judge may decide any emergency dispositive matter. Otherwise the assigned Magistrate Judge shall proceed pursuant to Fed. R. Civ. P. 72. This paragraph does not apply to motions for temporary restraining orders which should be referred by the Clerk to the other resident District Judge. General Order No. 13, filed May 22, 1985, is hereby VACATED.

3. **Government Loans:** All cases filed by the United States seeking recovery of a loan.

4. **Miller Act:** All cases arising under the Miller Act.

5. **Pro Se Cases:** All cases filed by persons proceeding *pro se*. In such cases, the reference shall not terminate if the plaintiff later obtains counsel unless otherwise ordered by the assigned District Judge.

6. **Post-Conviction Relief:** All cases collaterally attacking a criminal judgment, including without limitation those filed under 28 U.S.C. §§2241, 2254, or 2255. All such cases attacking a judgment which includes a sentence of death shall be assigned and referred to Magistrate Judge Merz.

7. **Social Security:** All appeals from decisions of the Commissioner of Social Security regarding Social Security benefits.

8. In Forma Pauperis: All applications to proceed *in forma pauperis* upon initial filing. Because such applications are filed and must be considered before a case is opened and assigned, *in forma pauperis* applications shall be considered by the duty judge.

9. Recommital: In any case in which a party files objections to or an appeal from a decision or report and recommendations of a Magistrate Judge, the assigned Magistrate Judge is authorized, pursuant to Fed. R. Civ. P. 72(b), to reconsider the decision and file a supplemental report and recommendations or supplemental decision.

In each case in the above-described categories, this General Order shall act as a reference to the assigned Magistrate Judge without further order. The Clerk shall advise the parties in each such case of this General Order of Reference and of their right to consent to plenary magistrate judge jurisdiction under 28 U.S.C. §636(c).

January 13, 2003.

Walter Herbert Rice, Chief Judge
United States District Court

January 13, 2003.

Thomas M. Rose
United States District Judge

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

IN RE SOCIAL SECURITY APPEALS

THIRD AMENDED MAGISTRATE JUDGES' GENERAL ORDER NO. 11

To provide for the efficient adjudication of appeals to this Court of decisions of the Commissioner of Social Security under the Social Security Act, it is hereby ORDERED with respect to all such appeals:

1. All prior general Orders of the United States Magistrate Judges at Dayton with respect to Social Security cases are hereby rescinded.

2. The Commissioner shall file and serve an Answer and a certified copy of the administrative record within sixty (60) days of service of process.

3. Within sixty (60) days of service of the Answer and certified copy of the administrative record, the plaintiff shall file and serve a Statement of Specific Errors upon which the plaintiff seeks reversal or remand. This Statement shall be organized in the form of a memorandum in support of the plaintiff's position and shall also include page references to the administrative record as well as citations of applicable law and supporting authority. Statements of Specific Errors shall present the detail ordinarily expected in a motion for summary judgment.

4. Within forty-five (45) days of service of the Statement of Errors, the Commissioner shall file and serve a memorandum in opposition to the plaintiff's Statement of Specific Errors. This memorandum in opposition shall be organized in the form of a memorandum in opposition to the plaintiff's position and in support of the Commissioner's decision and shall also

include page references to the administrative record as well as citations of applicable law and supporting authority.

5. Plaintiff may file and serve a reply memorandum within twenty (20) days of service of the Commissioner's memorandum in opposition.

6. All cases will be decided on the memoranda and the administrative record, except that the Court reserves the right to hold oral argument, by telephone or otherwise, in any such case.

7. In cases decided by the Magistrate Judge upon consent under 28 U.S.C. §636(c), appeals shall be taken as provided by law. In cases in which the Magistrate Judge makes a Report and Recommendations to a District Judge on the merits of the appeal, the time for filing Objections is the ten (10) day period provided by 28 U.S.C. §636(b), Fed.R.Civ.P. 72 and all other applicable provisions of law.

