



LOCAL RULES OF COURT

Effective: February 1, 2013

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

LOCAL CIVIL RULES OF COURT

LCvR 1.1 SCOPE OF RULES

A. Title and Citation. These rules shall be known as the Local Rules of the United States District Court for the Western District of Pennsylvania. They may be cited as "LCvR."

B. Scope of Rules. These rules shall apply in all proceedings in civil and criminal actions.

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

D. Rule of Construction and Definitions. United States Code, Title 1, Sections 1 to 5, shall, as far as applicable, govern the construction of these rules. Unless the context indicates otherwise, the word "Judge" refers to both District Judges and Magistrate Judges.

LCvR 1.2 RULES AVAILABLE ON WEBSITE OR IN OFFICE OF CLERK OF COURT

Copies of these rules, as amended and with any appendices attached hereto, are available on the Court's website (www.pawd.uscourts.gov/) or in hard copy from the Clerk of Court's office for a reasonable charge to be determined by the Board of Judges. When amendments to these rules are made, notices of such amendments shall be provided on the Court's website, in the legal journals for each county and on the bulletin board in the Clerk of Court's office. When amendments to these rules are proposed, notice of such proposals and of the ability of the public to comment shall be provided on the Court's website, in the legal journals for each county and on the bulletin board in the Clerk of Court's office.

LCvR 3 ASSIGNMENT TO ERIE, JOHNSTOWN OR PITTSBURGH DOCKET

Where it appears from the complaint, petition or other pleading that the claim arose OR any plaintiff or defendant resides in: Crawford, Elk, Erie, Forest, McKean, Venango, or Warren County, the Clerk of Court shall give such complaint, petition or other pleading an Erie number and it shall be placed on the Erie docket. Should it appear from the complaint, petition or other pleading that the claim arose OR any plaintiff or defendant resides in: Bedford, Blair, Cambria, Clearfield or Somerset County, the Clerk of Court shall give such complaint, petition or other pleading a Johnstown number and it shall be placed on the Johnstown docket. All other cases or matters for litigation shall be docketed and processed at Pittsburgh. In the event of a conflict between the Erie and Johnstown dockets, the Clerk of Court shall place the action on the plaintiff's choice of those two dockets.

LCvR 5.1 GENERAL FORMAT OF PAPERS PRESENTED FOR FILING

A. Filing and Paper Size. In order that the files in the Clerk of Court's office may be kept under the system commonly known as "flat filing," all papers presented to the Court or to the Clerk of Court for filing shall be flat and as thin as feasible. Further, all pleadings and other documents presented for filing to the Court or to the Clerk of Court shall be on 8½ by 11 inch size paper, white in color for scanning purposes and electronic case filing (ECF).

B. Lettering. The lettering or typeface shall be clearly legible and shall not be smaller than 12 point word processing font or, if typewritten, shall not be smaller than pica. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. The font type and size used in footnotes shall be the same as that used in the body of the brief. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

C. Printing on One Side. The lettering or typeface shall be on only one (1) side of a page.

D. Page Fasteners. All papers and other documents filed in this Court shall be securely fastened with a paper clip, binder clip or rubber band. The use of plastic strips, staples or other such fasteners is prohibited, with the exception that administrative and judicial records may be firmly bound.

E. Exhibits to Briefs. Exhibits to a brief or motion shall accompany the brief or motion, but shall not be attached to or bound with the brief or motion. Exhibits shall be secured separately, using either lettered or numbered separator pages to separate and identify each exhibit. Each exhibit also shall be identified by letter or number on the top right hand corner of the first page of the exhibit. Exhibits in support of a pleading or other paper shall accompany the pleading or other paper but shall not be physically bound thereto. In all instances where more than one exhibit is part of the same filing, there shall be a table of contents for the exhibits.

F. Separate Documents. Each motion and each brief shall be a separate document.

G. Exceptions on Motion. Exceptions to the provisions of this rule may be made only upon motion and for good cause or in the case of papers filed in litigation commenced *in forma pauperis*.

H. Withdrawal of Files. Records and papers on file in the office of the Clerk of Court may be produced pursuant to a subpoena from any federal or state Court, directing their production. Records and papers may be removed from the files only upon order of Court. Whenever records and papers are withdrawn, the person receiving them shall leave with the Clerk of Court a signed receipt describing the records or papers taken.

I. Exhibits. All exhibits received in evidence, or offered and rejected, upon the hearing of any cause or motion, shall be presented to the deputy clerk, who shall

keep the same in custody, unless otherwise ordered by the Court, except that the clerk may without special order permit an official court reporter to withdraw exhibits, by means of a signed descriptive receipt, for the purpose of preparing the transcript.

J. Law Enforcement Evidence. In all cases where money, firearms, narcotics, controlled substances or any matter of contraband is introduced into evidence, such evidence shall be maintained for safekeeping by law enforcement during all times when court is not in session, and at the conclusion of the case. The law enforcement agent will be responsible for its custody if the evidence is required for any purpose thereafter. See *a/so* LCrR 23.

K. Exhibits Retained by Clerk. Trial exhibits shall be retained by the deputy clerk until it is determined whether an appeal has been taken from a final judgment. In the event of an appeal, exhibits shall be retained by the deputy clerk until disposition of the appeal. Otherwise, they may be reclaimed by counsel for a period of thirty (30) days after which the exhibits may be destroyed by the deputy clerk.

LCvR 5.2 DOCUMENTS TO BE FILED WITH THE CLERK OF COURT

A. Only Original to be Filed. As to any document required or permitted to be filed with the Court in paper form, only the original shall be filed with the Clerk of Court.

B. Attorney Identification. Any document signed by an attorney for filing shall contain under the signature line the name, address, telephone number, fax number, e-mail address (if applicable) and Pennsylvania or other state bar identification number. When listing the bar identification number, the state's postal abbreviation shall be used as a prefix (e.g., PA 12345, NY 246810).

C. No Faxed Documents. Documents shall not be faxed to a Judge without prior leave of Court. Documents shall not be faxed to the Clerk of Court's office, except in the event of a technical failure with the Court's Electronic Case Filing ("ECF") system. "Technical failure" is defined as a malfunction of Court owned/leased hardware, software, and/or telecommunications facility which results in the inability of a Filing User to submit a filing electronically. Technical failure does not include malfunctioning of a Filing User's equipment.

D. Redaction of Personal Identifiers. A filed document in a case (other than a social security case) shall not contain any of the personal data identifiers listed in this rule unless permitted by an order of the Court or unless redacted in conformity with this rule. The personal data identifiers covered by this rule and the required redactions are as follows:

1. Social Security Numbers. If an individual's Social Security Number must be included in a document, only the last four digits of that number shall be used;

2. Names of minor children. If the involvement of a minor child must be mentioned, only that child's initials shall be used;

3. Dates of birth. If an individual's date of birth must be included, only the year shall be used;

4. Financial account numbers. If financial account numbers must be included, only the last four digits shall be used.

Additional personal data identifier in a criminal case document only:

5. Home addresses. If a home address must be included, only the city and state shall be listed.

E. Personal Identifiers Under Seal. A party wishing to file a document containing the personal data identifiers listed above may file in addition to the required redacted document:

1. a sealed and otherwise identical document containing the unredacted personal data identifiers, or
2. a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its(their) place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended as of right.

F. Unredacted Version Retained by Court. The sealed unredacted version of the document or the sealed reference list shall be retained by the Court as a part of the record.

G. Counsel and Parties Responsible. The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk of Court will not review each document for compliance with this rule.

LCvR 5.3 PROOF OF SERVICE WHEN SERVICE IS REQUIRED BY FED. R. CIV. P. 5

Except as otherwise provided by these rules, the filing or submission to the Court by a party of any pleading or paper required to be served on the other parties pursuant to Fed. R. Civ. P. 5, shall constitute a representation that a copy thereof has been served upon each of the parties upon whom service is required. No further proof of service is required unless an adverse party raises a question of notice.

LCvR 5.4 FILING OF DISCOVERY MATERIALS

A. No Filing of Discovery Materials. Discovery requests and responses referenced in Fed. R. Civ. P. 5(d) shall not be filed with the office of the Clerk of Court except by order of Court.

B. Discovery Materials Necessary to Decide a Motion. A party making or responding to a motion or seeking relief under the Federal Rules of Civil

Procedure shall file only that portion of discovery requests and responses as needed to decide the motion or determine whether relief should be granted.

C. Necessary Portions to be Filed With Clerk of Court. When discovery requests and responses are needed for an appeal, upon an application and order of the Court, or by stipulation of counsel, the necessary portion of the discovery requests and responses shall be filed with the Clerk of Court.

D. Custodian of Discovery Materials. The party serving discovery requests or responses or taking depositions shall retain the original and be custodian of it.

LCvR 5.5 FILING OF DOCUMENTS BY ELECTRONIC MEANS

Except for documents filed by *pro se* litigants, or as otherwise ordered by the Court, documents must be filed, signed and verified by electronic means to the extent and in the manner authorized by the Court's Standing Order regarding Electronic Case Filing Policies and Procedures and the ECF User Manual. A document filed by electronic means in compliance with this Local Rule constitutes a written document for the purposes of applying these Local Rules, the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

LCvR 5.6 SERVICE OF DOCUMENTS BY ELECTRONIC MEANS

Documents may be served through the Court's transmission facilities by electronic means to the extent and in the manner authorized by the Standing Order regarding Electronic Case Filing Policies and Procedures and the ECF User Manual. Transmission of the Notice of Electronic Filing constitutes service of the filed document upon each party in the case who is registered as a Filing User. Any other party or parties shall be served documents according to these Local Rules, the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

LCvR 7 MOTION PRACTICE AND STIPULATIONS

A. Motions Filed in Actions Pending in this Court. Motions in all civil actions pending in this Court shall comply with the applicable Federal Rules of Civil Procedure, the applicable Local Rules, the orders of the assigned Judge and the practices and procedures of the assigned Judge that are posted at the following internet link: <http://www.pawd.uscourts.gov/pages/chamber.htm>.

B. Motions Not Filed in Actions Pending in this Court. All motions of a civil nature that are not filed in a civil action pending in this Court shall comply with the applicable Federal Rules of Civil Procedure and the applicable Local Rules, shall be filed with the Clerk of Court upon payment of any appropriate filing fee, and shall be served on any interested parties. The Court's fee schedule is posted at the following internet link:
<http://www.pawd.uscourts.gov/pages/fee.htm>.

C. Discovery Motions. In addition to the general requirements of this LCvR 7, any discovery motion filed pursuant to Fed. R. Civ. P. 26 through 37 shall comply with the requirements of LCvR 37.1 and 37.2, and any motion *in limine* shall comply with the requirements of LCvR 16.1.C.4.

D. Proposed Order of Court. All motions shall be accompanied by a proposed order of Court.

E. Stipulations. The parties, without Court approval, may file a stipulation one time which extends for a period not to exceed 45 days from the original due date the time for filing either an answer to a complaint or a motion pursuant to Fed. R. Civ. P. 12.

LCvR 7.1 **DISCLOSURE STATEMENT AND RICO CASE STATEMENT**

A. Disclosure Statement.

1. Disclosure Statement Required. A corporation, association, joint venture, partnership, syndicate, or other similar entity appearing as a party or amicus in any proceeding shall file a Disclosure Statement, at the time of the filing of the initial pleading, or other Court paper on behalf of that party or as otherwise ordered by the Court, identifying all parent companies, subsidiaries, and affiliates that have issued shares or debt securities to the public. In emergency or any other situations where it is impossible or impracticable to file the Disclosure Statement with the initial pleading, or other Court paper, it shall be filed within seven days of the date of the original filing. For the purposes of this rule, "affiliate" shall be a person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified entity; "parent" shall be an affiliate controlling such entity directly, or indirectly through intermediaries; and "subsidiary" shall be an affiliate controlled by such entity directly or indirectly through one or more intermediaries.

2. Purpose of Disclosure Statement. The purpose of this Disclosure Statement is to enable the Judges of this Court to determine the need for recusal pursuant to 28 U.S.C. § 455 or otherwise. Counsel shall have the continuing obligation to amend the Disclosure Statement to reflect relevant changes.

3. Disclosure Statement Contents. The Disclosure Statement shall identify the represented entity's general nature and purpose and if the entity is unincorporated. The statement shall include the names of any members of the entity that have issued shares or debt securities to the public. No such listing need be made, however, of the names of members of a trade association or professional association. For purposes of this rule, a "trade association" is a continuing association of numerous organizations or individuals operated for the purpose of promoting the general commercial, professional, legislative, or other interests of the membership. The form of the Disclosure Statement is set forth in "Appendix LCvR 7.1A" to these Rules.

B. RICO Case Statement. Any party filing a civil action under 18 U.S.C. §§ 1961-1968 shall file with the complaint, or within fourteen (14) days thereafter, a RICO case statement in the form set forth at "Appendix LCvR 7.1B" or in another form as directed by the Court.

LCvR 8 PLEADING UNLIQUIDATED DAMAGES

No party shall set forth in a pleading originally filed with this Court a specific dollar amount of unliquidated damages in a pleading except as may be necessary to invoke the diversity jurisdiction of the Court or to otherwise comply with any rule, statute or regulation which requires that a specific amount in controversy be pled in order to state a claim for relief or to invoke the jurisdiction of the Court.

LCvR 10 PRO SE CIVIL RIGHTS ACTIONS BY INCARCERATED INDIVIDUALS

A. Approved Form Required. All *pro se* civil rights actions filed in this district by incarcerated individuals shall be submitted on the Court approved form supplied by the Clerk of Court. If the plaintiff does not use the Court approved form, the complaint must substantially follow the form. Any complaint that does not utilize or substantially follow the form, or does not comply with the requirements set forth herein, may be returned to the *pro se* petitioner with a copy of the court's standardized form, a statement of reasons for its return and a directive that the prisoner resubmit the claims outlined in the original filing in compliance with the Court's requirements.

A properly filed complaint must:

1. be submitted on the required form;
2. identify each defendant in the caption of the complaint; and
3. be signed by the plaintiff;

If additional pages are needed, they must be neatly written or typed, on one side only, of 8½ by 11 inch paper, white in color for scanning purposes and ECF.

B. Responsibilities; Service. All individuals filing *pro se* civil rights actions assume responsibilities inherent to litigation. Incarcerated individuals are not relieved of these responsibilities. One important obligation is the service of a properly filed complaint. Failure to comply with the requirements set forth herein may render the service of the complaint impossible and subject to dismissal for failure to prosecute.

To effectuate proper service, a plaintiff must provide:

1. an identical copy of the complaint for each named defendant. It is the plaintiff's responsibility, not that of the Clerk of Court or the Court, to submit these copies;

2. a completed United States Marshals 285 Form for each and every defendant named in the complaint. Additional copies of this form are available either through the United States Marshal's Office or the Clerk of Court;
3. a completed **Notice of Lawsuit and Waiver of Service of Summons** form for each and every defendant named in the complaint who **is not** an employee, or agency of, the federal government sued in his or her official capacity. Additional copies of this form are available through the Office of the Clerk of Court; and
4. a completed **Summons** form for each and every defendant that **is** an employee, or agency of, the federal government, as well as an identical copy of the complaint and a completed summons form for service on the Attorney General of the United States and the United States Attorney for the Western District of Pennsylvania.

C. Timing of Appointment of Counsel. Absent special circumstances, no motions for the appointment of counsel will be granted until after dispositive motions have been resolved.

D. Appeal. The *pro se* plaintiff shall have thirty (30) days to file an appeal with the Third Circuit Court of Appeals from a final decision of the District Court on a dispositive motion. Where it appears that the papers filed by a prisoner show that he had delivered his notice of appeal to the prison authorities within 30 days after the date of judgment from which the appeal is taken, the time for filing the formal notice of appeal shall be extended for a period not to exceed 30 days beyond the time required by Rule 4 of the Federal Rules of Appellate Procedure.

E. Powers of a Magistrate Judge. Within 21 days of commencement of a civil rights proceeding, the plaintiff shall execute and file a "CONSENT TO JURISDICTION BY UNITED STATES MAGISTRATE JUDGE" form, either consenting to the jurisdiction of the Magistrate Judge or electing to have the case randomly assigned to a District Judge. Respondent shall execute and file within 21 days of its appearance a form either consenting to the jurisdiction of the Magistrate Judge or electing to have the case randomly assigned to a District Judge. If all parties do not consent to Magistrate Judge jurisdiction, a District Judge shall be assigned and the Magistrate Judge shall continue to manage the case consistent with 28 U.S.C. § 636.

The "CONSENT TO JURISDICTION BY UNITED STATES MAGISTRATE JUDGE" form is available on this Court's website (www.pawd.uscourts.gov). If a party elects to have the case assigned to a District Judge, the Magistrate Judge shall continue to manage the case by deciding non-dispositive motions and submitting reports and recommendations on the petition and on dispositive motions, unless otherwise directed by the District Judge.

Comment (June 2008)

With regard to LCvR 10.D, examples of final judgments are Court orders that: 1) grant a motion to dismiss, or a motion for judgment on the pleadings or a motion for summary judgment **AND** 2) end all claims against all defendants. If a Court order ends fewer than all claims against all defendants, it generally cannot be appealed to the Third Circuit Court of Appeals until there is a subsequent Court order that ends all of the remaining claims against all of the remaining defendants.

LCvR 16.1 PRETRIAL PROCEDURES

A. Scheduling and Pretrial Conferences -- Generally.

1. There shall be two phases of pretrial scheduling as set forth in LCvR 16.1.B: (1) a discovery phase to be governed by an initial scheduling order; and (2) a post-discovery phase to be governed by a final scheduling order.
2. As soon as practicable but not later than thirty (30) days after the appearance of a defendant, the Court shall enter an order, which may be revised as set forth in LCvR 16.1.A.3 below, setting forth the date and time of an initial scheduling conference and the dates by which the parties shall confer and file the written report required by Fed. R. Civ. P. 26(f), which shall be in the form set forth at "Appendix LCvR 16.1A" to these Rules and shall be referred to as the Rule 26(f) Report. The Court may defer the initial scheduling conference if a motion that would dispose of all of the claims within the Court's original jurisdiction is pending.
3. The Court may conduct such further conferences as are consistent with the circumstances of the particular case and this Rule, and may revise any prior scheduling order for good cause.
4. Unrepresented parties are subject to the same obligations as those imposed upon attorneys representing a party. All counsel and unrepresented parties shall have sufficient knowledge of the claim asserted, defenses presented, relief sought, and legal issues fairly raised by the pleadings so as to allow for a meaningful discussion of all such matters at each conference.
5. Upon request or *sua sponte*, the Court may permit attendance by telephone of counsel or unrepresented parties at any conference.
6. Scheduling conferences shall not be conducted in any civil action involving Social Security claims, bankruptcy appeals, *habeas corpus*, government collection and prisoner civil rights, unless the Court to whom the case is assigned directs otherwise.