8. The practice of seeking lengthy (*e.g.*, 30 day) extensions of time to file and serve Statements of Specific Errors or Objections on conclusory grounds (*e.g.*, "heavy caseload") is strongly discouraged. Repeated requests of this nature may lead to sanctions. The Code of Professional Responsibility counsels attorneys not to accept more work than they can reasonably handle.

9. When a case is remanded to the Commissioner for further proceedings and those proceedings are completed, if the Commissioner's new decision is adverse to the plaintiff, the Commissioner shall file and serve a copy of the supplemental administrative record. The matter shall then be briefed in accordance with this General Order: the plaintiff will have sixty (60) days from the date of service of the supplemental administrative record within which to file a Statement of Specific Errors in the form described above; the Commissioner will have forty-five (45) days from the date of service of the Statement of Specific Errors within which to file and serve a

memorandum in opposition in the form described above; and the plaintiff will have twenty (20) days from the date of service of the Commissioner's memorandum within which to file and serve a reply memorandum.

10. When a case is remanded to the Commissioner for further proceedings and those proceedings are completed, if the plaintiff accepts the Commissioner's new decision, within ten (10) days of receipt of the Commissioner's new decision, plaintiff's counsel shall notify the chambers of the Magistrate Judge to whom the case is assigned that the plaintiff accepts the Commissioner's new decision and that the plaintiff does not seek further judicial review.

11. This Order is effective immediately and applies to cases currently pending before the Court.

September 1, 2004

Michael R. Merz
United States Magistrate Judge

Sharon L. Ovington
United States Magistrate Judge

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

IN RE:

SEALING OF DOCUMENTS :
FILED WITH THE COURT

:

RE-ADOPTED GENERAL ORDER NUMBER 14

Whenever any person seeks to protect a privacy, confidentiality, or other interest in documents filed in this Court, the following procedure shall apply:

1. No documents filed with this Court shall be withheld from disclosure to any member of the public except upon a court order sealing the documents. This does not limit the discretion of the court employee having custody of documents (usually the Clerk) to make reasonable provision for the security of court files and to set reasonable time, place, and manner restrictions upon the availability of files to members of the public.

2. Applications for an order to seal must be by written motion filed with the clerk. (On occasion a judicial officer may need to accept a filing at a time when the Clerk's Office is not open. In that case, a judicial officer will forward the motion to the Clerk as soon as possible.) To the maximum extent possible without compromising the interest sought to be protected by sealing, in a case involving a search warrant, a movant shall identify in the caption of the motion the premises or person to be searched.

3. Applications for sealing shall cover as few documents as necessary to protect the claimed interest. For example, if the reason for sealing is to protect an informant's identity, ordinarily only the affidavit would need to be sealed, not the warrant, inventory, and return.

4. Ordinarily in search warrant cases, the Court will act on motions to seal *ex parte*, but indulge a presumption in favor of public access to court documents. Orders to seal will be public documents from the time of filing.

5. Any person may move the Court in writing to unseal any sealed document. The Clerk will promptly transmit a copy of any such motion to all counsel of record in the relevant case (the United States Attorney in any search warrant case) and to the judicial officer who issued the sealing order. Any opposition to unsealing shall be filed within the time allowed by S.D. Ohio Civ. R. 7.2. In deciding a motion to unseal, the Court will examine the sealed document in-camera. The Court may order the entire document or a redacted version thereof unsealed. If the initial ruling on an unsealing motion is made by a Magistrate Judge, appeal will lie in the first instance to the District Judge.

6. All sealed documents shall remain sealed until further Court order, except that all sealed search warrant documents (warrants, affidavits, returns, and inventories) filed on or after February 1, 2002, shall be unsealed by the Clerk without further order six months from the date of filing unless the United States or some others interested party shows good cause to keep the document sealed.

7. This Order is effective February 1, 2002. It has been re-adopted as of January 6, 2005, to reflect concurrence of all the Dayton judges.

January 6, 2005.

Walter H. Rice
United States District Judge

Thomas M. Rose
United States District Judge

Michael R. Merz
Chief United States Magistrate Judge

Sharon L. Ovington
United States Magistrate Judge

KENNETH [illegible]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

IN RE:

GENERAL ORDER NO. 98-1

FEES FOR PRO HAC VICE AND READMISSION TO THE BAR OF THIS COURT

Pursuant to Local Rule 83.4 of this Court and subject to the provisions of the Plan for the Admissions Fund of this Court filed November 5, 1985 (attached), each attorney seeking to be admitted Pro Hac Vice to the Bar of this Court for the limited purpose of participating in a specific case or action must tender a fee to the Clerk of the Court in the amount of $50 immediately upon the filing of the request for such admission. Such fee shall be paid and collected upon every such Pro Hac Vice application. Should the application not be granted, the fee will be returned to the applicant.

Each attorney, previously disbarred or suspended from the Bar of this Court, shall tender a fee to the Clerk of this Court in the amount of $50 upon application for readmission to the Bar of this Court. Such readmission shall be subject to the Order for Readmission of this Court which may require the successful completion of the next subsequent written examination for admission to the Bar of this Court administered pursuant to Local Rule 83.4(d). Should the Application for Readmission not be granted, the fee will be returned to the applicant.

All such fees collected by the Clerk shall be deposited for the use of the Bar and the Court in the Court's Attorney Admission Fund established and administered pursuant to the herein stated Plan for administration of the Admission Funds.

The provisions of this General Order shall become effective upon its approval by the Court and filing by the Clerk of this Court.

IT IS SO ORDERED.

Walter Herbert Rice, Chief Judge
United States District Court

Edmund A. Sargus, Jr.
United States District Judge

Herman J. Weber
United States District Judge

Algenon D. Marbley
United States District Judge

James L. Graham
United States District Judge

Joseph P. Kinneary
Senior United States District Judge

George C. Smith
United States District Judge

S. Arthur Spiegel
Senior United States District Judge

Sandra S. Beckwith
United States District Judge

John D. Holschuh
Senior United States District Judge

Susan J. Dlott
United States District Judge

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

ORDER AMENDING
PRO HAC VICE ORDER

General Order 00-1

IT IS ORDERED that General Order No. 98-1, filed March 5, 1998, is further amended, in addition to the amending order filed September 21, 1998, to also provide that the $50 fee imposed in General Order 98-1 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.

This order does not relieve or rescind the requirement to file an application to appear Pro Hac Vice. All attorneys not admitted to the Bar of this Court, seeking admission to appear in a specific case, must file an application to appear Pro Hac Vice pursuant to the Federal Rules of Civil and Criminal Procedure and the Local Rules of this Court.

The provisions of this Order shall become effective upon its approval by the Court and filing by the Clerk of this Court.

IT IS SO ORDERED.

DATED: 2-18-00

Walter Herbert Rice, Chief Judge
United States District Court

Herman J. Weber
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
Filed 9-29-98

IN RE: GENERAL ORDER 98-3

DISCLOSURE OF PRETRIAL SERVICES REPORT (PS3) FOR GOOD CAUSE

Order

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

Walter Herbert Rice, Chief Judge
United States District Court

Sandra S. Beckwith
United States District Judge

Herman J. Weber
United States District Judge

Susan J. Dlott
United States District Judge

James L. Graham
United States District Judge

Edmund A. Sargus, Jr.
United States District Judge

George C. Smith
United States District Judge

Algenon L. Marbley
United States District Judge

Joseph P. Kinneary
Senior United States District Judge

S. Arthur Spiegel
Senior United States District Judge

John D. Holschuh
Senior United States District Judge

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

In Re: REIMBURSEMENT OF ATTORNEY EXPENSES IN INDIGENT LITIGATION

GENERAL ORDER NO. 00-2

To enable counsel representing litigants proceedings *in forma pauperis* to more effectively represent their clients, there is hereby created a fund (the "Expense Reimbursement Fund) for reimbursement of expenses incurred in such representation in accordance with the following guidelines:

1. The Expense Reimbursement Fund shall be allocated $10,000 initially from the Attorney Admission Fund. Disbursements from the Fund shall be made by the Clerk on order of a judicial officer. Future allocations will be made on an annual basis at the discretion of the Court.