B. Scheduling Orders and Case Management.

1. Initial Scheduling Order. At the initial scheduling conference or as soon thereafter as practicable, the Court shall enter an initial scheduling order that sets forth dates for the following:

- a. the topics identified in Fed. R. Civ. P. 16(b)(3)(A);
- b. completion of fact discovery;
- c. a post-discovery status conference to be held within thirty (30) days after the completion of fact discovery; and
- d. designation, if appropriate, of the case for arbitration, mediation, early neutral evaluation, or appointment of a special master or other special procedure;

2. Additional Topics. The initial scheduling order may also address:

- a. The topics identified in Fed. R. Civ. P. 16(b)(3)(B)(i)-(vi);
- b. Dates for completion of expert discovery, including the dates for expert disclosures required by Fed. R. Civ. P. 26(a)(2) and the dates by which depositions of experts shall be completed;
- c. Such limitations on the scope, method or order of discovery as may be warranted by the circumstances of the particular case to avoid duplication, harassment, delay or needless expenditure of costs; and
- d. The date to file dispositive motions at an early stage of the proceedings (i.e., before completion of fact discovery or submission of experts' reports).

3. Final Scheduling Order. At the post-discovery status conference or as soon thereafter as practicable, the Court shall enter a final scheduling order that sets forth dates for the following:

- a. Filing dispositive motions and responses thereto;
- b. Filing motions *in limine* and motions to challenge the qualifications of any proposed expert witness and/or the substance of such expert's testimony;
- c. Filing pretrial statements required by LCvR 16.1.C;
- d. Further conferences before trial including the final pretrial conference.

4. Additional Topics. The final scheduling order may also include:

- a. The presumptive trial date; and

b. Any other matters appropriate in the circumstances of the case.

5. Requirement to Confer; Scheduling Motion Certificate. Before filing a motion to modify any scheduling order, counsel or an unrepresented party shall confer with all other counsel and unrepresented parties in an effort to reach agreement on the proposed modification. Unless a motion to modify the scheduling order is filed jointly by all parties, any motion to modify shall be accompanied by a certificate of the movant denominated a Scheduling Motion Certificate stating that all parties have conferred with regard to the proposed modification and stating whether all parties consent thereto.

C. Pretrial Statements and Final Pretrial Conference.

1. By the date specified in the Court's scheduling order, which generally will be no sooner than 30 days after the close of discovery (including expert discovery), counsel for the plaintiff or an unrepresented plaintiff shall file and serve a pretrial statement. The pretrial statement shall include:

- a. a brief narrative statement of the material facts that will be offered at trial;
- b. a statement of all damages claimed, including the amount and the method of calculation of all economic damages;
- c. the name, address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises, and identifying each witness as a liability and/or damage witness;
- d. the designation of those witnesses whose testimony is expected to be presented by means of a deposition and the designation of the portion of each deposition transcript (by page and line number) to be presented (and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony);
- e. an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those that the party expects to offer and those that the party may offer if the need arises and assigning an exhibit number to those that the party expects to offer;
- f. a list of legal issues that the party believes should be addressed at the final pretrial conference;
- g. copies of all expert disclosures that the party made pursuant to Fed. R. Civ. P. 26(a)(2) with respect to expert witnesses identified in the pretrial statement pursuant to LCvR 16.1.C.1.c; and

- h.** copies of all reports containing findings or conclusions of any physician who has treated, examined, or has been consulted in connection with the injuries complained of, and whom a party expects to call as a witness at the trial of the case.
- 2.** Within 30 days of filing of the plaintiff's pretrial statement, counsel for the defendant or an unrepresented defendant shall file a pretrial statement meeting the requirements set forth in LCvR 16.1.C.1, including defenses to the damages claims asserted against the defendant by any party and a statement of all damages claimed by the defendant in connection with a counterclaim, cross-claim or third party claim, including the amount and the method of calculation of all economic damages.
- 3.** Within 30 days of the filing of the defendant's pretrial statement, counsel for any third-party defendant or an unrepresented third-party defendant shall file a pretrial statement meeting the requirements set forth above for plaintiffs and/or for defendants, as appropriate.
- 4.** Before filing a motion *in limine*, counsel or an unrepresented party shall confer with all other counsel and unrepresented parties in an effort to reach agreement on the issue to be raised by the motion. In the event an agreement is not reached, the motion *in limine* shall be accompanied by a certificate of the movant denominated a Motion *in Limine* Certificate stating that all parties made a reasonable effort to reach agreement on the issue raised by the motion.
- 5.** Following the filing of the pretrial statements, counsel and any unrepresented parties shall meet with the Court at a time fixed by the Court for a final pretrial conference. Prior to and in preparation for the conference, counsel and unrepresented parties shall:
- a.** make available for examination by opposing counsel or opposing unrepresented parties all exhibits identified in the pretrial statement and examine all exhibits made available by opposing counsel or opposing unrepresented parties;
 - b.** confer and determine in a jury case whether counsel and any unrepresented parties can agree that the case shall be tried non-jury. If an agreement is reached, the parties shall report to the Court at the conference. If no agreement is reported, no inquiry shall be made by the Court and no disclosure shall be made by any counsel or unrepresented party identifying the counsel or party who failed to agree; and
 - c.** unless previously filed or otherwise ordered, prepare a motion accompanied by or containing supporting legal authority for presentation at the final pretrial conference on any legal issues that have not been decided.
- 6.** Unless otherwise ordered by the Court, the following shall be done at the final pretrial conference:

- a.** counsel and any unrepresented party shall indicate on the record whether the exhibits of any other party are agreed to or objected to, and the reason for any objection;
 - b.** motions prepared pursuant to LCvR 16.1.C.5.c shall be presented, accompanied by or containing supporting legal authority;
 - c.** counsel and any unrepresented party shall be prepared to disclose and discuss the evidence to be presented at trial, including (a) any anticipated use of trial technology in the presentation of evidence or in the opening statement or closing argument, and (b) any anticipated presentation of expert testimony and any challenges thereto;
 - d.** counsel and any unrepresented parties shall advise the Court of any depositions that they anticipate will or may be taken after the final pretrial conference and the reason for the timing of the depositions. In the event that such deposition is for use at trial and the deposition will be taken other than by stenographic means, the party taking the deposition shall have the deposition transcribed and the transcript shall be made available for the Court to make rulings on any objections raised during the course of the deposition. Prior to use in the trial, the party offering the testimony shall edit any video recording to reflect the Court's ruling on objections;
 - e.** counsel shall have inquired of their authority to settle and shall have their clients present or available by phone. The Court shall inquire whether counsel have discussed settlement;
 - f.** counsel and any unrepresented party wishing to supplement his or her pretrial statement shall file and serve a motion to do so not less than seven (7) days before the final pretrial conference, which motion shall be granted in the absence of prejudice to another party;
 - g.** if not previously done, the Court shall schedule the case for trial; and
 - h.** such record shall be made of the conference as the Court orders or as any party may request.
- 7.** Failure to fully disclose in the pretrial statements (or, as permitted by the Court, at or before the final pretrial conference) the substance of the evidence proposed to be offered at trial, may result in the exclusion of that evidence at trial, at a hearing or on a motion unless the parties otherwise agree or the Court orders otherwise. The only exception will be evidence used for impeachment purposes.
- 8.** In the event that the civil action has not been tried within 12 months of the final pretrial conference, the Court upon request of any party shall

schedule a status conference to discuss the possibility of settlement and establish a prompt trial date.

D. Procedures Following Inadvertent Disclosure. Unless a party requests otherwise, the following language will be included in the Scheduling Order to aid in the implementation of Fed. R. Evid. 502:

1. The producing party shall promptly notify all receiving parties of the inadvertent production of any privileged or trial preparation material. Any receiving party who has reasonable cause to believe that it has received privileged or trial preparation material shall promptly notify the producing party.
2. Upon receiving notice of inadvertent production, any receiving party shall immediately retrieve all copies of the inadvertently disclosed material and sequester such material pending a resolution of the producing party's claim either by the Court or by agreement of the parties.
3. If the parties cannot agree as to the claim of privilege, the producing party shall move the Court for a resolution within 30 days of the notice set forth in subparagraph (a). Nothing herein shall be construed to prevent a receiving party from moving the Court for a resolution, but such motion must be made within the 30-day period.

LCvR 16.2 ALTERNATIVE DISPUTE RESOLUTION

A. Effective Date and Application. LCvR 16.2 shall govern all actions as the Board of Judges shall determine, from time to time, commenced on or after June 1, 2006, with the exception of Social Security cases and cases in which a prisoner is a party. Cases subject to LCvR 16.2 also remain subject to the other Local Rules of the Court.

B. Purpose. The Court recognizes that full, formal litigation of claims can impose large economic burdens on parties and can delay resolution of disputes for considerable periods. The Court also recognizes that an alternative dispute resolution ("ADR") procedure can improve the quality of justice by improving the parties' understanding of their case and their satisfaction with the process and the result. The Court adopts LCvR 16.2 to make available to litigants a broad range of Court-sponsored ADR processes to provide quicker, less expensive and potentially more satisfying alternatives to continuing litigation without impairing the quality of justice or the right to trial. The Court offers diverse ADR services to enable parties to pursue the ADR process that promises to deliver the greatest benefits to their particular case. In administering these Local ADR Rules and the ADR program, the Court will take appropriate steps to assure that no referral to ADR results in an unfair or unreasonable economic burden on any party.

C. ADR Options. The Court-sponsored ADR options for cases include:

1. Mediation
2. Early Neutral Evaluation
3. Arbitration

D. ADR Designation. At the Rule 26(f) "meet and confer" conference, the parties are required to discuss and, if possible, stipulate to an ADR process for that case. The Rule 26(f) written report shall (1) designate the specific ADR process that the parties have selected, (2) specify the time frame within which the ADR process will be completed, and (3) set forth any other information the parties would like the Court to know regarding their ADR designation. The parties shall use the form provided by the Court. When litigants have not stipulated to an ADR process before the Scheduling Conference contemplated by LCvR 16.1, the assigned Judge will discuss the ADR options with counsel and unrepresented parties at that conference. If the parties cannot agree on a process before the end of the Scheduling Conference, the Judge will make an appropriate determination and/or selection for the parties.

E. ADR Practices and Procedures. The ADR process is governed by the ADR Policies and Procedures, as adopted by the Board of Judges for the United States District Court for the Western District of Pennsylvania, which sets forth specific and more detailed information regarding the ADR process, and which can be accessed either on the Court's official website (www.pawd.uscourts.gov) or from the Clerk of Court.

LCvR 17.1 MINORS OR INCOMPETENT PERSONS -- COMPROMISE SETTLEMENT, DISCONTINUANCE AND DISTRIBUTION

A. Court Approval Required. No action to which a minor is a party shall be compromised, settled, discontinued or dismissed except after approval by the Court pursuant to a petition presented by the guardian of the minor or the natural guardian of the minor, such as the circumstances might require.

B. Contents of Petition. In all such cases, the minor's attorney shall file with the Clerk of Court, as part of the record, a petition containing (1) a statement of the nature of the evidence relied on to show liability, (2) the elements of damage, (3) a statement of the services rendered by counsel, (4) the expenses incurred or to be incurred and (5) the amount of fees requested. The petition shall contain written statements of minor's attending physicians, setting forth the nature of the injuries and the extent of recovery. If required by the Judge, such statements of attending physicians shall be in affidavit form. The petition shall be verified by the affidavit of the minor's counsel. In claims for property damage, the extent of the damage shall be described and the statement shall be supported by the affidavit of the person who appraised the damage or made the repairs.

C. Contents of Court Order. When a compromise or settlement has been so approved by the Court, or when a judgment has been entered upon a verdict or by agreement, the Court, upon petition by the guardian or any party to the action, shall make an order approving or disapproving any agreement entered into by the guardian for the payment of counsel fees and other expenses out of the fund created by the compromise, settlement or judgment; or the Court may make such order as it deems proper fixing counsel fees and other proper expenses. The Court shall then order the balance of the fund to be paid to the guardian of the estate of the minor qualified to receive the fund except that if the amount payable to the minor does not exceed the sum of one hundred thousand dollars (\$100,000.00), the Court may order the monies deposited in a federally insured

bank or savings and loan in an account to be marked "not to be withdrawn until majority has been attained or further order of Court." If the amount of anticipated interest would cause the account to exceed \$100,000.00, then the Court may order the deposit to be made in two or more savings institutions. If the minor has no guardian of his or her estate and the balance does not exceed ten thousand dollars (\$10,000.00), the Court on its own motion or upon petition of any person entitled to apply for the appointment of a guardian for the minor may authorize the amount of the judgment to be paid to the guardian of the person, the natural guardian, the person by whom the minor is maintained, or the minor.

D. Payment of Funds. When a judgment has been entered in favor of a minor plaintiff and no petition has been filed under the provision of Subparagraph C of this rule, the amount of the judgment shall be paid only to a guardian of the estate of the minor qualified to receive the fund. If the minor has no such guardian and the judgment does not exceed ten thousand dollars (\$10,000.00), the Court on its own motion or upon petition of any person entitled to apply for the appointment of a guardian for the minor may authorize the amount of the judgment to be paid to the guardian of the person, the natural guardian, the person by whom the minor is maintained, or the minor.

LCvR 17.2 SETTLEMENT PROCEDURE FOR SEAMAN SUITS

A. Court Approval Required. No suit in admiralty or civil action to which a seaman is a party shall be compromised, settled, discontinued or amicably or voluntarily dismissed except after approval by the Court pursuant to a petition presented by the seaman's attorney and upon payment to the Clerk of Court of the filing fee.

B. Contents of Petition. In all such cases, the seaman's attorney shall file with the Clerk of Court, as part of the record, a petition containing:

1. a statement of the essential facts relating to liability;
2. the elements of claimed damage, including a statement of amounts already paid to or on behalf of the seaman;
3. a statement of services rendered by counsel;
4. the expenses incurred or to be incurred by counsel; and
5. the amount of fees and expenses requested by counsel.

The petition shall also include copies of written statements of those physicians who have treated or examined the seaman setting forth the nature of the injuries and the extent of recovery and a copy of the release, if any, signed or to be signed by the seaman. The petition shall be verified by the seaman's attorney.

C. Seaman to Appear. No such compromise, settlement, discontinuance or dismissal shall be approved by the Court unless the seaman appears in open Court before the Judge to whom the petition is presented. At such time, the Court shall examine the seaman under oath in order to insure that the seaman's

rights are fully protected and that he or she comprehends the nature of the action being taken by him or her and on his or her behalf before such petition and release shall be approved and order entered thereon.

D. Contents of Court Order. When a compromise or settlement has been so approved by the Court, or when a judgment has been entered on a verdict or by agreement, the Court, upon petition filed by the seaman's counsel, shall make an order approving or disapproving the agreement entered into by the attorney and the seaman for the payment of counsel fees and other expenses out of the fund created by the compromise, settlement or judgment; or the Court may make such order as it deems proper, fixing counsel fees and other proper expenses. The petition to be filed by counsel for the seaman in those instances where a judgment has been entered need only contain a statement of those matters referred to in LCvR 17.2.B.1-.5. The Court shall then order the balance of the fund to be paid to the seaman unless he or she be a minor or an incompetent, in which case the Court shall order the balance of the fund to be paid to a guardian of the estate of the seaman qualified to receive the fund.

LCvR 23 CLASS ACTIONS AND COLLECTIVE ACTIONS

The following procedures will govern class action and collective action proceedings in this district, except as otherwise provided in applicable federal statutes.

A. Class Action Information.

1. The caption of the complaint in any action sought to be maintained as a class action shall include in the legend "Complaint-Class Action."
2. If not included in the Complaint, a statement shall be filed with the Complaint under a separate heading styled "Class Action Statement," which shall contain the following information:
 - a. the proposed definition of the alleged class; and
 - b. information relating to the class action, including:
 - i. the size (or approximate size) of the alleged class;
 - ii. the alleged questions of law or fact claimed to be common to the class;
 - iii. the basis upon which the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
 - iv. the basis upon which the representative parties will fairly and adequately protect the interests of the class.

B. Initial Disclosures. For any action sought to be maintained as a class action, the initial disclosures provided by all parties pursuant to Fed. R. Civ. P. 26(a)(1) shall include disclosures regarding the class certification allegations and any defenses thereto.

C. Matters to be Addressed at Initial Scheduling Conference (hereafter "Pretrial Conference"). In addition to the requirements of Fed. R. Civ. P. 16, with respect to any case in which class claims are alleged, the parties should be prepared to address the following topics at the Pretrial Conference:

1. the timing of the filing of a motion for class certification;
2. the appointment of interim class counsel;
3. the scope of any discovery necessary for resolution of any class certification motion;
4. the briefing schedule; and
5. the timing of and plan for any methods for alternative dispute resolution to be utilized.

D. Time and Expense Records. Anyone seeking Court approval for payment for legal services rendered or costs advanced in a class action will maintain contemporaneous time and expense records. Upon request of Lead Class Counsel, time and expense records will be provided to that counsel or its designee on a periodic basis. The Court will inform counsel of any specific requirements that it has regarding record keeping at the Pretrial Conference.

E. Joint Report of the Parties. At least seven (7) days prior to the Pretrial Conference, the parties shall submit a "Joint Report of the Parties and Proposed Scheduling and Discovery Order -- Class Action" setting forth their respective positions on the timing and scope of class certification discovery, the filing of a motion for class certification, and the appointment of class counsel. A form "Joint Report of the Parties and Proposed Scheduling and Discovery Order -- Class Action" is available. See "Appendix LCvR 23.E." This is in lieu of the Fed. R. Civ. P. 26(f) Report. To the extent appropriate given the facts of the case, the parties are encouraged to stipulate to any facts regarding the approximate size and definition of the class, the qualifications of proposed class counsel, and any other matters relevant to the findings to be made by the Court under Fed. R. Civ. P. 23.

F. Order Following Pretrial Conference. After the Pretrial Conference, the Court will enter an order addressing the matters discussed at the Pretrial Conference. The Court may require the parties to draft a proposed order.