2. The Court will reimburse the following categories of expenses:

    1. Mileage for necessary travel beyond 100 miles from the courthouse at the location of court at which the case is pending at the then-current Government mileage rate.

    2. Copying at cost or $.15 per page, whichever is less, but no reimbursement will be made for copying cases or articles.

    3. Court reporter attendance fees for depositions of essential witnesses, and transcription fees for such depositions if approved in advance by the Court.

    4. Necessary long distance telephone calls and postage.

    5. Expert witness fees if approved in advance by the Court.

    6. Interpreters' fees and expenses.

    7. Investigative services, if approved in advance by the Court.

8. Lay witness fees for attendance at depositions and mileage.

3. The Court will not reimburse expenses for any other category of expenses, including without limitation the costs of lodging and meals or computerized research expenses.

4. The maximum allowable reimbursement per case is $300 without prior Court approval. Requests for reimbursement must be accompanied by an explanation for their necessity and proof that they were incurred.

5. Amounts reimbursed must be repaid to the Expense Reimbursement Fund if the case is settled with a payment of money, if fees and costs are awarded under 28 U.S.C. §1988 or any other fee-shifting statute, or if plaintiff is awarded monetary damages.

6. No reimbursement is available under this Order for expenses incurred by *pro se* litigants or for expenses which are reimbursable under the Criminal Justice Act.

7. The Court initially allocates $2,200 to the Cincinnati location of court, $2,100 to the Dayton location of court, and $5,700 to the Columbus location of court.

February 18, 2000.

Walter Herbert Rice, Chief Judge
United States District Court

Herman J. Weber
United States District Judge

James L. Graham
United States District Judge

George C. Smith
United States District Judge

Sandra S. Beckwith
United States District Judge

Susan J. Dlott
United States District Judge

Edmund A. Sargus, Jr.
United States District Judge

Algenon L. Marbley
United States District Judge

Joseph P. Kinneary
United States Senior District Judge

S. Arthur Spiegel
United States Senior District Judge

John D. Holschuh
United States Senior District Judge

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

In Re: REIMBURSEMENT OF PRO BONO ATTORNEY EXPENSES IN INDIGENT LITIGATION

GENERAL ORDER NO. 05-1

To enable counsel representing litigants proceeding *in forma pauperis* to more effectively represent their clients, there is hereby created the Expense Reimbursement Fund for reimbursement of expenses incurred in such representation in accordance with the following guidelines:

1. The Expense Reimbursement Fund shall be allocated $30,000 initially from the Attorney Admission Fund. Disbursements from the Fund shall be made by the Clerk at the order of the Chief Judge upon the recommendation of the judicial officer assigned to the case in question. Future allocations will be made on an annual basis at the discretion of the Court.

2. The Court will reimburse the following categories of expenses:

    1. Mileage for necessary travel beyond 100 miles from the courthouse at the location of court where the case is pending at the then-current Government mileage rate.

    2. Copying at cost or $.15 per page, whichever is less.

    3. Court reporter attendance fees for depositions of essential witnesses, and transcription fees for such depositions, if approved in advance by the Court.

    4. Necessary long distance telephone calls and postage.

    5. Expert witness fees, if approved in advance by the Court.

    6. Interpreters' fees and expenses.

7. Investigative services, if approved in advance by the Court.

8. Lay witness fees for attendance at depositions and mileage.

3. The maximum allowable reimbursement per case shall be $1,000, without prior Court approval. Requests for reimbursement must be accompanied by an explanation for their necessity and proof that they were actually incurred.

4. Amounts reimbursed must be repaid to the Expense Reimbursement Fund if the case is settled with a payment of money, if fees and costs are awarded under 28 U.S.C. § 1988 or any other fee-shifting statute, or if plaintiff is awarded monetary damages.

5. No reimbursement is available under this Order for expenses incurred by *pro se* litigants or for expenses which are reimbursable under the Criminal Justice Act.

6. The Court allocates $10,000 to the Cincinnati seat of court, $10,000 to the Dayton seat of court, and $10,000 to the Columbus seat of court. The Clerk shall transfer those amounts from the Attorney Admission Fund to three separate accounts entitled, "Expense Reimbursement Fund."

September 30th, 2005

Sandra S. Beckwith, Chief Judge
United States District Court

Susan J. Dlott
United States District Judge

Edmund A. Sargus, Jr.
United States District Judge

Algenon L. Marbley
United States District Judge

Thomas M. Rose
United States District Judge

Gregory L. Frost
United States District Judge

Michael H. Watson
United States District Judge

S. Arthur Spiegel
United States Senior District Judge

John D. Holschuh
United States Senior District Judge

George C. Smith
United States Senior District Judge

Herman J. Weber
United States Senior District Judge

James L. Graham
United States Senior District Judge

Walter H. Rice
United States Senior District Judge

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

IN THE MATTER OF:

BANKRUPTCY JURISDICTION AND
PROCEDURE UNDER THE BANKRUPTCY
AMENDMENTS OF 1984

GENERAL ORDER NO. 05-02

By virtue of 28 U.S.C. §§151 and 157 (a) and §104 of Title I of the Bankruptcy Amendments Act of 1984, IT IS HEREBY ORDERED that all cases under the Bankruptcy Act and Title 11 of the United States Code and all actions, matters or proceedings arising under Title 11 of the United States Code or arising in or related to a case under the Bankruptcy Act and Title 11 of the United States Code shall be referred to the Bankruptcy Judges for this Judicial District, who shall exercise the authority conferred under the Bankruptcy Amendments Act of 1984, except as otherwise provided by law or by rule or order of the District Court. This Order supercedes the prior Order of Chief Judge Carl B. Rubin, dated July 30, 1984, and filed under Case No. MS-1-84-152.

IT IS SO ORDERED:

DATED October 24th, 2005

Sandra S. Beckwith, Chief Judge
United States District Court

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
AND
UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
General Order 05-04

GENERAL ORDER, EFFECTIVE JANUARY 1, 2006, ADOPTING AMENDMENTS TO THE LOCAL BANKRUPTCY RULES AND FORMS FOR THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF OHIO

Following various meetings and communications among the United States Bankruptcy Judges for the Southern District of Ohio, including communications with members of the Bar and a period of public comment, the United States Bankruptcy Judges unanimously recommended to the United States District Court the adoption of Amendments to the United States Bankruptcy Court for the Southern District of Ohio Local Bankruptcy Rules and Forms effective January 1, 2006.

In accordance with Federal Rule of Bankruptcy Procedure 9029 and Rule 83 of the Federal Rules of Civil Procedure, the United States District Judges for the Southern District of Ohio have unanimously approved and **hereby adopt, effective January 1, 2006, the Amendments to the United States Bankruptcy Court for the Southern District of Ohio Local Bankruptcy Rules and Forms,** which, following January 1, 2006, shall govern practice in all bankruptcy cases and proceedings referred by this Court to the Bankruptcy Judges of the District and, where applicable, shall also govern practice in all bankruptcy cases and proceedings before the United States District Judges of this District.

IT IS SO ORDERED.

December 16, 2005

Thomas F. Waldron

THOMAS F. WALDRON, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT
FOR THE COURT

SANDRA S. BECKWITH, CHIEF JUDGE
UNITED STATES DISTRICT COURT
FOR THE COURT

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AND IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

IN THE MATTER OF:
SECURITY PROCEDURES

SIXTH CIRCUIT GENERAL ORDER NO. _____

SOUTHERN DISTRICT OF OHIO GENERAL ORDER NO. 05-05

This order supersedes and replaces all prior orders of these Courts on these subjects and establishes the security procedures to screen all persons entering United States Courthouses in the Southern District of Ohio. It is entered pursuant to authority reserved to local building security committees in Southern District of Ohio Civil Rules 83.2(e).