G. Conference Following Class Certification Decision. After resolution of the motion for class certification, the Court will schedule a conference to discuss how the case will proceed in light of the ruling on class certification. At this conference, the parties should be prepared to discuss the following topics:

1. if a party has sought appeal of the decision pursuant to Fed. R. Civ. P. 23(f), whether or not any party will seek a stay of proceedings before the District Court;
2. disclosures not otherwise provided in initial Fed. R. Civ. P. 26(a)(1) disclosure;
3. the completion of any remaining discovery; and
4. if applicable, a plan of notice.

H. Notice to the Class. If a class is certified and notice is required under either Fed. R. Civ. P. 23 or LCvR 100.2, or otherwise directed by the Court, prior to the conference following the class certification decision, the parties shall meet and make efforts to agree on the text of the proposed class notice, the manner of class notice, and the procedures to be used to identify the class. To the extent the parties cannot agree on these matters, they shall file jointly a proposed plan for class notice and the language on which they do agree. On the matters on which they disagree, the parties may provide briefs to supplement their position.

Once the Court approves a plan of class notice and a form of class notice, the Approved Class Notice shall be posted on the Court's website, in addition to any other notice procedures approved by the Court. Notice to be posted on the Court's website shall contain the following disclaimer:

**CONTACT COUNSEL IDENTIFIED IN THIS
NOTICE IF YOU HAVE ANY QUESTIONS.
DO NOT CONTACT THE COURT.**

I. Class Settlements. Parties seeking approval of any class settlement, voluntary dismissal, or compromise shall provide the Court with sufficient information for the Court to make findings with respect to the fairness and reasonableness of the settlement to the class.

J. Collective Actions. Civil actions containing Collective Action claims involving a group or groups of multiple plaintiffs who may elect to join or "opt into" the action as plaintiffs, *e.g.*, The Age Discrimination in Employment Act, 29 U.S.C. 621, *et seq.*, or the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*, shall be managed to the extent practicable in accordance with the provisions of LCvR 23, subject to the following:

1. The caption of a Complaint asserting a Collective Action claim shall include in the legend "Complaint -- Collective Action." If not included in the Complaint, a statement shall be filed with the Complaint under a separate heading styled "Collective Action Statement," which shall contain the following:
 - a. the proposed definition of the alleged Collective Action;
 - b. the size (or approximate size) of the alleged Collective Action;and

- c. the questions of law or fact claimed to be common to the Collective Action.
2. LCvR 23.H shall not apply to Collective Action claims.
3. If a Complaint seeking class certification of Class Action claims also asserts Collective Action claims, the Class Action claims shall be governed by LCvR 23.

Comment (June 2008)

Counsel should acquaint themselves with the requirements of Fed. R. Civ. P. 23, the accompanying advisory committee notes, and the latest version of the Manual on Complex Litigation with respect to discovery and other practices in class actions.

LCvR 24 NOTICE OF CONSTITUTIONAL QUESTION

A. Notification to Court Required. In any action, suit, or proceeding in which the United States or any agency, officer, or employee thereof is not a party and in which the constitutionality of an Act of Congress affecting the public interest is drawn in question, or in any action, suit or proceeding in which a state or any agency, officer, or employee, thereof is not a party, and in which the constitutionality of any statute of that state affecting the public interest is drawn in question, the party raising the constitutional issue shall notify the Court of the existence of the question either by checking the appropriate box on the civil cover sheet or by stating on the pleading that alleges the unconstitutionality, immediately following the title of that pleading, "Claim of Unconstitutionality" or the equivalent.

B. Failure to Comply Not Waiver. Failure to comply with this rule will not be grounds for waiving the constitutional issue or for waiving any other rights the party may have. Any notice provided under this rule, or lack of notice, will not serve as a substitute for, or as a waiver of, any pleading requirement set forth in the federal rules or statutes.

LCvR 26.1 DISCOVERY MOTIONS

In addition to the general requirements of LCvR 7.1, any discovery motion filed pursuant to Fed. R. Civ. P. 26 through 37 shall comply with the requirements of LCvR 37.1 and 37.2.

LCvR 26.2 DISCOVERY OF ELECTRONICALLY STORED INFORMATION

A. Duty to Investigate. Prior to a Fed. R. Civ. P. 26(f) conference, counsel shall:

1. Investigate the client's Electronically Stored Information ("ESI"), such as email, electronic documents, and metadata, and including computer-based and other digital systems, in order to understand how such ESI is

stored; how it has been or can be preserved, accessed, retrieved, and produced; and any other issues to be discussed at the Fed. R. Civ. P. 26(f) conference, including the issues in LCvR 26.2.C.

2. Identify a person or persons with knowledge about the client's ESI, with the ability to facilitate, through counsel, preservation and discovery of ESI.

B. Designation of Resource Person. In order to facilitate communication and cooperation between the parties and the Court, each party shall, if deemed necessary by agreement under LCvR 26.2.C.7 or by the Court, designate a single resource person through whom all issues relating to the preservation and production of ESI should be addressed.

C. Duty to Meet and Confer. At the Fed. R. Civ. P. 26(f) conference, and upon a later request for discovery of ESI, counsel shall meet and confer, and attempt to agree, on the discovery of ESI, including:

1. The steps the parties have taken to preserve ESI;
2. The scope of ESI discovery and an ESI search protocol, including methods to filter the data, such as application of search terms or date ranges;
3. Procedures to deal with inadvertent production of privileged information under LCvR 16.1.D;
4. Accessibility of ESI, including but not limited to the accessibility of back-up, deleted, archival, or historic legacy data;
5. The media, format and procedures for preserving and producing ESI, including the media, format, and procedures for the Fed. R. Civ. P. 26(a)(1) initial disclosures;
6. Allocation of costs of preservation, production, and restoration (if possible and/or necessary) of any ESI;
7. The need for a designated resource person, as discussed in Section B above; and
8. Any other issues related to ESI.

Comment (June 2008)

1. LCvR 26.2.A.1 imposes a duty for counsel to discuss ESI with their client. It does not, in any way, alter a party's and counsel's obligations under law to preserve evidence, including ESI, when litigation is reasonably anticipated. Nothing in this section precludes a party from moving the Court for an appropriate preservation order.

2. Regarding LCvR 26.2.A.2, the person may be an individual party, a party's employee, a third-party, or a party's attorney.

3. Regarding LCvR 26.2.B, the resource person must have sufficient familiarity with the party's ESI to meaningfully discuss technical issues and provide reliable information relative to the preservation and production of ESI. The resource person is permitted to, and, in fact, encouraged to, involve persons with technical expertise in these discussions, including the client, client's employee, or a third party. The resource person may be an individual party, a party's employee, a third party, or a party's attorney, and may be the same person referenced in LCvR 26.2.A.2.
4. Regarding LCvR 26.2.C, the parties have an ongoing obligation to supplement their disclosures. See Fed. R. Civ. P. 26.
5. Regarding LCvR 26.2.C.1, it may be necessary to segregate ESI in order to properly preserve it.
6. Regarding LCvR 26.2.C.4, "accessibility" is used in the same manner as Fed. R. Civ. P. 26(b)(2)(B) ("A party need not provide discovery of [ESI] from sources that the party identifies as not reasonably accessible because of undue burden or cost.").
7. Regarding LCvR 26.2.C.5, the media, format, and procedures for preserving ESI may differ from the media, format, and procedures for producing ESI. For example, a party may preserve ESI in native format, and the parties may agree on production in a different format. See Fed. R. Civ. P. 34(b).

LCvR 26.3 CERTIFICATION BY SERVING OR FILING ELECTRONIC DOCUMENTS

Unless actual notice to the contrary is given in writing by the serving party, service under these Local Civil Rules of any electronic document containing an electronic representation of the original signature of any person shall constitute a certification by the server that as of the time of service he or she is in possession of the signer's actual original signature on a hard copy of the electronic document served. Service by a party or any counsel under LCvRs 33, 34 or 36 of responses to interrogatories, requests for production or requests for admission ("Written Discovery") shall constitute a certification by the server of such responses that no alteration has been made to the Written Discovery as originally served upon such party or counsel. The filing with the Court for any purpose by any party or counsel of Written Discovery or responses thereto served in electronic form pursuant to LCvRs 33, 34 and 36 shall constitute the certification by such party or counsel that the content of such electronic document so filed is the same as when it was served or received by the filing party.

LCvR 30 VIDEOTAPE DEPOSITIONS

A. Procedures.

1. Witnesses shall be placed under oath on the video-record.
2. Immediately upon the conclusion of the deposition, the operator shall label the recording by deponent's name, caption of the case, and case number.

B. Objections During Deposition.

1. Evidence objected to shall be taken subject to the objections. All objections shall be noted upon an index listing pertinent videotape reel and videotape recorder counter numbered by the operator, which index shall be retained with the videotape recording.

LCvR 31 SERVING NOTICES AND WRITTEN QUESTIONS IN ELECTRONIC FORM

Any party serving any notice or written questions pursuant to the provisions of Rules 31(a)(3), 31(a)(5) or 31(b) of the Fed. R. Civ. P. may serve such notice or written questions in electronic form.

LCvR 33 SERVING AND RESPONDING TO INTERROGATORIES TO PARTIES IN ELECTRONIC FORM

A. Electronic Form. Any party may, pursuant to Rule 33 of the Fed. R. Civ. P., serve upon any other party interrogatories in Writable Electronic Form (as hereinafter defined) and require that written answers to such interrogatories also be provided in electronic form, except that a responding party shall retain the option to produce business records in the form and manner permitted pursuant to Fed. R. Civ. P. 33(d). Upon request by any party, interrogatories must be served upon that party in Writable Electronic Form. Unless the serving party specifically requests that the written answers be provided in hard-copy form, the responding party shall provide the written answers to such interrogatories in electronic form. Any party responding in electronic form to interrogatories may serve such response in a form that may not be altered.

B. Definition of Writable Electronic Form. "Writable Electronic Form" means a format that allows the recipient to copy or transfer the text of the document into the written answer or written response, or permits the written answer or written response to be typed directly into the document, and thus avoids the need to retype the text.

C. Hard Copy Form. In the event that the parties elect not to use the electronic form for interrogatories or written responses thereto, interrogatories shall be prepared in such a fashion that sufficient space for insertion of the written responses thereto is provided after each interrogatory or sub-section thereof. The original and two (2) copies shall be served upon the party to whom such interrogatories is directed. The responding party shall insert answers on the original interrogatories served upon him or her and shall retain the original and be the custodian of it. If there is not sufficient space on the original for insertion of written responses, the responding party may use and attach supplemental pages for the written responses. In lieu of the foregoing procedure, the responding party may retype each interrogatory with the response to such interrogatory appearing immediately thereafter.

LCvR 34 SERVING AND RESPONDING TO REQUESTS FOR PRODUCTION IN ELECTRONIC FORM

A. Electronic Form. Any party may, pursuant to Rule 34 of the Fed. R. Civ. P., serve upon any other party requests for production in Writable Electronic Form (as defined in LCvR 33.B) and require that written responses thereto also be provided in electronic form, except that a party producing documents or electronically stored information shall produce them in the manner and form as may be permitted or required pursuant to Fed. R. Civ. P. 34(b)(2)(E). Upon request by any party, requests for production must be served upon the requesting party in Writable Electronic Form. Unless the serving party specifically requests that the written responses be provided in hard-copy form, the responding party shall provide the written responses to such requests for production in electronic form. Any party responding in electronic form to requests for production may serve such written response in a form which may not be altered.

B. Hard Copy Form. In the event that the parties elect not to use the electronic form for requests for production or written responses thereto, requests for production shall be prepared in such a fashion that sufficient space for insertion of the written responses thereto is provided after each request or sub-section thereof. The original and two (2) copies shall be served upon the party to whom such request for production is directed. The responding party shall insert written responses on the original request for production served upon him or her and shall retain the original and be the custodian of it. If there is not sufficient space on the original for insertion of written responses, the responding party may use and attach supplemental pages for the written responses. In lieu of the foregoing procedure, the responding party may retype each request with the written response to each such request appearing immediately thereafter.

LCvR 36 SERVING AND RESPONDING TO REQUESTS FOR ADMISSION IN ELECTRONIC FORM

A. Electronic Form. Any party may, pursuant to Rule 36 of the Fed. R. Civ. P., serve upon any other party requests for admission in Writable Electronic Form (as defined in LCvR 33.B) and require that written answers thereto also be provided in electronic form. Upon request by any party, requests for admission must be served upon the requesting party in Writable Electronic Form. Unless the serving party specifically requests that the written answers be provided in hard-copy form, the responding party shall provide the written answers to such requests for admission in electronic form. Any party responding in electronic form to requests for admission may serve such written response in a form which may not be altered.

B. Hard Copy Form. In the event that the parties elect not to use the electronic form for requests for admission or written responses thereto, requests for admission shall be prepared in such a fashion that sufficient space for insertion of the written responses thereto is provided after each request or sub-section thereof. The original and two (2) copies shall be served upon the party to whom such request for admission is directed. The responding party shall insert written answers on the original request for admission served upon him or her and shall

retain the original and be the custodian of it. If there is not sufficient space on the original for insertion of written responses, the responding party may use and attach supplemental pages for the written responses. In lieu of the foregoing procedure, the responding party may retype each request with the written response to each such request appearing immediately thereafter.

LCvR 37.1 REFERRAL OF DISCOVERY MOTIONS BY CLERK OF COURT

All discovery motions shall be referred to the member of the Court to whom the case was assigned for disposition, except in cases where such matters may be required to be submitted to the emergency or miscellaneous judge, or the judge to whom matters may be temporarily referred by the judge to whom the case was assigned.

LCvR 37.2 FORM OF DISCOVERY MOTIONS

Any discovery motion filed pursuant to Fed. R. Civ. P. 26 through 37 shall include, in the motion itself or in an attached memorandum, a verbatim recitation of each interrogatory, request, answer, response, and objection which is the subject of the motion or a copy of the actual discovery document which is the subject of the motion.

LCvR 40 ASSIGNMENT OF ACTIONS

A. Civil Action Categories. All civil actions in the Court shall be divided into the following categories:

1. antitrust and securities cases;
2. labor-management relations;
3. *habeas corpus*;
4. civil rights;
5. patent, copyright, and trademark;
6. eminent domain;
7. all other federal question cases;
8. all personal and property damage tort cases, including maritime, F.E.L.A., Jones Act, motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest;
9. insurance, indemnity, contract, and other diversity cases; or
10. government collection cases (includes *inter alia*, Health & Human Services (formerly Health, Education and Welfare) student loans,

Veterans Administration overpayment, Social Security overpayment, enlistment overpayment, Housing & Urban Development loans, General Accounting Office loans, mortgage foreclosures, Small Business Administration loans, civil and coal mine penalties, and reclamation fees).

B. Criminal Action Categories. All criminal cases in this jurisdiction shall be divided into the following categories:

1. narcotics and other controlled substances;
- 1a. narcotics and other controlled substances, 3 or more defendants;
2. fraud and property offenses;
- 2a. fraud and property offenses, 3 or more defendants;
3. crimes of violence;
4. sex offenses;
5. firearms and explosives;
6. immigration; or
7. all others.

C. Assignment of Civil Actions. Each civil action shall be assigned to a Judge who shall have charge of the case. The assignment shall be made by the Clerk of Court from a non-sequential list of all Judges arranged in each of the various categories. Sequences of Judges' names within each category shall be kept secret and no person shall directly or indirectly ascertain or divulge or attempt to ascertain or divulge the name of the Judge to whom any case may be assigned before the assignment is made by the Clerk of Court.

D. Related Actions. At the time of filing any civil or criminal action or entry of appearance or filing of the pleading or motion of any nature by defense counsel, as the case may be, counsel shall indicate on an appropriate form whether the action is related to any other pending or previously terminated actions in this Court. Relatedness shall be determined as follows:

1. all criminal actions arising out of the same criminal transaction or series of transactions are deemed related;
2. civil actions are deemed related when an action filed relates to property included in another action, or involves the same issue of fact, or it grows out of the same transaction as another action, or involves the validity or infringement of a patent involved in another action; and
3. all *habeas corpus* petitions filed by the same individual shall be deemed related. All *pro se* civil rights actions by the same individual shall be deemed related.

E. Assignment of Related Actions.

1. If the fact of relatedness is indicated on the appropriate form at time of filing, the Clerk of Court shall assign the case to the same Judge to whom the lower numbered related case is assigned.
2. If the fact of relatedness does not become known until after the case is assigned, the Judge receiving the later case may transfer the matter to the Judge to whom the earlier related case was assigned.

F. Erie or Johnstown Actions. All actions qualifying for the Erie or Johnstown calendars shall be assigned to Judges designated by the Court to hear such actions.

G. No Transfer of Actions. Except in the case of death, disability, recusal required or permitted by law or other exceptional circumstances approved by the Chief Judge, no civil action shall be transferred from one Judge to another where:

1. the action has already been transferred from one Judge to another;
2. the action has been pending for more than two years; or
3. there are dispositive motions pending.

LCvR 47 VOIR DIRE OF JURORS

A. Examination of Jurors Before Trial. During the examination of jurors before trial, the Clerk of Court, or the representative of the Clerk of Court conducting such examination, shall state the following to the jurors collectively:

1. the name and county of residence of each of the parties;
2. the nature of the suit; and
3. the caption of the action.

B. Required Questions to Jurors Collectively. The following questions shall be posed to the jurors collectively:

1. Do you know any of the parties?
2. Do you know any of the attorneys in the case? Have they or their firms ever represented you or any members of your immediate family?
3. Do you know anything about this case?
4. Are you, or any member of your immediate family, employees, former employees, or stockholders in any of the corporate parties?

C. Required Questions to Each Juror. The following questions, where appropriate, shall, *inter alia*, be put to each juror individually:

1. How old are you?
2. Where do you live? How long have you lived there?
3. What is your educational background?
4. What is your present occupation? (If retired, what was your occupation?)
5. Who is your employer? (If retired, who was your employer?)
6. Are you married? If so, what is your spouse's occupation and who is your spouse's employer? (If your spouse is retired, what was his or her occupation and who was his or her employer?)
7. Do you have any children? If so, how old are they? For whom do they work, and what do they do?
8. Do you own your own home?
9. Do you drive a car?
10. Have you ever been a party to a lawsuit?
11. Any other question, which in the judgment of the trial Judge or the Judge in charge of miscellaneous matters after application being made, shall be deemed proper.

D. Jury List. Members of the bar of this Court shall be permitted to have a copy of each jury list on condition that a receipt be signed with the Clerk of Court at the date of delivery thereof which shall contain as the substance the following certification:

"I hereby certify that I and/or my firm or associates have litigation pending and in connection therewith, I will require a list of jurors. I further acknowledge to have received a copy of said list of jurors from the Clerk of Court and hereby agree that I will not, nor will I permit any person or agency, to call or contact any juror identified on said list at his or her home or any other place, nor will I call or contact any immediate member of said juror's family, which includes his or her spouse, children, mother, father, brother, or sister, in an effort to determine the background of any member of said jury panel for acceptance or rejection of said juror.

Date: _____ "

/s/ _____

LCvR 52 FINDINGS BY THE COURT

In all non-jury cases, civil or criminal, the Court may direct suggested findings of fact and conclusions of law to be filed, and require the parties and their counsel to set forth the pages of the record and the exhibit number with specific reference to that part of the exhibit or record which it is contended supports the findings or conclusions.

LCvR 54 COSTS**A. Jury Cost Assessment.**

1. Whenever the Court finds, after 14 days notice and a reasonable opportunity to be heard, that any party or lawyer in any civil case before the Court has acted in bad faith, abused the judicial process, or has failed to exercise reasonable diligence in effecting the settlement of such case at the earliest practicable time, the Court may impose upon such party or lawyer the jury costs, including mileage and per diem, resulting therefrom.
2. The Court shall issue a rule to show cause and conduct a hearing of record to inquire into the facts prior to imposing any sanction.

B. Taxation of Costs.

1. Absent extenuating circumstances, the Clerk of Court will tax costs for a prevailing party only after the time for filing an appeal has expired. Generally, costs will not be taxed while an appeal is pending because of the possibility that the judgment may be reversed. However, if a party believes there is a reason why there should be an immediate taxation in a particular case, that party may make a written request for taxation prior to resolution of the appeal.
2. While there is no strict deadline for filing a bill of costs with the Court, a bill of costs must be filed within a reasonable period of time, which should be no later than 45 days after a final judgment is entered by the District Court.
3. Upon receipt of a bill of costs, the Clerk of Court will issue a schedule for objections and responses.
4. If after a bill of costs is filed the parties resolve the matter between themselves, the parties must immediately notify the Clerk of Court in writing that the bill of costs is being withdrawn or has been resolved.

LCvR 56 MOTION FOR SUMMARY JUDGMENT

A. Application. The procedures that follow shall govern all motions for summary judgment made in civil actions unless the Court, on its own motion, directs otherwise, based on the particular facts and circumstances of the individual action.

B. Motion Requirements. The motion for summary judgment must set forth succinctly, but without argument, the specific grounds upon which the judgment is sought and must be accompanied by the following:

1. A Concise Statement of Material Facts. A separately filed concise statement setting forth the facts essential for the Court to decide the motion for summary judgment, which the moving party contends are **undisputed and material**, including any facts which for purposes of the summary judgment motion only are assumed to be true. The facts set forth in any party's Concise Statement shall be stated in separately numbered paragraphs. A party must cite to a particular pleading, deposition, answer to interrogatory, admission on file or other part of the record supporting the party's statement, acceptance, or denial of the material fact;

2. Memorandum in Support. The supporting memorandum must address applicable law and explain why there are no genuine issues of material fact to be tried and why the moving party is entitled to judgment as a matter of law; and

3. Appendix. Documents referenced in the Concise Statement shall be included in an appendix. Such documents need not be filed in their entirety. Instead, the filing party may extract and highlight the relevant portions of each referenced document. Photocopies of extracted pages, with appropriate identification and highlighting, will be adequate.

C. Opposition Requirements. Within 30 days of service of the motion for summary judgment, the opposing party shall file:

1. A Responsive Concise Statement. A separately filed concise statement, which responds to each numbered paragraph in the moving party's Concise Statement of Material Facts by:

a. admitting or denying whether each fact contained in the moving party's Concise Statement of Material Facts is undisputed and/or material;

b. setting forth the basis for the denial if any fact contained in the moving party's Concise Statement of Material Facts is not admitted in its entirety (as to whether it is undisputed or material), with appropriate reference to the record (See LCvR 56.B.1 for instructions regarding format and annotation); and

c. setting forth in separately numbered paragraphs any other material facts that are allegedly at issue, and/or that the opposing party asserts are necessary for the Court to determine the motion for summary judgment;

2. Memorandum in Opposition. The memorandum of law in opposition to the motion for summary judgment must address applicable law and explain why there are genuine issues of material fact to be tried and/or why the moving party is not entitled to judgment as a matter of law; and

3. Appendix. Documents referenced in the Responsive Concise Statement shall be included in an appendix. (See LCvR 56.B.3 for instructions regarding the appendix).

D. Moving Party's Reply to Opposing Party's Submission. Within 14 days of service of the opposing party's submission in opposition to the motion for summary judgment, the moving party may reply to the opposing party's submission in the same manner as set forth in LCvR 56.C.

E. Admission of Material Facts. Alleged material facts set forth in the moving party's Concise Statement of Material Facts or in the opposing party's Responsive Concise Statement, which are claimed to be undisputed, will for the purpose of deciding the motion for summary judgment be deemed admitted unless specifically denied or otherwise controverted by a separate concise statement of the opposing party.

LCvR 66 RECEIVERS

A. Rule as Exercise of Vested Authority. In the exercise of the authority vested in the District Courts by Fed. R. Civ. P. 66, this rule is promulgated for the administration of estates by receivers, appointed by the Court, in civil actions.

B. Inventories. Unless the Court otherwise orders, a receiver, as soon as practicable after his or her appointment and not later than thirty (30) days after he or she has taken possession of the estate, shall file an inventory of all the property and assets in his or her possession or in the possession of others who hold possession as his or her agent, and in a separate schedule an inventory of the property and assets of the estate not reduced to possession by him or her but claimed and held by others.

C. Reports. Within three (3) months after the filing of the inventory, and at regular intervals of three (3) months thereafter until discharged, or at such other times as the Court may direct, the receiver shall file reports of his or her receipts and expenditures and of his or her acts and transactions in an official capacity.

D. Compensation of Receivers and Attorneys. No compensation for services of receivers and attorneys in connection with the administration of an estate shall be ascertained and awarded by the Court until after notice to such persons in interest as the Court may direct. The notice shall state the amount claimed by each applicant.

LCvR 67.1 BONDS AND OTHER SURETIES

A. By Non-Resident. In every action filed by a plaintiff who is not a resident of this district, the defendant, after answer to the complaint, may by petition and for good cause shown, have a rule upon the plaintiff to enter security for costs in such sum, in such manner and within such period of time as shall be determined by order of the Court upon hearing on the rule, all proceedings to stay meanwhile. If security for costs is not entered as ordered, the Court shall dismiss the action.

B. By Other Parties. The Court, on motion, may order any party to file an original bond for costs or additional costs in such an amount and so conditioned as the Court by its order may designate.

C. Qualifications of Surety. Every bond for costs under this rule must have as surety either (1) a cash deposit equal to the amount of the bond or (2) a corporation authorized to act as surety on official bond under 31 U.S.C. § 9304.

D. Persons Who May Not Be Sureties. No clerk, marshal, member of the bar, or other officer of this Court will be accepted as surety on any bond or undertaking in any action or proceeding in this Court.

LCvR 67.2 DEPOSIT IN COURT

A. Investment of Funds by Clerk of Court. The Clerk of Court will invest funds under Fed. R. Civ. P. 67 as soon as the business of his or her office allows.

B. Administrative Fee. All registry invested accounts are subject to an administrative handling fee at a rate established by the Judicial Conference of the United States. The fee will be assessed and funds will be withdrawn from each invested account in accordance with Judicial Conference directives and this may be accomplished by the authority herein and without further order of Court.

C. Motion Required for Deposit Into Interest Account. The posting party must move the Court to have registry funds deposited into an interest-bearing account, the Court Registry Investment System ("CRIS"), which is administered by the Administrative Office of the United States Courts under 28 U.S.C. § 2045, and shall be the only investment mechanism authorized. The proposed investment order should be reviewed by the Clerk of Court or his or her financial deputy to insure that all of the required investment information is included. It is the responsibility of the posting party to serve the Clerk of Court or his or her financial deputy with a copy of the signed investment order. In most instances, the office of the Clerk of Court can provide a standard investment order that would satisfy the requirements of the federal rules and these Local Rules.

D. Court Registry Investment System. CRIS is the designated depository for the Court. The Clerk of Court shall, upon an order from the Court, deposit funds subject to Fed. R. Civ. P. 67 into CRIS.

E. Petition Required for Investment. If the attorney for the party on whose behalf the deposit is made desires to invest funds in a manner other than at the designated depository of the Court, and if the investment is in accordance with the requirements of the federal rules, and specifically Fed. R. Civ. P. 67, a petition and proposed order may be presented for the Court's consideration.

F. IRS Regulations Applicable. Registry deposits involving designated or qualified settlement funds may be subject to IRS Regulations that require the appointment of an administrator outside of the Court to handle fiduciary and tax matters. A registry account may be a designated or qualified settlement fund if:

1. there has been a settlement agreement in the case;
2. the Court has entered an order establishing or approving a deposit into the registry as a settlement fund; and
3. the liability resolved by the settlement is of a kind described in 26 U.S.C. § 468B or 26 C.F.R. § 1.468B-1(c).

It is the responsibility of the depositing party to identify any registry deposit intended to be a designated or qualified settlement fund. Depositors should contact the office of the Clerk of Court prior to the deposit of settlement fund monies to insure that proper procedures are followed for the reporting of interest income and the payment of income tax on registry accounts.

LCvR 67.3 WITHDRAWAL OF A DEPOSIT PURSUANT TO FED. R. CIV. P. 67

The Court's order for disbursement of invested registry funds must include the name and address of the payee(s) in addition to the total amount of the principal and interest (if the interest is not known, the order may read "plus interest") which will be disbursed to each payee. In order for the Clerk of Court to comply with the Internal Revenue Code and the rules thereunder, payees receiving earned interest must provide a W-9 Taxpayer Identification and Certification form to the office of the Clerk of Court prior to disbursement from the invested account. The disbursement order should be reviewed by the Clerk of Court or the financial deputy prior to being signed by the Judge in order to insure that the necessary information is provided.

LCvR 71A CONDEMNATION OF PROPERTY

When the United States files separate land condemnation actions and concurrently files a single declaration of taking relating to those separate actions, the Clerk of Court is authorized to establish a master file so designated. If a master file is established, the declaration of taking shall be filed, and the filing of the declaration of taking therein shall constitute a filing of the same in each of the actions to which it relates when reference is made thereto in the separate actions.

LCvR 72 MAGISTRATE JUDGES

A. Duties under 28 U.S.C. §§ 636(a)(1) and (2). Each Magistrate Judge appointed by this Court is authorized to perform the duties prescribed by 28 U.S.C. § 636(a)(1) and (2) and may:

1. exercise all the powers and duties conferred or imposed upon United States commissioners or Magistrate Judges by law or the Federal Rules of Criminal Procedure;
2. administer oaths and affirmations, impose conditions of release under 18 U.S.C. § 3142 and take acknowledgments, affidavits, and depositions;

3. conduct removal proceedings and issue warrants of removal in accordance with Fed. R. Crim. P. 40;
4. conduct extradition proceedings, in accordance with 18 U.S.C. § 3184; and
5. supervise proceedings conducted pursuant to letters rogatory, in accordance with 28 U.S.C. § 1782.

B. Disposition of Misdemeanor Cases -- 28 U.S.C. § 636(a)(3).

1. A Magistrate Judge may, upon the express consent of the defendant:
 - a. try persons accused of, and sentence persons convicted of, misdemeanors committed within this district in accordance with 18 U.S.C. § 3401; and
 - b. dismiss or quash a misdemeanor indictment or information, decide a motion to suppress evidence; and
 - c. direct the probation service of the Court to conduct a presentence investigation in any misdemeanor case.
2. A Magistrate Judge shall:
 - a. file the record of proceedings and all other official papers with the Clerk of Court within twenty-one (21) days after disposing of a misdemeanor or, in other cases, after completing his or her assigned duties;
 - b. transmit immediately to the Clerk of Court all fines collected or collateral forfeited.
3. An appeal from a judgment of a Magistrate Judge having been certified to the Court in accordance with the Rules of Procedure for Trials before Magistrate Judges (18 U.S.C. § 3402), the appellant shall, within fourteen (14) days, serve and submit a brief. The United States Attorney shall serve and submit a reply brief within fourteen (14) days after receipt of a copy of the appellant's brief;
4. In a case involving a petty offense as defined in 18 U.S.C. § 1(3), payment of a fixed sum may be accepted in lieu of appearance and as authorizing the termination of the proceeding;
5. There shall be maintained at the office of the Clerk of Court a list of those petty offenses for which collateral forfeiture may apply and the amounts of said collateral forfeiture. The list shall enumerate those offenses for which collateral forfeiture shall not apply and for which appearance shall be mandatory;
6. Nothing contained in this rule shall prohibit a law enforcement officer from arresting a person for the commission of any offense, including

those for which collateral may be posted and forfeited, and requiring the person charged to appear before a Magistrate Judge or, upon arrest, taking him or her immediately before a Magistrate Judge;

C. Nondispositive Pretrial Matters.

1. In accordance with 28 U.S.C. § 636(b)(1)(A), a Magistrate Judge may hear and determine any pretrial motion or other pretrial matter, other than those motions specified in Rule 4 of the Rules Governing Section 2254 and Section 2255 Proceedings.

2. Objections to Magistrate Judge's Determination. Any party may object to a Magistrate Judge's determination made under this rule within fourteen (14) days after the date of service of the Magistrate Judge's order, unless a different time is prescribed by the Magistrate Judge or District Judge. Such party shall file with the Clerk of Court, and serve on all parties, written objections which shall specifically designate the order or part thereof objected to and the basis for objection thereto. The opposing party shall be allowed fourteen (14) days after date of service to respond to the objections. The District Judge assigned to the case shall consider the objections and set aside any portion of the Magistrate Judge's order found to be clearly erroneous or contrary to law. The District Judge may also reconsider any matter *sua sponte*.

D. Dispositive Pretrial Motions and Prisoner Cases.

1. In accordance with 28 U.S.C. § 636(b)(1)(B) and (C), a Magistrate Judge may hear, conduct such evidentiary hearings as are necessary or appropriate, and submit to a District Judge proposed findings of fact and recommendations for the disposition of:

- a. applications for post-trial relief made by individuals convicted of criminal offenses;
- b. prisoner petitions challenging conditions of confinement; and
- c. motions for injunctive relief (including temporary restraining orders and preliminary injunctions), for judgment on the pleadings, for summary judgment, to dismiss or permit the maintenance of a class action, to dismiss for failure to state a claim upon which relief may be granted, to involuntarily dismiss an action, for judicial review of administrative determinations, and for review of default judgments.

2. Objections to Magistrate Judge's Proposed Findings. Any party may object to the Magistrate Judge's proposed findings, recommendations or report under this rule within fourteen (14) days after date of service. Such party shall file with the Clerk of Court, and serve on all parties, written objections which shall specifically identify the portions of the proposed, recommendations or report to which objection is made and the basis for such objections. Such party may be ordered to file with the Clerk of Court a transcript of the specific portions of any evidentiary

proceedings to which objection is made. The opposing party shall be allowed fourteen (14) days after date of service to respond to the objections. A District Judge shall make a *de novo* determination of those portions to which objection is made and may accept, reject or modify in whole or in part, the findings and recommendations made by the Magistrate Judge. The District Judge, however, need not conduct a new hearing and may consider the record developed before the Magistrate Judge, making his or her own determination on the basis of that record, or recommit the matter to the Magistrate Judge with instructions.

E. Special Master References and Trials by Consent.

1. A Magistrate Judge may serve as a special master subject to the procedures and limitations of 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53.
2. Where the parties consent, a Magistrate Judge may serve as a special master in any civil case without regard to the provisions of Fed. R. Civ. P. 53(b).
3. The Magistrate Judges may, upon consent of the parties, conduct any and all proceedings in a jury or non-jury civil matter and order the entry of judgment in accordance with 28 U.S.C. § 636(c).

F. Other Duties. A Magistrate Judge is also authorized to:

1. exercise general supervision of the civil and criminal calendars of the Court, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the Judges;
2. conduct pretrial conferences, settlement conferences, omnibus hearings and related pretrial proceedings;
3. conduct arraignments in cases not triable by the Magistrate Judge to the extent of taking a not guilty plea or noting a defendant's intention to plead guilty or *nolo contendere* and ordering a presentence report in appropriate cases;
4. receive grand jury returns in accordance with Fed. R. Crim. P. 6(f), issue bench warrants and enter orders sealing the record in accordance with Fed. R. Crim. P. 6(e), 6(f) and 9(a);
5. conduct *voir dire* and select petit juries for the Court;
6. accept petit jury verdicts in civil cases in the absence of a District Judge;
7. conduct necessary proceedings leading to the potential revocation of probation;
8. issue subpoenas, writs of *habeas corpus ad testificandum* or *habeas corpus ad prosequendum*, or other orders necessary to obtain the

presence of parties or witnesses or evidence needed for Court proceedings;

9. order the exoneration or forfeiture of bonds;

10. conduct proceedings for the collection of civil penalties of not more than \$200 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. § 484(d);

11. conduct examinations of judgment debtors in accordance with Fed. R. Civ. P. 69;

12. review petitions in civil commitment proceedings under Title III of the Narcotic Addict Rehabilitation Act;

13. approve deferred prosecution agreements in felony cases pending before the Magistrate Judge in which no indictment or information has been filed;

14. issue administrative inspection warrants and other compulsory process sought by administrative agencies of the United States; and

15. perform any additional duty as is not inconsistent with the Constitution and laws of the United States.

G. Assignment of Duties of Magistrate Judges. The Clerk of Court will assign each non-prisoner civil action to a District Judge or a Magistrate Judge by automated random selection such that a Magistrate Judge will be assigned a case, in the first instance, approximately one-third of the time. All prisoner civil cases and non-death penalty habeas cases will be assigned only to a Magistrate Judge.

In the event the action is assigned to a Magistrate Judge, each party shall execute and file within 21 days of its appearance a form, either consenting to the jurisdiction of the Magistrate Judge or electing to have the case randomly assigned to a District Judge. If a party elects to have the case assigned to a District Judge, the Magistrate Judge shall continue to manage the case by deciding non-dispositive motions and submitting reports and recommendations on dispositive motions, unless otherwise directed by the District Judge. If all parties do not consent to Magistrate Judge jurisdiction, a District Judge shall be assigned and the Magistrate Judge shall continue to manage the case consistent with 28 U.S.C. § 636.