SECURITY PROCEDURES

Screening of Persons Entering the Building

1. The United States Marshal Service Court Security Officers shall operate an x-ray machine and a walkthrough magnetometer at the public entrance on the first floor of each United States Courthouse (referred to hereafter as the "Facility" or "Facilities") for the purpose of screening persons entering the building. All persons and their belongings are subject to search by the United States Marshal Service while in these Facilities.

2. All employees (except those indicated in item number 5 listed below) and persons having business with the Courts or any other offices in these Facilities shall pass through the walkthrough magnetometer for the purpose of detection of firearms, explosives, pepper spray, incendiary devices, knives, or any other item prohibited by law, regulation or court order from introduction into these Facilities. These persons shall submit to further screening by a United States Marshal Service Court Security Officer if the readings of the magnetometer indicate the presence of metallic objects. This further screening may encompass the removal of all metallic objects on their person, screening by a portable hand-held metal detector, or other screening procedures as necessary. Any person refusing to submit to this screening process shall be denied access to these Facilities.

3. All employees (except those indicated in item number 5 listed below) and persons having business with the Courts or any other offices in these Facilities who are carrying, delivering or otherwise transporting any briefcase, suitcase, package, electronic device (including cell phones, pagers, electronic organizers and portable computers), or any other container (hereafter referred to as "carried item") shall surrender such carried item for screening through an x-ray device and/or personal inspection by a Court Security Officer. Any person refusing to submit the carried item for screening through an x-ray device and/or personal inspection by a Court Security Officer shall be denied access to these Facilities. If a Court Security Officer concludes, after x-ray and/or personal inspection, that any item which the person seeks to bring into these Facilities contains firearms, explosives, pepper spray, incendiary devices, knives, or any other dangerous item prohibited by law, regulation or court order, the individual may be subject to arrest.

The following persons are exempt from the screening procedures set forth above (with appropriate official identification):

a. Judges of the United States Court of Appeals for the Sixth Circuit; and

b. Judges of the United States District and Bankruptcy Courts for the Southern District of Ohio; and

c. United States Magistrate Judges for the Southern District of Ohio; and

d. Other judges of the United States Courts who are serving by designation or assignment in these Facilities; and

e. Deputies of the United States Marshal Service, contract guards on duty, and employees of contractors of the United States Marshal Service who serve as Court Security Officers who are authorized by law and agency regulations to carry firearms; and

f. Probation Officers who are employed by the United States Probation Office who are authorized by law and agency regulations to carry firearms; and

g. Employees of the United States Federal Protective Service of the Department of Homeland Security and their contract private security officers who are authorized by law and agency regulations to carry firearms; and

h. Pretrial Services officers who are employed by the United States Pretrial Services Office who are authorized by law and agency regulations to carry firearms.

4. No person having authorized access to security areas after having passed through the screening devices or having authorized access via key, card key or other device, shall permit any person access to these Facilities or to any elevator, locked stairwell door, or any other locked door in these Facilities without proper written authorization from the employee's appropriate agency manager.

5. Only government employees and contract employees authorized by their appropriate agency manager and possessing an authorized card key may enter these Facilities through any locked entrance.

Cameras and Recording Devices

No camera or recording device is permitted in these Facilities:

a. Cameras and recording devices are permitted if authorized for a specific occurrence by a Judge of the United States Court of Appeals for the Sixth Circuit, a Judge of the United States District Court for the Southern District of Ohio, the Circuit Executive for the United States Court of Appeals for the Sixth Circuit, the Clerk of the United States District Court for the Southern District of Ohio, or their authorized representatives. The permitting authority shall notify, in writing, the United States Marshal Service of such authorization.

b. Employees of the United States Courts and the tenant agencies in these Facilities may possess cameras and recording devices. No recording or picture may be made of the courts, court hearings or other court functions without specific authorization by a court official (as listed above).

c. The General Services Administration's Property Manager or his designee can authorize an individual or contract group to possess a camera or recording device for the purpose of maintaining or enhancing a Facility, to include repair and alterations. The permitting authority shall notify, in writing, the United States Marshal Service of such authorization.

d. Tenant Managers or their designees are required to obtain permission and authorization from the United States Marshal Service to permit, for a specific occurrence, authorization for a person or group to possess and carry cameras and/or recording instruments into these Facilities.

Computers, Cellular Phones, Pagers and Related Electronic Equipment

1. The use of portable computers and related electronic equipment in courtrooms and facilities adjacent to courtrooms is subject to restrictions and requirements imposed by a judicial officer in connection with a case pending before that judicial officer.

2. **The use of cellular phones in chambers or courtrooms is prohibited** unless specifically authorized by the judicial officer presiding therein. Cellular phones may be used in the public hallways so long as such use does not disrupt courtroom or other official proceedings.

3. Cellular phones and pagers shall be set in a mode to emit no audible signals while on any of the courtroom floors in these Facilities.

4. **Cellular phones or other electronic devices capable of taking photographs or making recordings are subject to the provisions of Southern District of Ohio Local Rule 83.2, which deals with cameras, recording devices and other electronic devices.[1] An exception to the restrictions contained in this Order and in Southern District of Ohio Local Rule 83.2 is the use of non-flash cameras and recording devices during a Naturalization hearing and on the floor of the Courthouse where the hearing is being held. This permission does not include taking photographs of United States Deputy Marshals, Court Security Officers, other law enforcement officers, or any court security device. Photographs of this nature are strictly prohibited.**

Except as specifically provided herein, no person shall possess a weapon in these Facilities.

It is illegal to possess firearms, explosives, pepper spray, incendiary devices, knives or any other dangerous weapon in any federal building with or without the intent to commit a crime (Title 18, U.S.C. § 930(a)(b)); persons who do so are subject to arrest. Firearms, explosives, pepper spray, incendiary devices, knives and any other dangerous weapons brought into a Facility

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[1]The provisions of Southern District of Ohio Local Rule 83.2 are incorporated herein by reference. A copy of which is attached hereto.

will be confiscated by the United States Marshal Service, except as follows:

a. Employees of the United States Marshal Service, including Court Security Officers, who are authorized by law and agency regulations to carry firearms, may possess firearms within this Facility.

b. Employees of the United States Probation Office, who are authorized by law and agency regulations to carry firearms in the performance of their official duties, may possess firearms in these Facilities to the extent necessary to transport such firearms by the most direct route available to and from the offices of the Probation Department. In accordance with regulations of the Probation Department, all firearms shall be secured while present in the Facilities and within the offices of the Probation Department. The Chief Probation Officer will notify the United States Marshal Service, in writing, of the names of the officers with the authorization to carry firearms.

c. United States Federal Protective Service Officers and their contract security officers of the Department of Homeland Security, who are authorized by law and agency regulations to carry firearms in the performance of their official duties, may possess firearms in these Facilities.

d. Employees of the United States Pretrial Services, who are authorized by law and agency regulations to carry firearms in the performance of their official duties, may possess firearms in these Facilities to the extent necessary to transport such firearms by the most direct route available to and from the office of Pretrial Services. In accordance with regulations of the United States Pretrial Services Department, all firearms shall be secured while present in a Facility and within the offices of Pretrial Services. The Chief of Pretrial Services will notify the United States Marshal Service, in writing, of the names of officers with the authorization to carry firearms.

e. Agents, officers and inspectors of all federal law enforcement agencies who are authorized by law and agency regulations to make arrests and carry firearms in the performance of their official duties may be armed in these Facilities only under the following circumstances:

1) While transporting a defendant/prisoner for an initial appearance before a Magistrate Judge and/or an authorized purpose in the United States Attorney's satellite office. In such circumstances, a call prior to arrival at a Facility must be placed by the agent, inspector or representative of same to the United States Marshal Service advising that an armed agent or inspector of that agency will be transporting a prisoner into a Facility. Additional internal policy, developed by the United States Marshal Service, will be required (such as lapel pins, entry log signature, etc.).