H. Forfeiture of Collateral in Lieu of Appearance.

1. Pursuant to paragraph G(2) of the order of this Court of March 9, 1971, adopting rules for United States Magistrate Judges (LCvR 72.A), this list is established setting forth those petty offenses for which trial appearance shall be mandatory and the amounts of collateral forfeiture which may be acceptable in lieu of appearance.

2. Petty offenses for which trial appearance shall be mandatory:

a. traffic offenses:

i. indictable offenses;

ii. offenses resulting in an accident where one of the following conditions are met:

(a) two or more vehicles are involved;

(b) personal injury has resulted; or

(c) property damage in excess of \$200 has resulted.

iii. operation of a motor vehicle while under the influence of intoxicating liquor or a narcotic or habit producing drug, or permitting another person who is under the influence of intoxicating liquor or a narcotic or habit producing drug to operate a motor vehicle owned by the defendant or in his or her custody or control;

iv. reckless driving;

v. leaving the scene of an accident;

vi. driving while under suspension or revocation of a driver's license;

vii. driving without being licensed to drive;

viii. exceeding the speed limit by more than 15 miles per hour; or

ix. a second moving traffic offense within a 12-month period, as indicated by a notation on a driver's license.

b. non-traffic offenses:

i. drunkenness; or

ii. disorderly conduct.

3. In all other petty offenses collateral forfeitures may be accepted by the duly authorized representative of the agency in an amount not greater than 25% of the maximum fine established by law for each offense, but in no event less than ten dollars (\$10.00); provided, however, that the enforcing agencies shall file with the Clerk of Court a schedule of collateral forfeitures approved by the Chief Judge. However, in those petty offenses for which the maximum fine established by law is less than ten dollars (\$10.00), collateral forfeitures may be accepted in an amount equal to the maximum fine.

LCvR 77 SESSIONS OF COURT

Sessions of the Court shall be held at Pittsburgh, Erie and Johnstown at such times as may be required to expedite the business of the Court. The Clerk of Court shall post and make available to interested members of the bar, each Judge's tentative schedule of trials, both jury and non-jury, from time to time.

LCvR 83.1 FREE PRESS -- FAIR TRIAL PROVISIONS

A. Release of Information in Civil Actions. A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if there is a substantial likelihood that such extrajudicial statement would materially prejudice such civil action and relates to:

1. evidence regarding the occurrence or transaction involved;
2. the character, credibility, or criminal record of a party, witness, or prospective witness;
3. the performance or results of any examinations or tests or the refusal or failure of a party to submit to such;
4. his or her opinion as to the merits of the claims or defenses of a party except as required by law or administrative rule; or
5. any other matter substantially likely to materially prejudice such civil action.

B. Matters on Which Extrajudicial Statements Are Not Precluded. Nothing in this rule is intended to preclude the issuance of extrajudicial statements made in connection with hearings or the lawful issuance of reports by legislative, administrative or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him or her.

C. Photography, Recording and Broadcasting.

1. Except as hereafter provided, all forms, means and manner of taking photographs, recording, broadcasting and televising are prohibited in any hearing room, corridor or stairway leading thereto, on any floor occupied entirely or in part by the United States District Court for the Western District of Pennsylvania, in any United States Courthouse or federal facility, or any other building designated by the United States District Court for the Western District of Pennsylvania as a place for holding Court or other judicial proceeding, whether or not Court is in session.

2. Exceptions:

- a. Photographs may be taken and radio and television may be transmitted with the voluntary consent of the individual involved in

and from the press rooms set aside for the use of members of the press and other communications media.

b. Subject to the approval of the presiding Judge, the broadcasting, televising, recording or photographing of investitive, ceremonial or naturalization proceedings in the Courtrooms of this district will be permitted under the following conditions:

i. available light is to be used;

ii. only one camera is to be used. The station owning that camera must make a tape available to all stations requesting one;

iii. the camera must remain in one position throughout. It must be in position before the opening of Court and remain there until the Court has recessed;

iv. microphones must be placed in fixed positions and remain there throughout; and

v. camera and microphone personnel shall not move about the Courtroom during the proceeding.

Comment (June 2008)

1. The amended Rule conforms to the standard set forth in *United States v. Wecht*, 484 F.3d 194, 205 (3d Cir. 2007) (exercising "supervisory authority to require that District Courts apply LCvR 83.1 to prohibit only speech that is substantially likely to materially prejudice ongoing criminal proceedings") and to the governing law of professional conduct. Former LCvR 83.1.A-E, governing free press and fair trial issues relating to criminal proceedings, has been moved to the Local Criminal Rules.

2. LCvR 83.1.C includes in the Local Rules the provisions of the standing order dated May 21, 1968.

LCvR 83.2 ADMISSION TO PRACTICE AND APPEARANCE OF ATTORNEYS AND STUDENTS

A. Admission to Practice -- Generally.

1. Roll of Attorneys. The bar of this Court consists of those heretofore and those hereafter admitted to practice before this Court, who have taken the oath prescribed by the rules in force when they were admitted or prescribed by this rule.

2. Eligibility; Member in Good Standing. Any person who is eligible to become a member of the Bar of the Supreme Court of Pennsylvania or who is a member in good standing of the bar of the Supreme Court of Pennsylvania, or a member in good standing of the Supreme Court of the United States, or a member in good standing of any United States District

Court, may be admitted to practice before the bar of this Court.

3. Procedure For Admission. No person shall be admitted to practice in this Court as an attorney, except on oral motion of a member of the bar of this Court. He or she shall, if required, offer satisfactory evidence of his or her moral and professional character and shall take the following oath or affirmation, to wit:

"I DO SOLEMNLY SWEAR (OR AFFIRM) THAT I WILL CONDUCT MYSELF AS AN ATTORNEY AND COUNSELOR OF THIS COURT, UPRIGHTLY AND ACCORDING TO LAW; AND THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES. SO HELP ME GOD."

If admitted, the applicant shall, under the direction of the Clerk of Court, sign the roll of attorneys and pay such fee as shall have been prescribed by the Judicial Conference and by the Court.

5. Agreements of Attorneys. All agreements of attorneys relating to the business of the Court shall be in writing; otherwise, if disputed, they will be considered of no validity.

6. Practice in Criminal Branch Prohibited. No attorney shall be permitted to practice in the criminal branch of the federal law as counsel for any person accused of crime in the United States District Court for the Western District of Pennsylvania where said attorney is serving by appointment or election in any of the following categories in either the state of Pennsylvania or for the United States of America:

- a. district attorney of any county in the Commonwealth of Pennsylvania;
- b. assistant, deputy or special advisor of any district attorney of any county in the Commonwealth of Pennsylvania;
- c. Attorney General of the Commonwealth of Pennsylvania;
- d. assistant, deputy or special advisor of the Attorney General of the Commonwealth of Pennsylvania;
- e. legal counsel for and any assistant or deputy of any agency of the United States government; or
- f. magistrates or justices of the peace of any city, county or state.

B. Pro Hac Vice Admissions. All motions for admission *pro hac vice* must be accompanied by the filing fee. A motion for admission *pro hac vice* must be made by the attorney seeking to be admitted and must be accompanied by an affidavit from the attorney seeking to be admitted *pro hac vice* (hereinafter the "affiant"). The affidavit must include the affiant's name, law firm affiliation (if any), business address, and bar identification number. The affiant must attest in the affidavit that the affiant is a registered user of ECF in the United States District

Court for the Western District of Pennsylvania, that the affiant has read, knows and understands the Local Rules of Court for the United States District Court for the Western District of Pennsylvania, and that the affiant is a member in good standing of the bar of any state or of any United States District Court. The affidavit must list the bars of any state or of any United States court of which the affiant is a member in good standing. The affiant must attach to the affidavit one current certificate of good standing from the bar or the court in which the affiant primarily practices. The affidavit also must list and explain any previous disciplinary proceedings concerning the affiant's practice of law that resulted in a non-confidential negative finding or sanction by the disciplinary authority of the bar of any state or any United States court. The Court will not rule on a motion for admission *pro hac vice* that does not include an affidavit containing the aforementioned information and attestations required by this rule. The forms of the motion for admission *pro hac vice* and accompanying affidavit are set forth in "Appendix LCvR 83.2B-MOTION," and "Appendix LCvR 83.2B-AFFIDAVIT."

Comment (February 2013)

The Local Rules of Court for the United States District Court for the Western District of Pennsylvania and instructions for becoming a registered user of ECF in the United States District Court for the Western District of Pennsylvania are available on the Court's website. ***"A Declaration pursuant to 28 U.S.C. §1746 in lieu of an affidavit shall be sufficient to comply with the requirements of this Rule."***

C. Appearances and Withdrawals of Appearance.

- 1. Appearance -- How entered.** In all criminal cases involving privately retained counsel, a notice of appearance of counsel shall be filed at or before the first appearance of counsel.
- 2. Attorney Identification Number.** Any appearance by a Pennsylvania attorney shall contain a Pennsylvania attorney identification number.
- 3. Separate Praecipe Unnecessary.** In a civil action, no separate praecipe for appearance need be filed by an attorney for an original party or for an intervenor. The endorsement of names of attorneys appearing on the first pleading or motion filed by a party shall constitute the entry of appearance of such attorneys. Appearance by other attorneys shall be by praecipe filed with the Clerk of Court.
- 4. Withdrawal of Appearance.** In any civil proceeding, no attorney whose appearance has been entered shall withdraw his or her appearance except upon filing a written motion. The motion must specify the reasons requiring withdrawal and provide the name and address of the succeeding attorney. If the succeeding attorney is not known, the motion must set forth the name, address, and telephone number of the client and either bear the client's signature approving withdrawal or state specifically why, after due diligence, the attorney was unable to obtain the client's signature.

Comment (February 2013)

A motion for withdrawal of counsel's appearance that sets forth the basis for withdrawal should disclose that basis only in a manner consistent with the applicable provisions of the Pennsylvania Rules of Professional Conduct. See Pa. R. Prof. Conduct 1.16, comment 3.

D. Student Practice Rule.

1. Purpose. This rule is designed to provide law students with clinical instruction in federal litigation, and thereby enhance the competence of lawyers practicing before the United States District Courts.

2. Student Requirements. An eligible student must:

- a. be duly enrolled in a law school accredited by the American Bar Association;
- b. have completed a least three semesters of legal studies, or the equivalent;
- c. be enrolled for credit in a law school clinical program that has been approved by this Court;
- d. be certified by the Dean of the law school, or the Dean's designee, as being of good character, and having sufficient legal ability to fulfill the responsibilities of a legal intern to both the client and this Court;
- e. be certified by this Court to practice pursuant to this rule; and
- f. not accept personal compensation from a client or other source for legal services provided pursuant to this rule.

3. Program Requirements. A law school clinical practice program:

- a. must provide the student with academic and practice advocacy training, utilizing law school faculty or adjunct faculty, including federal government attorneys or private practitioners, for practice supervision;
- b. must grant the student academic credit for satisfactory participation therein;
- c. must be certified by this Court;
- d. must be conducted in such a manner as not to conflict with normal Court schedules;
- e. may accept compensation other than from a client; and
- f. must secure and maintain professional liability insurance for its activities.

4. Supervisor Requirements. A supervisor must:

- a.** have faculty or adjunct faculty status at the law school offering the clinical practice program, and must be certified by the Dean of the law school as being of good character, and having sufficient legal ability and adequate training to fulfill the responsibilities of a supervisor;
- b.** be admitted to practice before this Court;
- c.** be present with the student at all times during Court appearance, and at all other proceedings, including depositions in which testimony is taken;
- d.** co-sign all pleadings or other documents filed with this Court;
- e.** assume full professional responsibility for the student's guidance in, and for the quality of, any work undertaken by the student pursuant to this rule;
- f.** be available for consultation with represented clients;
- g.** assist and counsel the student in all activities conducted pursuant to this rule, and review such activities with the student so as to assure the proper practical training of the student and the effective representation of the client; and
- h.** be responsible for supplementing oral or written work of the student, where necessary, to ensure the effective representation of the client.

5. Certification of Student, Program and Supervisor.

a. Students.

(1) Certification by the law school Dean and approval by this Court shall be filed with the Clerk of Court, and unless it is sooner withdrawn, shall remain in effect until expiration of 18 months.

(2) Certification to appear in a particular case may be withdrawn at any time, in the discretion of the Court, and without any showing of cause.

b. Program.

(1) Certification of a program by this Court shall be filed with the Clerk of Court and shall remain in effect indefinitely unless withdrawn by the Court.

(2) Certification of a program may be withdrawn by this Court at any time.

c. Supervisor.

(1) Certification of a supervisor must be filed with the Clerk of Court, and shall remain in effect indefinitely unless withdrawn by this Court.

(2) Certification of a supervisor may be withdrawn by the Court at any time.

(3) Certification of a supervisor may be withdrawn by the Dean by mailing notice of such withdrawal to the Clerk of Court.

6. Activities. A certified student, under the personal supervision of the supervisor, as set forth in LCvR 83.2.C.4, may:

a. represent any client including federal, state or local governmental bodies, in any civil or administrative matter, if the supervising lawyer and the client on whose behalf the student is appearing have consented in writing to that appearance; or

b. engage in all activities on behalf of the clients that a licensed attorney may engage in.

7. Limitation of Activities. The Court retains the power to limit a student's participation in a particular case to such activities as the Court deems consistent with the appropriate administration of justice.

Comment (June 2008)

The amended Rule adds headings, modifies the numbering and clarifies and modernizes language in the Rule. More substantively, the amended Rule adds a section on *pro hac vice* admissions. In addition, it permits students to practice before the Court after completing three (as opposed to four) semesters of legal study.

LCvR 83.3 RULES OF DISCIPLINARY ENFORCEMENT FOR ATTORNEYS**A. Introduction.**

1. Responsibility of Court. The United States District Court for the Western District of Pennsylvania, 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 rules pertaining to disciplinary enforcement heretofore promulgated.

2. Adoption of Rules of Professional Conduct. Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with others, that violate the rules of professional conduct adopted by this Court shall constitute misconduct and shall be grounds for

discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The rules of professional conduct adopted by this Court are the rules of professional conduct adopted by the Supreme Court of Pennsylvania, as amended from time to time, except that Rule 3.10 has been specifically deleted as a rule of this Court, and as otherwise provided by specific order of this Court.

3. Sanctions for Misconduct. For misconduct defined in these rules, 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.

4. Admission to Practice as Conferring Disciplinary Jurisdiction. 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.

B. Disciplinary Proceeding.

1. Reference to Counsel. 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 District Judge or Magistrate Judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these rules, or in the event a petition for reinstatement has been filed by a disciplined attorney, the Chief Judge shall in his or her discretion and with prior agreement of the Disciplinary Board of the Supreme Court of Pennsylvania appoint as counsel attorneys serving in the Office of Disciplinary Counsel of the Disciplinary Board or one or more members of the bar of this Court to investigate allegations of misconduct or to prosecute disciplinary proceedings under these rules or in conjunction with such a reinstatement petition, provided, however, that the respondent-attorney may move to disqualify an attorney so appointed who is or has been engaged as an adversary of the respondent-attorney in any matter. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

2. Recommendation of Counsel. Should such 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 this Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise setting forth the reasons therefor.

3. Order to Show Cause. Should such counsel conclude after investigation and review that a formal disciplinary proceeding should be initiated, counsel shall obtain an order of this Court upon a showing of

probable cause requiring the respondent-attorney to show cause within thirty (30) days after service of that order upon that attorney, personally or by mail, why the attorney should not be disciplined.

4. Hearings. 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, the Chief Judge shall set the matter for prompt hearing before one or more Judges of this Court, provided, however, that if the disciplinary proceeding is predicated upon the complaint of a Judge of this Court the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge, or if there are fewer than three Judges eligible to serve or the Chief Judge is the complainant, by the Chief Judge of the Court of Appeals. Where a Judge merely refers a matter and is not involved in the proceeding, he or she shall not be considered a complainant.

All such proceedings shall be conducted by counsel appointed pursuant to LCvR 83.3.B.1 or such other counsel as the Court may appoint for such purpose.

The Judge or Judges to whom a disciplinary proceeding is assigned by the Chief Judge may conduct a further hearing, and/or otherwise take additional testimony, or hear or receive oral or written argument, and shall make a recommendation based thereon to the Board of Judges. The Board, after consideration of the recommendation, shall enter such order as it shall determine by a majority vote of the active Judges in service at the next meeting of the board to be appropriate, including dismissal of the charges, reprimand, suspension for a period of time, disbarment, or such action as may be proper.

C. Attorneys Convicted of Crimes.

1. Immediate Suspension. Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before this 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 Chief Judge shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty or *nolo contendere* or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the Chief Judge may set aside such order when it appears in the interest of justice so to do upon concurrence of a majority of active Judges in service.

2. Definition of Serious Crime. 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."

3. Certified Copy of Conviction as Evidence. 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.

4. Mandatory Reference for Disciplinary Proceeding. Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Court shall refer the matter for the institution of a disciplinary proceeding 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.

5. Discretionary Reference for Disciplinary Proceedings. 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 provided, however, that the Court may in its discretion make no reference with respect to convictions for minor offenses.

6. Reinstatement Upon Reversal. 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.

D. Discipline Imposed by Other Courts.

1. Notice by Attorney of Public Discipline. 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.

2. Proceedings after Notice of Discipline. 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:

- a. A copy of the judgment or order from the other Court; and
- b. An order to show cause directing that the attorney inform this Court within thirty (30) days after service of that order upon the

attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in LCvR 83.3.D.4 that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.

3. Stay of Discipline in Other Jurisdiction. 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.

4. Reciprocal Discipline. Upon the expiration of thirty (30) days from service of the notice issued pursuant to the provisions of LCvR 83.3.D.2, 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 that:

- a. the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
- b. 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;
- c. the imposition of the same discipline by this Court would result in grave injustice; or
- d. the misconduct established is deemed by this Court to warrant substantially different discipline.

In the event that an attorney files a timely answer alleging one or more of the elements set forth in LCvR 83.3.D.4, the Chief Judge shall set the matter for prompt hearing before one or more Judges of this Court who may order and conduct a further hearing, or take testimony or hear argument, and make a recommendation to the Board of Judges. The Board, after consideration of the recommendation, shall enter such order, as it shall determine by a majority vote of the active Judges in service at the next meeting of the Board, including dismissal of the charges, reprimand, suspension for a period of time, disbarment, or such action as may be proper.