2) State and Local Law Enforcement Officers, while in uniform, may enter and retain their weapons while investigating/responding to a reported crime within a Facility, but excluding the courtroom floors.

These provisions regarding weapons will be in effect unless otherwise authorized, for a specific occurrence, by the United States Marshal, Chief Deputy United States Marshal, or his designee.

Any person who refuses to abide by this Order governing the possession of weapons will not be permitted access to these Facilities.

VIOLATIONS

A violator of this General Order is **subject to arrest and may be charged** with any applicable criminal offense and/or contempt of court. Property brought into these Facilities or used herein in violation of this General Order is **subject to confiscation and forfeiture** upon court order.

ORIGINAL

CJ Security (6CA)
FAX: CJ Beckwith
Circ Exec

UNITED STATES MARSHAL SERVICE'S SECURITY ALERT PLAN

The UNITED STATES MARSHAL SERVICE SECURITY ALERT PLAN is divided into five levels. Escalating levels provide additional security requirements designed to supplement security procedures already mandated by United States Marshal Service policy.

When the United States Marshal Service Security Alert protocol is activated, the national policy guidelines directing security levels will supersede this court order.

It is so **ORDERED** on behalf of the entire Court this 30th day of September, 2005.

Chief Judge Danny J. Boggs
United States Circuit Court

Judge Algenon L. Marbley
United States District Court

Chief Judge Sandra S. Beckwith
United States District Court

Judge Thomas M. Rose
United States District Court

Judge Susan J. Dlott
United States District Court

Judge Gregory L. Frost
United States District Court

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

Judge Michael H. Watson
United States District Court

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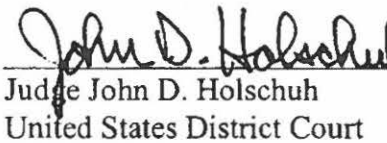
United States District Court

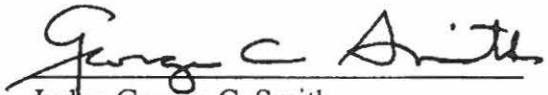
Judge Michael H. Watson
United States District Court

SENIOR JUDGES:

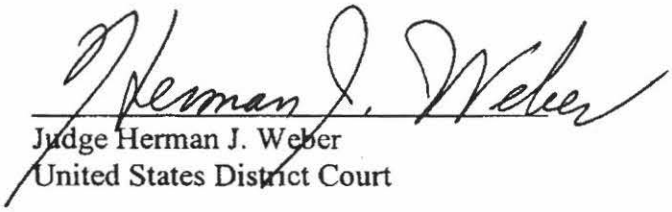
Judge S. Arthur Spiegel
United States District Court



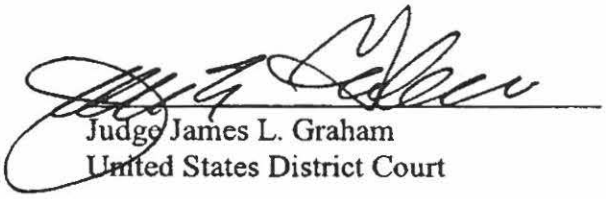
Judge John D. Holschuh
United States District Court



Judge George C. Smith
United States District Court



Judge Herman J. Weber
United States District Court



Judge James L. Graham
United States District Court

Judge Walter H. Rice
United States District Court

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

Procedure for Assigning Multi-Defendant Criminal Actions

Filed 12-18-98

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

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

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

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

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

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

IT IS SO ORDERED

Walter Herbert Rice, Chief Judge
United States District Court

Herman J. Weber, Judge
United States District Court

James L. Graham, Judge
United States District Court

George C. Smith, Judge
United States District Court

Sandra S. Beckwith, Judge
United States District Court

Susan J. Dlott, Judge
United States District Court

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

Algenon L. Marbley, Judge
United States District Court

Joseph P. Kinneary, Senior Judge
United States District Court

S. Arthur Spiegel, Senior Judge
United States District Court

John D. Holschuh, Senior Judge
United States District Court