5. Conclusive Evidence of Final Adjudication. In all other respects, a final adjudication in another Court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for the purposes of a disciplinary proceeding in this Court.

6. Appointment of Counsel. This Court may at any stage appoint counsel to prosecute the disciplinary proceedings, pursuant to LCvR 83.3.B.I.

E. Disbarment on Consent or Resignation.

1. Automatic Cessation of Right to Practice. 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.

2. Attorney to Notify Clerk of Disbarment. 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, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

F. Disbarment on Consent While under Disciplinary Investigation or Prosecution.

1. Consent to Disbarment. 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:

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

b. the attorney is aware that there is 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;

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

d. 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 or herself.

2. Consent Order. Upon receipt of the required affidavit, this Court shall enter an order disbaring the attorney.

3. Public Record. The Order disbaring 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.

G. Reinstatement.

1. After Disbarment or Suspension. An attorney suspended for three (3) 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 (3) months or disbarred may not resume practice until reinstated by order of this Court.

2. 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 (5) years from the effective date of this disbarment.

3. 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 refer the petition to counsel for investigation and recommendation, and shall assign the matter for a hearing, or other appropriate action, 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 (3) other Judges of this Court appointed by the Chief Judge, or, if there are fewer than three (3) Judges eligible to serve or the Chief Judge was the complainant, by the Chief Judge of the Court of Appeals. The Judge or Judges assigned to the matter shall schedule a hearing, if necessary, at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications, competency and learning in the law required for admission to practice law before this Court and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

The Judge or Judges shall make a recommendation to the Board of Judges and the Board shall enter an appropriate order, as determined by a majority vote of the active Judges in service at the next meeting of the Board.

4. 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.

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

6. 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 or her, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further, that if the petitioner has been suspended or disbarred for five (5) 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.

7. Successive Petitions. No petition for reinstatement under this rule shall be filed within one (1) year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

H. Service of Papers and Other Notices. Service of an order to show cause instituting a formal disciplinary proceeding or other papers or notices required by these rules shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at the address most recently registered by him or her with the Clerk of Court. 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 address most recently registered with the Clerk of Court; or to counsel or respondent's attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding under these rules.

I. Duties of the Clerk of Court.

1. Filing Certificate of Conviction. 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.

2. Filing Disciplinary Judgment. 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 of Court shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this Court.

3. Filing Consent Order. Upon being informed that an attorney admitted to practice before this Court has been disbarred on consent or resigned in another jurisdiction while an investigation into allegations of

misconduct was pending, the Clerk of this Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order striking the attorney's name from the rolls of those admitted to practice has been filed with the Court, and, if not, shall promptly obtain a certified or exemplified copy of such judgment or order and file it with the Court.

4. Transmittal of Record to Other Courts. 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 fourteen (14) 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 or 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.

5. National Discipline Data Bank. The Clerk of Court shall 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.

J. Retention of Control. 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 Fed. R. Crim. P. 42.

K. Confidentiality. All investigations of allegations of misconduct, and disciplinary proceedings authorized by these rules shall be kept confidential until or unless:

1. the Judge or Judges to whom the matter is assigned determine otherwise;
2. the respondent-attorney requests in writing that the matter be public;
3. the investigation or proceeding is predicated on a conviction of the respondent-attorney for a crime; or
4. the Court determines that discipline is appropriate in accordance with LCvR 83.3.B.4.

This rule shall not prohibit counsel, appointed pursuant to LCvR 83.3.B.1 or any member of this Court, from reporting to law enforcement authorities the suspected commission of any criminal offense.

Comment (June 2008)

The amended Rule adds headings, modifies the numbering and clarifies and modernizes language in the Rule. The amendment reorganizes the Rule and clarifies the process whereby allegations of attorney misconduct are investigated and, if appropriate, prosecuted. The amended Rule clarifies that the word "Counsel" refers to a member of the bar of the Court appointed by the Chief Judge to perform the investigation and/or prosecution.

LCvR 100.1 TRANSFER OF MULTIDISTRICT LITIGATION

A. Composite Number Assigned. Whenever the Court consents to the transfer of a group of actions to this district in order to hold coordinated or consolidated pretrial proceedings as set forth in Title 28 U.S.C. § 1407, the group of actions shall be given the composite number previously assigned by the Judicial Panel on Multidistrict Litigation. Individual actions within the group shall be given specific civil action numbers.

B. Clerk of Court to Maintain Multidistrict Docket Sheet. The Clerk of Court shall maintain a multidistrict litigation docket sheet for the group of actions compositely numbered, as well as an individual docket sheet for each separate action. All pleadings, papers, depositions, interrogatories, and other documents or material, relating to two or more actions shall be entered only on the multidistrict litigation docket sheet. If such pleading or document relates to a single action only, it shall be entered on the individual action docket sheet.

C. No Separate Appearance Required. Counsel who entered an appearance in the transferor court prior to the transfer need not enter a separate appearance before this Court.

D. Notification of Representing Counsel. Upon receipt of an order of transfer, attorneys representing litigants in transferred cases shall notify the Clerk of this Court of the names, addresses and telephone numbers of attorneys of record. No litigant may list more than one attorney as its legal representative for the purpose of service.

E. Liaison Counsel to be Designated. Prior to the first pretrial conference, counsel for plaintiffs and for defendants shall designate, subject to the approval of the Court, liaison counsel. Liaison counsel shall be authorized to receive notices on behalf of the parties by whom they have been designated. They shall be responsible for the preparation and transmittal of copies of such notices as they may receive as liaison counsel to each of the attorneys included on the list prepared in accordance with the preceding paragraph.

F. Only Original Documents to be Filed. Unless the Judicial Panel on Multidistrict Litigation or this Court by order specifically otherwise directs for a specific case or group of cases, only the original of all documents shall be filed with the Clerk of this Court; provided, however, upon remand, it shall be the responsibility of the attorneys who filed a given document to furnish an adequate number of copies for transmittal to the transferor Court. The Clerk of Court shall notify counsel of the number of copies needed. The copies shall be furnished within thirty (30) days from the date of notification of remand. Upon receipt of an

order of the Judicial Panel transferring or remanding cases, without further order of this Court, the Clerk of Court shall assemble the files, together with their documentation, and forward the files as directed by the Judicial Panel.

LCvR 100.2 PUBLICATION OF NOTICE OR ADVERTISEMENTS

Any notice or advertisement required by law or rule of Court to be published in any newspaper shall be a short analysis, setting forth the general purpose of such notice or advertisement, and shall also be published in the Pittsburgh Legal Journal, Erie County Law Journal, and/or Cambria County Legal Journal which are also designated as the official newspapers for this District or other publications ordered by the Court.

LCvR 2241 ACTIONS UNDER 28 U.S.C. § 2241

A. Scope. These rules shall apply in the United States District Court, Western District of Pennsylvania, in all proceedings initiated by federal prisoners under 28 U.S.C. § 2241. In filings submitted to this Court, these Local Rules shall be cited as "LCvR 2241.____." In addition to these rules, all parties also should consult the applicable provisions of the federal *habeas corpus* statute at 28 U.S.C. §§ 2241-2266, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), P.L. 104-132, effective April 24, 1996.

B. The Petition.

1. Naming the Respondent. If the petitioner is currently serving a sentence imposed by a federal Court and he or she is challenging the execution of his or her sentence, petitioner must name as respondent the warden or custodian of the prison or correctional facility where petitioner is incarcerated.

2. Form.

a. Form of Petitions Required. A petitioner who files a petition seeking relief pursuant to 28 U.S.C. § 2241 may submit his or her petition on the standard form supplied by this Court. If the petitioner does not use the standard form, the petition must substantially follow the standard form supplied by this Court. Petitions that do not utilize the standard form shall contain all of the information required by the standard form. If the petitioner is represented by counsel, Electronic Case Filing (ECF) procedures apply.

b. Content. The petitioner is to state all grounds for relief, provide specific facts supporting each argument, and identify the relief requested. An accompanying memorandum of law is not required but will be accepted by the Clerk of Court at the time the petition is filed.

c. Where to Get the Standard Form. The standard form supplied by this Court for 28 U.S.C. § 2241 petitions can be obtained free of charge from the following sources: (i) this Court's website (www.pawd.uscourts.gov) (FORMS/MANUALS); (ii) this Court's Office of the Clerk of Court upon request; (iii) the Federal Public Defender's website (<http://paw.fd.org>); or (iv) the Federal Public Defender's Office upon request.

d. Requirements Concerning Filing Format. All filings in 28 U.S.C. § 2241 proceedings must be typed, word-processed or neatly written in ink. All filings must be submitted on paper sized 8½ by 11 inches. No writing or typing shall be made on the back of any filing.

e. Return of Petitions that Do Not Substantially Comply With Local Form Rules. If the form or other initial filing submitted by a *pro se* petitioner does not substantially comply with these Local Rules, the filing may be returned to the *pro se* petitioner with a copy of the Court's standard form, a statement of reasons for its return, and a directive that the petitioner resubmit the claims outlined in the original filing on the Court's form. A petitioner will be given 21 days or as directed by the Court to return his or her filing on the form supplied by this Court. A petitioner may seek leave of Court for an extension of time to return the form.

f. Certificate Required in Death Penalty Case. A petitioner challenging the execution of a sentence of death pursuant to a federal Court judgment shall file with the Clerk of Court a copy of the "Certificate of Death Penalty Case" required by the Third Circuit L.A.R. Misc. 111.2(a). The certificate will include the following information: names, addresses, and telephone numbers of parties and counsel; if set, the proposed date of execution of the sentence; and the emergency nature of the proceedings. Upon docketing, the Clerk of Court will transmit a copy of the certificate, together with a copy of the relevant documents, to the Clerk of the Court of Appeals as required by Third Circuit L.A.R. Misc. 111.2(a).

C. Filing the Petition. The original Section 2241 petition shall be filed with the Clerk of Court. Section 2241 petitions must be accompanied by the applicable filing fee or a motion requesting leave to proceed *in forma pauperis*.

D. The Answer and the Reply.

1. The Answer.

a. When Required. Upon undertaking preliminary review of the motion for relief under 28 U.S.C. § 2241, if the Court finds that there is no basis for dismissal, the Court must enter an order directing the respondent to file an Answer within the time frame permitted by the Court. The respondent is not required to file a

Response to the petition unless a Judge so orders. An extension may be granted only for good cause shown.

b. Contents. The Response must address the allegations in the petition. All relevant documents should be attached to the Response as exhibits. In addition, the Response must state whether any claim in the petition is barred by a failure to exhaust administrative remedies, a procedural bar, or non-retroactivity.

2. The Reply. Although not required, the petitioner may file a Reply (also known as "a Traverse") within 30 days of the date the respondent files its Response. If the petitioner wishes to file a Reply after 30 days have passed, he or she must file a motion requesting to do so and an extension may be granted only for good cause shown.

E. Powers of a Magistrate Judge. Within 21 days of commencement of a Section 2241 proceeding in the Erie or Pittsburgh Divisions, the petitioner shall execute and file a "CONSENT TO JURISDICTION BY UNITED STATES MAGISTRATE JUDGE" form, either consenting to the jurisdiction of the Magistrate Judge or electing to have the case randomly assigned to a District Judge. Respondent shall execute and file within 21 days of its appearance a form either consenting to the jurisdiction of the Magistrate Judge or electing to have the case randomly assigned to a District Judge. If all parties do not consent to Magistrate Judge jurisdiction, a District Judge shall be assigned and the Magistrate Judge shall continue to manage the case consistent with 28 U.S.C. § 636.

The "CONSENT TO JURISDICTION BY UNITED STATES MAGISTRATE JUDGE" form is available on this Court's website (www.pawd.uscourts.gov) (CASE ASSIGNMENT SYSTEM). If a party elects to have the case assigned to a District Judge, the Magistrate Judge shall continue to manage the case by deciding non-dispositive motions and submitting reports and recommendations on the petition and on dispositive motions, unless otherwise directed by the District Judge.

F. Applicability of the Federal Rules of Civil Procedure. The Federal Rules of Civil Procedure may be applied to a proceeding under these rules.

G. Appeals.

1. Upon entry of a final decision decided pursuant to 28 U.S.C. § 2241, the Court shall set forth the judgment on a separate document and enter the judgment on the civil docket as required under Fed. R. Civ. P. 58(a)(1).

2. The time for filing a notice of appeal is governed by Fed. R. App. P. 4(a) and such time commences when the Court enters the judgment as described in said Rule.

H. The Appointment of Counsel. There is no constitutional right to counsel in proceedings brought pursuant to 28 U.S.C. § 2241. Financially eligible petitioners may, however, request that counsel be appointed at any time. See 18

U.S.C. § 3006A. The Court may appoint counsel for a petitioner who qualifies to have counsel appointed under 18 U.S.C. § 3006A. This Local Rule is not intended to alter or limit the appointment of counsel available pursuant to 18 U.S.C. § 3006A.

Comment (June 2008)

All Section 2241 *habeas* cases in the Erie and Pittsburgh Divisions are assigned to a Magistrate Judge only.

LCvR 2254 ACTIONS UNDER 28 U.S.C. § 2254

A. Scope.

1. These rules shall apply in the United States District Court, Western District of Pennsylvania, in all proceedings initiated under 28 U.S.C. § 2254. In addition to these rules, all parties also should consult 28 U.S.C. § 2254 and the applicable provisions of the federal *habeas corpus* statute at 28 U.S.C. §§ 2241-2266, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), P.L. 104-132, effective April 24, 1996.

2. These Local Rules are intended to supplement, when necessary, the corresponding rules promulgated by the United States Supreme Court that are entitled "Rules Governing Section 2254 Proceedings for the United States District Courts." Those rules are cited herein as "the Federal 2254 Rules," and a specific Federal 2254 Rule is cited as "Federal 2254 Rule ____." All parties should consult the Federal 2254 Rules at the commencement of litigation to ensure compliance with the Federal 2254 Rules, as supplemented by these Local Rules. In filings submitted to this Court, these Local Rules shall be cited as "LCvR 2254.____."

B. The Petition.

1. **Naming the Respondent.** If the petitioner is currently under a state Court judgment and he or she is challenging the state Court conviction/sentence, he or she must name as respondent the state officer who has custody (i.e., the warden or superintendent). The petitioner must also name as respondent the District Attorney of the county in which he or she was convicted and sentenced. If a petitioner is challenging parole proceedings, he or she must name as respondent the Pennsylvania Board of Probation and Parole.

2. Form.

a. **Form of Petitions Required.** A petitioner who files a petition seeking relief pursuant to 28 U.S.C. § 2254 may submit his or her petition on the standard form supplied by this Court. If the petitioner does not use the standard form, the petition must substantially follow the standard form supplied by this Court or the

form attached to the Federal 2254 Rules. Petitions that do not utilize the standard forms shall contain all of the information required by the standard forms. If the petitioner is represented by counsel, the Electronic Case Filing (ECF) procedures apply.

b. Content. The petitioner is to state *all* grounds for relief, provide specific facts supporting each argument, and identify the relief requested. An accompanying memorandum of law is not required but will be accepted by the Clerk of Court at the time the petition is filed.

c. Where to Get the Standard Form. The standard form supplied by this Court for 28 U.S.C. § 2254 petitions can be obtained free of charge from the following sources: (i) this Court's website (www.pawd.uscourts.gov) (FORMS/MANUALS); (ii) this Court's Office of the Clerk of Court upon request; (iii) the Federal Public Defender's website (<http://paw.fd.org>); or (iv) the Federal Public Defender's Office upon request.

d. Requirements Concerning Filing Format. All filings in 28 U.S.C. § 2254 proceedings must be typed, word-processed or neatly written in ink. All filings must be submitted on paper sized 8½ by 11 inches. No writing or typing shall be made on the back of any filing.

e. Return of Petitions that Do Not Substantially Comply With Local Form Rules. If the form or other initial filing submitted by a *pro se* petitioner does not substantially comply with Federal 2254 Rule 2, as supplemented by these Local Rules, the Clerk of Court will accept the petition and file it for the sole purpose of preserving the timeliness. If the Court so directs, the filing may be returned to a *pro se* petitioner with a copy of the Court's standard form, a statement of reasons for its return, and a directive that the petitioner resubmit the claims outlined in the original filing on the Court's form. A petitioner will be given 21 days to return his or her filing on the form supplied by this Court. A petitioner may seek leave of Court for an extension of time to return the form.

f. Certificate Required in Death Penalty Case. A petitioner challenging the imposition of a sentence of death pursuant to a state Court judgment shall file with the Clerk of Court a copy of the "Certificate of Death Penalty Case" required by the Third Circuit L.A.R. Misc. 111.2(a). The certificate will include the following information: names, addresses, and telephone numbers of parties and counsel; if set, the proposed date of execution of the sentence; and the emergency nature of the proceedings. Upon docketing, the Clerk of Court will transmit a copy of the certificate, together with a copy of the relevant documents, to the Clerk of the Court of Appeals as required by Third Circuit L.A.R. Misc. 111.2(a).

C. Filing the Petition. The original Section 2254 petition shall be filed with the Clerk of Court. Section 2254 petitions must be accompanied by the applicable filing fee or for leave to proceed *in forma pauperis*.

D. Preliminary Review. These Local Rules provide no supplement to Federal 2254 Rule 4. Please consult that rule regarding preliminary review.

E. The Answer and the Reply.

1. The Answer.

a. When Required. Upon the directive of the Court, the respondent shall file an Answer to the petition in a form consistent with LCvR 2254.E.1.b-f.

The Respondent may, within the time frame permitted by the Court for the filing of the Answer, file a motion to dismiss if the respondent believes that there is a clear procedural bar to the action, such as the failure to exhaust, statute of limitations, abuse of the writ, and/or successive petitions. A motion to dismiss need not be in a form consistent with LCvR 2254.E.1.b-f. However, such a motion must be accompanied by a certified copy of all relevant state Court records.

b. Contents. The Answer is more than just a responsive pleading that simply admits or denies the allegations contained in the petition. In *habeas* petitions challenging a state conviction/sentence, the Answer shall contain a discussion of the relevant procedural and factual history of all state proceedings, including the state Court trial, direct appeal, and post-conviction proceedings. In *habeas* petitions challenging state parole proceedings, the Answer shall contain the relevant procedural and factual history of the parole proceedings and any state Court proceedings which related to the parole proceedings.

The Answer also shall address procedural issues, the merits of the petition, and shall contain accompanying legal argument and citation to appropriate authorities. All assertions of historical or procedural facts shall be accompanied by citations to the state Court record and shall appear in a style comporting with the designations employed in the index of materials prepared in accordance with LCvR 2254.E.1.d.

c. The respondent must also provide the Court with a certified copy of all relevant transcripts of the state trial and post-conviction proceedings; relevant documentary evidence admitted at those proceedings; briefs submitted by either party to any state Court relating to the matter; opinions and dispositive orders of the state Court or agency; other relevant state Court/agency records; and a certified copy of the docket sheets of all the state Courts/agencies involved. Care should be taken so that all items are photocopied accurately, legibly, and in full.

d. The respondent shall also submit an index of all material described in LCvR 2254.E.1.c. The pages of the records must be sequentially numbered so that citations to those records will identify the exact location where the information appears.

e. If any item identified in LCvR 2254.E.1.c is not available at the time the respondent submits an answer, the respondent shall notify the Court that the item is unavailable. Once the item becomes available, the respondent shall provide a supplemental lodging of the item and index within 21 days of its availability.

f. As set forth in this Court's "Electronic Case Filing Policies and Procedures," in addition to the items that must be filed electronically with the Answer, a respondent shall also submit the original state Court records, or a certified complete copy of those records. The records shall be submitted in the traditional manner on paper. The Clerk of Court shall note on the docket that the original state Court records have been received. State Court records are not part of this Court's permanent case file and will be returned to the appropriate state Court upon final disposition, including appeals.

2. The Reply. Although not required, the petitioner may file a Reply (also known as "a Traverse") within 30 days of the date the respondent files its Answer. If the petitioner wishes to file a Reply after 30 days have passed, he or she must file a motion requesting leave to do so. An extension may be granted only for good cause shown.

F. Discovery. These Local Rules provide no supplement to Federal 2254 Rule 6. Please consult that rule regarding discovery.

G. Expanding the Record. If either party intends to rely on any document(s) that are not a part of the state Court record, such party must include those documents in a separate appendix attached to the pleading by which those documents are being submitted. In addition, that party should address, in its documents filed with the Court, why reliance on those documents is proper under the federal *habeas* statute and Federal 2254 Rule 7.

H. Evidentiary Hearing. These Local Rules provide no supplement to Federal 2254 Rule 8. Please consult that rule regarding evidentiary hearings.

I. Second or Successive Petitions. These Local Rules provide no supplement to Federal 2254 Rule 9. Please consult that rule regarding second or successive petitions.

J. Powers of a Magistrate Judge. Within 21 days of commencement of a Section 2254 proceeding in the Erie or Pittsburgh Divisions, the petitioner shall execute and file a "CONSENT TO JURISDICTION BY UNITED STATES MAGISTRATE JUDGE" form, either consenting to the jurisdiction of the Magistrate Judge or electing to have the case randomly assigned to a District Judge. Respondent shall execute and file within 21 days of its appearance a form either consenting to the jurisdiction of the Magistrate Judge or electing to

have the case randomly assigned to a District Judge. If all parties do not consent to Magistrate Judge jurisdiction, a District Judge shall be assigned and the Magistrate Judge shall continue to manage the case consistent with 28 U.S.C. § 636.

The "CONSENT TO JURISDICTION BY UNITED STATES MAGISTRATE JUDGE" form is available on this Court's website (www.pawd.uscourts.gov) (CASE ASSIGNMENT SYSTEM). If a party elects to have the case assigned to a District Judge, the Magistrate Judge shall continue to manage the case by deciding non-dispositive motions and submitting reports and recommendations on the petition and on dispositive motions, unless otherwise directed by the District Judge.

K. Applicability of the Federal Rules of Civil Procedure. These Local Rules provide no supplement to Federal 2254 Rule 11. Please consult that rule regarding applicability of the Federal Rules of Civil Procedure.

L. Appeals.

1. Upon entry of a final decision decided pursuant to 28 U.S.C. § 2254, the Court shall set forth the judgment on a separate document and enter the judgment on the civil docket as required under Fed. R. Civ. P. 58(a)(1).
2. The time for filing a notice of appeal is governed by Fed. R. App. P. 4(a) and such time commences when the Court enters the judgment as described above in said Rule.

M. The Appointment of Counsel. There is no constitutional right to counsel in proceedings brought pursuant to 28 U.S.C. § 2254. Financially eligible petitioners may, however, request that counsel be appointed at any time. See 18 U.S.C. § 3006A. Pursuant to Federal 2254 Rule 6(a), the Court may, if necessary for effective discovery, appoint counsel for a petitioner who qualifies to have counsel appointed under 18 U.S.C. § 3006A. Pursuant to Federal 2254 Rule 8(c), if an evidentiary hearing is warranted, the Court must appoint counsel to represent a moving party who qualifies to have counsel appointed under 18 U.S.C. § 3006A. This Local Rule is not intended to alter or limit the appointment of counsel available pursuant to Federal 2254 Rule 6(a), Federal 2254 Rule 8(c), or 18 U.S.C. § 3006A.

Comment (June 2008)

All non-death penalty Section 2254 *habeas* cases in the Erie and Pittsburgh Divisions are assigned to a Magistrate Judge only. (Death penalty Section 2254 *habeas* cases continue to be assigned to District Judges only.)

LCvR 2255 ACTIONS UNDER 28 U.S.C. § 2255**A. Scope.**

1. These rules shall apply in the United States District Court, Western District of Pennsylvania, in all proceedings initiated under 28 U.S.C. § 2255. In addition to these rules, all parties also should consult 28 U.S.C. § 2255 and the applicable provisions of the federal *habeas corpus* statute, 28 U.S.C. §§ 2241-2266, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), P.L. 104-132, effective April 24, 1996.

2. These Local Rules are intended to supplement, when necessary, the corresponding rules promulgated by the United States Supreme Court that are entitled "Rules Governing Section 2255 Proceedings for the United States District Courts." Those rules are cited herein as "the Federal 2255 Rules," and a specific Federal 2255 Rule is cited as "Federal 2255 Rule ____." All parties should consult the Federal 2255 Rules at the commencement of litigation to ensure compliance with the Federal 2255 Rules, as supplemented by these Local Rules. In filings submitted to this Court, these Local Rules shall be cited as "LCvR 2255.____."

B. The Motion.**1. Form.**

a. Form of Motions Required. Motions seeking relief under 28 U.S.C. § 2255 filed with this Court may be submitted on the standard form supplied by this Court. If the movant does not use the standard form, the motion must substantially follow the standard form supplied by this Court or the form attached to the Federal 2255 Rules. Motions that do not utilize the standard forms shall contain all of the information required by the standard forms.

b. Content. In the § 2255 motion, the movant is to state *all* grounds for relief, provide specific facts supporting each argument, and identify the relief requested. An accompanying memorandum of law is not required but will be accepted by the Clerk of Court at the time the motion is filed.

c. Where to Get the Standard Form. The standard form supplied by this Court for 28 U.S.C. § 2255 motions can be obtained free of charge from the following sources: (i) this Court's website (www.pawd.uscourts.gov); (ii) this Court's Office of the Clerk of Court upon request; (iii) the Federal Public Defender's website (<http://paw.fd.org>); or (iv) the Federal Public Defender's Office upon request.

d. Requirements Concerning Filing Format. All filings in Section 2255 proceedings must be typed, word-processed or

neatly written in ink. All filings must be submitted on paper sized 8½ by 11 inches. No writing or typing shall be made on the back of any filing.

e. Return of Motions that Do Not Substantially Comply With Local Form Rules. If the form or other initial filing submitted by a *pro se* movant does not substantially comply with Federal 2255 Rule 2, as supplemented by these Local Rules, the Clerk of Court will accept the motion and file it for the sole purpose of preserving the timeliness. If the Court so directs, the filing may be returned to a *pro se* movant with a copy of the Court's standard form, a statement of reasons for its return, and a directive that the movant resubmit the claims outlined in the original filing on the Court's form. A movant will be given 21 days to return his or her filing on the form supplied by this Court. A party may seek leave of Court for an extension of time to return the form.

f. Certificate Required in Death Penalty Case. A movant challenging the imposition of a sentence of death pursuant to a federal Court judgment shall file with the Clerk of Court a copy of the "Certificate of Death Penalty Case" required by the Third Circuit L.A.R. Misc. 111.2(a). The certificate will include the following information: names, addresses, and telephone numbers of parties and counsel; if set, the proposed date of execution of the sentence; and the emergency nature of the proceedings. Upon docketing, the Clerk of Court will transmit a copy of the certificate, together with a copy of the relevant documents, to the Clerk of the Court of Appeals as required by Third Circuit L.A.R. Misc. 111.2(a).

C. Filing and Serving the Motion.

1. The original Section 2255 motion shall be filed with the Office of the Clerk of Court.
2. Upon receiving the filing, the Clerk of Court will docket it at two places. The Clerk of Court will assign a civil case number for the motion, open that civil case, and enter the motion at that civil case number. At the same time, the Clerk of Court will file and docket the motion at the movant's related criminal case number. All filings related to the motion thereafter will be filed and docketed at the criminal case number only, with the exception of the final judgment order. The final judgment order will be filed and docketed at the civil case number only. If the movant is represented by counsel, Electronic Case Filing (ECF) procedures apply.
3. Following docketing of the filing, the Clerk of Court will deliver a copy of the filing to the United States Attorney by way of a Notice of Electronic Filing (NEF) or by hard copy. Although the United States Attorney has no obligation to do so, he or she may elect to respond to the motion prior to receipt of a District Court order directing that a response be filed.

D. Preliminary Review.

These Local Rules provide no supplement to Federal 2255 Rule 4. Please consult that rule regarding preliminary review.

E. The Answer and the Reply.

1. Order Directing Response. Upon undertaking preliminary review of the motion for relief under 28 U.S.C. § 2255 (and the United States Attorney's initial response, if any), if the Court finds that there is no basis for dismissal, the Court must enter an order directing the United States Attorney to respond by way of an Answer, motion or other form of response within 45 days. An extension may be granted only for good cause shown.

2. The Reply. Although not required, the movant may file a Reply within 30 days of the date the United States Attorney files its Answer or other form of response. If the movant wishes to file a Reply after 30 days have passed, he or she must file a motion requesting leave to do so. An extension may be granted only for good cause shown.

F. Discovery. These Local Rules provide no supplement to Federal 2255 Rule 6. Please consult that rule regarding discovery.

G. Expanding the Record. These Local Rules provide no supplement to Federal 2255 Rule 7. Please consult that rule regarding expanding the record.

H. Evidentiary Hearing. Local Rules of Criminal Procedure [insert Local Rule here when that Rule is finalized] apply at a hearing under Federal 2255 Rule 8(d).

I. Second or Successive Motions. These Local Rules provide no supplement to Federal 2255 Rule 9. Please consult that rule regarding second or successive motions.

J. Powers of a Magistrate Judge. Motions filed under 28 U.S.C. § 2255 shall be assigned to District Judges only.

K. Appeals.

1. Upon entry of a final decision on a motion decided pursuant to 28 U.S.C. § 2255, the Court shall set forth the judgment on a separate document and enter the judgment on the civil docket as required under Fed. R. Civ. P. 58(a)(1).

2. The time for filing a notice of appeal is governed by Fed. R. App. P. 4(a) and such time commences when the Court enters the judgment as described above in subsection (a).

L. Applicability of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure. These Local Rules provide no supplement to Federal 2255 Rule 12. Please consult that rule regarding the applicability of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

M. The Appointment of Counsel. There is no constitutional right to counsel in proceedings brought under 28 U.S.C. § 2255. Financially eligible movants may, however, request that counsel be appointed at any time. See 18 U.S.C. § 3006A. Pursuant to Federal 2255 Rule 6(a), the Court may, if necessary for effective discovery, appoint counsel for a movant who qualifies to have counsel appointed under 18 U.S.C. § 3006A. Pursuant to Federal 2255 Rule 8(c), if an evidentiary hearing is warranted, the Court must appoint counsel to represent a moving party who qualifies to have counsel appointed under 18 U.S.C. § 3006A. This Local Rule is not intended to alter or limit the appointment of counsel available pursuant to Federal 2255 Rule 6(a), Federal 2255 Rule 8(c), or 18 U.S.C. § 3006A.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

LOCAL CRIMINAL RULES OF COURT

LOCAL CRIMINAL RULES OF COURT

LCrR 1 CITATION AND APPLICABILITY TO *PRO SE* DEFENDANTS

These rules may be cited as "LCrR." Where the defendant is proceeding *pro se*, references in these rules to defense counsel shall be taken to include the *pro se* defendant.

LCrR 5 INITIAL APPEARANCE BEFORE MAGISTRATE JUDGE

A. Opportunity to Consult With Counsel. A defendant shall be given an opportunity to consult with counsel at his or her Initial Appearance and before an initial interview with Pretrial Service Officers. The Federal Public Defender, as directed by the Court, will provide advice of rights to defendants before their interview with Pretrial Services.

B. Notification of Counsel. It is the responsibility of the Magistrate Judge assigned to criminal duty to notify the Federal Public Defender, or the defendant's retained counsel if known, before the Initial Appearance.

C. Eligibility for Appointed Counsel. When a defendant requests appointment of counsel, and the Court determines that the defendant is eligible for appointed counsel, the Court will appoint counsel under the Criminal Justice Act at the time of the Initial Appearance.

D. Entry of Appearance. In all criminal cases involving privately retained counsel, a notice of appearance of counsel shall be filed at or before the first appearance of counsel. See *also* LCvR 83.2.C.1.

E. Withdrawal of Appearance. In any criminal proceeding, no attorney whose appearance has been entered shall withdraw his or her appearance except upon filing a written petition stating reasons for withdrawal, and only with leave of Court and upon reasonable notice to the client. See *also* LCvR 83.2.C.4.

LCrR 10 ARRAIGNMENTS

Arraignments may be conducted by the Magistrate Judge in cases triable by the Magistrate Judge and in other cases to the extent of taking a not guilty plea or noting a defendant's intention to plead guilty or *nolo contendere* and ordering a presentence report in appropriate cases. Upon the request of the defendant, the government shall provide available Fed. R. Crim. P. 16 material to the defendant at the time of the arraignment, and the Fed. R. Crim. P. 16 receipt shall be filed with the Court. Upon written request by the defendant, the Magistrate Judge may set a date for the filing of pretrial motions up to 45 days from the date of the arraignment, and order that the period of the extension shall be excluded from the time within which the trial of the case shall commence under the Speedy Trial Act, as necessary to provide the defendant with adequate time for investigation and preparation of motions. Any other motions for extension of time shall be filed with the District Judge.

Comment (February 2013)

Forms for Motions to Extend Time to File Pretrial Motions will be available to counsel at the time of the arraignment and may be approved by Order of the Magistrate Judge. The 45 day period will be excluded from the Speedy Trial Act 18 U.S.C. § 3161 et seq.

LCrR 12 PRETRIAL MOTIONS

A. Timing. Motions under Fed. R. Crim. P. 12 and 41 shall be made within fourteen days after arraignment, unless the court extends the time at arraignment, or upon written application made within the said fourteen day period. The court, in its discretion, may, however, for good cause shown, permit a motion to be made and heard at a later date.

B. Requirements. All such motions shall contain a short and plain description of the requested relief and incorporate or be accompanied by a memorandum or brief setting forth the reasons and legal support for the granting of the requested relief.

C. Response. Any party opposing a motion may file and serve a response within fourteen days after service of the motion, unless the time period is otherwise extended by the Court. Every response shall incorporate or be accompanied by a memorandum or brief setting forth the reasons and legal support for the respondent's position.

D. Reply Memorandum. The movant may file and serve a reply memorandum within fourteen days after service of the response, unless the time period is otherwise extended by the Court.

E. Motion to Extend Time. Any motion to extend the time limits set forth above shall set forth the grounds upon which it is made and whether the continuance sought shall constitute, in whole or in part, excludable time as defined by 18 U.S.C. § 3161(h). Said motion to extend time shall be accompanied by a proposed form of Order that, if adopted, will state fully and with particularity the reasons for granting the motion as well as the proposed findings of the Court as to excludable time. Extensions of the time limits set forth above shall be excludable to the extent authorized by 18 U.S.C. § 3161(h). Extensions shall be granted by the Court where warranted by the ends of justice in accordance with the list of factors set forth in § 3161(h)(7)(B). The Court may consider good faith scheduling conflicts, additional time needed for reasonable preparation, the interests of the defendant and the government in maintaining continuity of counsel, and other unavoidable problems, such as emergencies and illness. This list is illustrative and not exclusive.

LCrR 16 DISCOVERY AND INSPECTION

A. Compliance With Fed. R. Crim. P. 16. The parties shall comply with Fed. R. Crim. P. 16, including the reciprocal discovery provisions of Fed. R. Crim. P. 16(b).

B. Timing. Upon a defendant's request, the government shall make available the Rule 16 material at the time of the arraignment. If discovery is not requested by the defendant at the time of the arraignment, the government shall disclose such material within seven (7) days of a defendant's request. The government shall file a receipt with the Court which sets forth the general categories of information subject to disclosure under Rule 16, as well as any exculpatory evidence, and the items provided under each category.

C. Exculpatory Evidence. At the time of arraignment, and subject to a continuing duty of disclosure thereafter, the government shall notify the defendant of the existence of exculpatory evidence, and permit its inspection and copying by the defendant.

D. Voluntary Disclosure. Nothing in this rule shall be construed to prevent the government from voluntarily disclosing material to the defendant at an earlier time than that required by Fed. R. Crim. P. 16, Fed. R. Crim. P. 26.2 and 18 U.S.C. § 3500.

E. Obligation to Confer. Counsel shall confer and attempt to resolve issues regarding additional discovery before a motion to produce is filed with the Court.

F. Status Conference. The Court shall hold a status conference with counsel approximately 30 days after Arraignment, on a date certain to be set by the Court. Counsel must be prepared to discuss case scheduling matters, as well as the progress of discovery to date. The attendance of the defendant shall be at the discretion of the Court.

LCrR 23 LAW ENFORCEMENT EVIDENCE

In all cases where money, firearms, narcotics, controlled substances or any matter of contraband is introduced into evidence, such evidence shall be maintained for safekeeping by law enforcement during all times when court is not in session, and at the conclusion of the case. The law enforcement agent will be responsible for its custody if the evidence is required for any purpose thereafter. See *also* LCvR 5.1.J.

LCrR 24.1 JURY LIST

Members of the bar of this court shall be permitted to have a copy of each jury list on condition that a receipt be signed with the Clerk of Court at the date of delivery thereof which shall contain as the substance the following certification:

"I hereby certify that I and/or my firm or associates have litigation pending and in connection therewith, I will require a list of jurors. I further acknowledge to have received a copy of said list of jurors from the Clerk of Court and hereby agree that I will not, nor will I permit any person or

agency, to call or contact any juror identified on said list at his or her home or any other place, nor will I call or contact any immediate member of said juror's family, which includes his or her spouse, children, mother, father, brother, or sister, in an effort to determine the background of any member of said jury panel for acceptance or rejection of said juror.

/s/ _____

Date: _____ "

LCrR 24.2 EXAMINATION OF JURORS BEFORE TRIAL

Jury selection in a criminal case shall be governed by Fed. R. Crim. P. 23 and 24 and by such procedures established by the trial judge. In its discretion, the Court may require potential jurors to complete a questionnaire before the formal voir dire process commences.

A. Examination of Jurors Before Trial. During the examination of jurors before trial, the Judge or a representative of the Clerk of Court conducting such examination, shall state the following to the jurors collectively:

1. The name of each of the defendants and the names of the attorneys for the parties; and
2. The nature of the case and the offenses charged.

B. Required Questions. The examination of jurors shall contain the following questions, or questions substantially similar thereto:

1. Do you know any of the defendants?
2. Do you know any of the attorneys in the case? Have they or their firms ever represented you or any members of your immediate family?
3. Do you know anything about this case?
4. (If appropriate) Are you or any member of your immediate family, employees, former employees or stockholders in any of the corporations or businesses involved in this case? The names of corporations and businesses involved in this case are:
5. Are you or any member of your immediate family employed by the federal government (with the exception of military service)? What do they do?
6. Are you or any member of your immediate family employed by any law enforcement agency?

C. Questions to Individual Jurors. The following questions, where appropriate, shall, *inter alia*, be put to each juror individually:

1. What is your present occupation?
2. Who is your employer?
3. If you are retired, who was your last employer and what was your occupation?
4. Are you married? If so, what is your spouse's occupation and who is your spouse's employer?
5. Do you have any children? Do any of them work in the Western District of Pennsylvania? For whom do they work and what do they do?
6. Have you ever been a witness or defendant in a criminal case?
7. Have you ever been the victim of a crime?
8. Any other question which in the judgment of the Court shall be deemed proper.

LCrR 24.3 COMMUNICATION WITH A TRIAL JUROR

A. During Trial. During the trial, no party, attorney for a party, or person acting on behalf of a party or attorney, shall communicate directly or indirectly with any of the following: (1) a juror, (2) an excused juror, (3) an alternate juror or (4) a family member or person living within the same household as a juror, excused juror or alternate juror.

B. After Trial. After a verdict is rendered or a mistrial is declared, the Court shall inform the jury that no juror is required to speak to anyone, but that a juror may do so if the juror wishes.

LCrR 24.4 JUROR NOTE TAKING

Jurors may be permitted to take notes in the discretion of the Court. If jurors are permitted to take notes, the Court will provide jurors with the necessary materials, and shall retain custody of the notes when Court is not in session or the jury is not deliberating. After the jury is discharged by the Court, the notes shall be destroyed.

LCrR 28 INTERPRETERS

A court certified interpreter will be provided by the Court and present for all proceedings involving defendants who are not proficient in English.

LCrR 32 PROCEDURE FOR GUIDELINE SENTENCING

The following procedures hereby are established to govern sentencing proceedings in this Court, in addition to the requirements of Fed. R. Crim. P. 32; the Sentencing Reform Act of 1984, 18 U.S.C. § 3551 *et seq.*; and the advisory United States Sentencing Guidelines ("U.S.S.G."), as promulgated under that Act and by the Sentencing Commission Act, 28 U.S.C. § 991 *et seq.*

A. Timing of Sentencing. Unless the Court orders otherwise, sentencing proceedings shall be scheduled no earlier than 14 weeks following the entry of a plea of guilty or *nolo contendere*, or the entry of a verdict of guilty.

B. Presentence Investigation and Report. Counsel is directed to the requirements of Fed. R. Crim. P. 32(c) and Fed. R. Crim. P. 32(d) regarding Presentence Investigations and Reports.

C. Presentence Procedures. No later than 7 weeks prior to the date set for sentencing, the United States Probation Office ("USPO") shall disclose the tentative Presentence Investigation Report ("PSR") to only the defendant, the defendant's attorney, and the attorney for the government. See Fed. R. Crim. P. 32(e)(2) and § 6A1.2(a) of the U.S.S.G.

1. Confidentiality. The PSR is a confidential court document. No copies or dissemination of the PSR shall be made without the express permission or Order of this Court, except that, pursuant to Third Circuit Local Appellate Rule 30.3(c), copies may be made for the United States Court of Appeals in any appeal from the sentence. The unauthorized copying or disclosure of the PSR may be treated as a contempt of court and be punished accordingly.

2. Administrative Resolution. If a party disputes facts or factors material to sentencing contained in the PSR, or seeks the inclusion of additional facts or factors material to sentencing, that party shall have the obligation to pursue the administrative resolution of that matter through informal presentence conferences with opposing counsel and the USPO.

a. The party seeking administrative resolution of such facts and factors shall do so within 2 weeks from the disclosure of the tentative PSR.

b. No later than 2 weeks after the disclosure of the tentative PSR, following any good faith efforts to resolve disputed, or include

additional, material facts or factors described above, the USPO shall notify the attorneys for the government and the defendant of those matters that have, or have not, been administratively resolved.

3. Disclosure of PSR to Court. Following the 2 week time period for administrative resolution, and no later than 5 weeks before sentencing, pursuant to Fed. R. Crim. P. 32(g), the USPO shall disclose the PSR, as may be amended, to the Court, the defendant, the attorney for the defendant, and the attorney for the government.

4. Objections; Positions of the Parties. No later than 4 weeks before sentencing, the parties each shall file with the court a pleading entitled "Position of [Defendant or Government, as appropriate] With Respect to Sentencing Factors," pursuant to Fed. R. Crim. P. 32(f) and § 6A1.2(b) of the U.S.S.G. This pleading shall set forth any objections to the PSR and any anticipated grounds for: (a) departure from the advisory guideline sentencing range; or, (b) a sentence outside of the advisory guideline sentencing range, pursuant to the provisions of 18 U.S.C. § 3553(a). The party's Position With Respect to Sentencing shall be accompanied by a written statement certifying that filing counsel has conferred with opposing counsel and with the USPO in a good faith effort to resolve any disputed matters.

5. Responses to Objections and Positions. A party may file a response to the opposing party's Position With Respect to Sentencing Factors no later than 3 weeks prior to the sentencing.

6. Action on Objections; Addendum. After receiving counsel's objections and any responses thereto, the USPO shall conduct such further investigation as appropriate. The USPO may meet or otherwise confer with counsel to discuss unresolved factual or legal issues.

a. No later than 2 weeks before sentencing, the USPO shall serve an addendum which shall set forth any unresolved objections to the PSR, the grounds for those objections, the responses thereto, and the USPO's comments thereon.

b. The USPO shall certify that the PSR, together with any revision thereof and any addendum thereto, have been disclosed to the defendant and all counsel of record, and that the addendum fairly sets forth any remaining objections and responses.

7. Court's Tentative Findings and Rulings. Prior to the sentencing hearing, the Court shall notify the parties and the USPO of the Court's tentative findings and rulings, to the extent practicable, concerning disputed facts or factors. Reasonable opportunity shall be provided to the

parties, prior to the imposition of sentence, for the submission of oral or written objections to the Court's tentative findings and rulings.

8. Supplemental Information and Memoranda. No later than 1 week before sentencing, a party may file supplemental information or a memorandum with respect to sentencing of the defendant, and shall serve the same upon the USPO. If counsel for the defendant intends to submit letters to the Court for consideration at sentencing, said letters should be electronically filed at least seven calendar days before sentencing. Opposing counsel may file a response to any supplemental information or memorandum no later than three days before sentencing.

9. Additional Information and Memoranda. For good cause shown, the Court may allow additional information and memoranda, and the responses thereto, to be raised at any time prior to the imposition of sentence.

10. Introducing Evidence. When any fact or factor material to the sentencing determination is reasonably in dispute, the parties shall be given an adequate opportunity to introduce evidence and to present information to the Court regarding that fact or factor, in accordance with § 6A1.3(a) of the U.S.S.G.

11. Court Determinations. Except with respect to any objection made pursuant to Fed. R. Crim. P. 32(f) and LCrR 32.C.5, above, the Court may accept as accurate any undisputed portion of the PSR as a finding of fact. However, with respect to disputed portions of the PSR, the Court shall make determinations pursuant to Fed. R. Crim. P. 32(i)(3) and § 6A1.3 of the U.S.S.G.

D. Judicial Modifications. For good cause shown, the time limits set forth in LCrR 32 may be modified by the Court.

E. Pre-Plea Presentence Investigations and Reports. Under appropriate circumstances, and with the written consent of the defendant pursuant to Fed. R. Crim. P. 32(e)(1), the Court may order the USPO to conduct a Presentence Investigation and prepare a PSR for a defendant prior to the entry of a plea of guilty or *nolo contendere*. The scope of any pre-plea PSR shall be determined by the Court.

LCrR 41 INSPECTION AND COPYING OF SEIZED PROPERTY

Under appropriate circumstances, upon the filing of a motion and a showing of good cause by the party seeking relief, the Court may enter an order which permits such party (1) to have reasonable access to seized property, including documents, for inspection; or (2) to obtain copies of seized documents or

property other than contraband. The moving party shall bear the cost of copying, unless otherwise ordered by the Court for good cause shown. In fashioning an order for relief under this Rule, the Court shall consider, among other things, the burden of compliance with the order upon the government, as well as the needs of the party seeking relief. Nothing herein is intended to limit any remedies which may be available under Fed. R. Crim. P. 41(g).

LCrR 46 TYPES OF BAIL IN CRIMINAL CASES

Provided that a bond in the form available at the office of the Clerk of Court is executed, any of the following may be accepted as security:

A. United States currency, or a certificate of deposit of a federally insured bank or savings and loan association, or federal, state or local government securities or bonds, or corporate securities or bonds of companies listed on the New York Stock Exchange, or a combination thereof, in the face amount of the bail, provided that the instruments are payable on demand, and provided further that, if the instruments are payable to one or more persons, the Clerk of Court or the appropriate judicial officer is satisfied that the endorsements of all owners have been secured as obligers.

B. Real property in the Commonwealth of Pennsylvania, including realty in which the defendant has an interest, in which the market value of the property after subtracting the current value of all mortgages, liens and judgments, equals the amount of the bond. *See also* Fed. R. Crim. P. 46(e).

The Clerk of Court shall maintain in its office and on its official website the procedures and requirements for posting of property bonds.

C. A surety company or corporation authorized by the Secretary of Treasury of the United States to act as surety on official bonds under the Act of August 13, 1894 (28 Stat. 279, as amended, U.S.C. Title 6, 1-13).

D. Such other property as the court deems sufficient pursuant to the Bail Reform Act of 1984, 18 U.S.C. § 3142(c)(2)(K).

LCrR 49 ELECTRONIC CASE FILING; SEALING OF DOCUMENTS

A. Electronic Case Filing Policies and Procedures. Counsel must comply with the Electronic Case Filing Policies and Procedures promulgated by the Court which govern all criminal cases and matters. All documents must comply with the privacy protection provisions set forth in Fed. R. Crim. P. 49.1 and LCvR 5.2.D.

B. Filing by Electronic Means. Documents may be filed, signed and verified by electronic means to the extent and in the manner authorized by the Court's Standing Order regarding Electronic Case Filing Policies and Procedures and the ECF User Manual. A document filed by electronic means in compliance with this Local Rule constitutes a written document for the purposes of applying these Local Rules, the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure. See *also* LCvR 5.5.

C. Service by Electronic Means. Documents may be served through the Court's transmission facilities by electronic means to the extent and in the manner authorized by the Standing Order regarding Electronic Case Filing Policies and Procedures and the ECF User Manual. Transmission of the Notice of Electronic Filing constitutes service of the filed document upon each party in the case who is registered as a Filing User. Any other party or parties shall be served documents according to these Local Rules, the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure. See *also* LCvR 5.6.

D. Filing Under Seal. The following documents shall be accepted by the Clerk for filing under seal without the necessity of a separate sealing order: (1) Motions setting forth the substantial assistance of a defendant in the investigation or prosecution of another person pursuant to U.S.S.G. § 5K1.1 or Fed. R. Crim. P. 35; (2) Motions for writs to produce incarcerated witnesses for testimony; (3) Motions for subpoenas for witnesses; (4) Motions by counsel seeking authorization for the expenditure of funds under the Criminal Justice Act, or seeking reimbursement for expenses incurred or attorney's fees. Such documents should be presented to the Clerk in hard copy for scanning and docketing under seal.

E. Provision of Sealed Documents to Opposing Party. Counsel of record may exchange copies of sealed documents, without obtaining leave of court, if the document is provided in an ongoing criminal case.

LCrR 57

ASSIGNMENT OF CASES

A. Criminal Action Categories. All criminal cases in this district shall be divided into the following categories:

1. Narcotics and Other Controlled Substances
 - 1a. Narcotics and Other Controlled Substances, 3 or more Defendants
2. Fraud and Property Offenses
 - 2a. Fraud and Property Offenses, 3 or more Defendants
3. Crimes of Violence

4. Sex Offenses
5. Firearms and Explosives
6. Immigration
7. All Others.

See also LCvR 40.B.

B. Assignment of Criminal Cases to District Judges. All criminal cases shall be assigned by the Clerk of Court at the earlier of (1) the time of filing of the indictment or information; (2) when any appeal is taken from a Magistrate Judge's decision on bail; (3) upon the filing of a motion for return of seized property; (4) upon the filing of a motion to quash a subpoena; (5) upon the filing of a motion to dismiss the complaint; (6) upon the filing of any motions of a similar nature that a Magistrate Judge concludes must be handled by a District Judge; or, (7) at the time of filing any motion in a case at the magisterial stage for a competency determination.

C. Related Actions. At the time of filing any criminal action or entry of appearance or any initial pleading or motion by defense counsel, as the case may be, counsel shall indicate on an appropriate form whether the action is related to any other pending or previously terminated actions in this Court. For the purpose of completing the form, all criminal actions arising out of the same criminal transaction or series of transactions are deemed related.

LCrR 58 PROCEDURES FOR MISDEMEANORS AND OTHER PETTY OFFENSES

See LCvR 72.

LCrR 83 FREE PRESS -- FAIR TRIAL PROVISIONS

A. Release of Information in Criminal Litigation. A lawyer or law firm shall not release or authorize the release of information or opinion that a reasonable person would expect to be disseminated by means of public communication, in connection with pending or imminent criminal litigation with which he or she or the firm is associated, if there is a substantial likelihood that such release would materially prejudice ongoing criminal proceedings.

B. Release Beyond Public Record. With respect to a pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication, that goes beyond the public record, if there is a substantial likelihood that such statement would materially prejudice such pending investigation.

C. Subjects Likely to Be Materially Prejudicial. From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, extrajudicial statements by a lawyer or law firm associated with the prosecution or defense that a reasonable person would expect to be disseminated by means of public communication relating to the following subjects are substantially likely to be considered materially prejudicial to ongoing criminal proceedings:

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, a lawyer associated with the prosecution may release any information necessary to aid in his or her apprehension or to warn the public of any dangers he or she may present;
2. the existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;
3. the performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;
4. the identity, testimony or credibility of prospective witnesses, except that the lawyer 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; or
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, except that counsel may announce without further comment that the accused asserts innocence or denies the charges made against him or her.

Unless otherwise prohibited by law, the foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of his or her or its official or professional obligations, from announcing the fact, time and place of arrest, the identity of the investigating and arresting officer or agency, and the length of the investigation; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused asserts innocence or denies the charges made against him or her.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

LOCAL BANKRUPTCY APPELLATE RULES OF COURT

LOCAL BANKRUPTCY APPELLATE RULES OF COURT**LBR 8007-2 APPEAL TO THE DISTRICT COURT FROM THE BANKRUPTCY COURT**

A. Appeals to the United States District Court from the United States Bankruptcy Court for the Western District of Pennsylvania pursuant to 28 U.S.C. § 158, shall be taken in the manner prescribed in Part VIII of the Federal Rules of Bankruptcy Procedure (hereinafter FRBP), Rule 8001, *et seq.*

B. Where, after a notice of appeal to the United States District Court has been filed in the Bankruptcy Court, the appellant fails to designate the contents of the record on appeal or fails to file a statement of issues on appeal within the time required by FRBP 8006, or fails to provide, when appropriate, evidence that a transcript has been ordered and that payment therefor has been arranged, or fails to take any other action to enable the bankruptcy clerk to assemble and transmit the record:

1. the bankruptcy clerk shall provide fourteen (14) days notice to the appellant and appellee of an intention to transmit a partial record consistent with Subsection B.2. of this rule;
2. after the 14 day notice period required by subsection B.1. of this rule has expired, the clerk of the bankruptcy court shall thereafter promptly forward to the clerk of the United States District Court a partial record consisting of a copy of the order or judgment appealed from, any opinion, findings of fact, and conclusions of law by the court, the notice of appeal, a copy of the docket entries, any documents filed as part of the appeal, and any copies of the record which have been designated by the parties pursuant to FRBP 8006; the record as transmitted shall be deemed to be the complete record for purposes of the appeal; and
3. the district court may dismiss said appeal for failure to comply with FRBP 8006 upon its own motion, or upon motion filed in the district court by any party in interest or the United States trustee.

C. Notwithstanding any counter designation of the record or statement of issues filed by the appellee, if the appellee fails to provide, where appropriate, evidence that a transcript has been ordered and that payment therefore has been arranged, or the appellee fails to take any other action to enable the bankruptcy clerk to assemble and transmit the record pursuant to FRBP 8006, the bankruptcy clerk shall transmit the copies of the record designated by the parties and this shall be deemed to be the complete record on appeal.

LBR 9015-1 JURY TRIAL IN BANKRUPTCY COURT

A. In accordance with 28 U.S.C. § 157(e), the Bankruptcy Judges of this Court are specially designated to conduct jury trials where the right to a jury applies. This jurisdiction is subject to the express consent of all parties.

B. The jurors will be drawn from the same qualified jury wheels, consisting of the same counties, that are used in this Court.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

LOCAL ADMIRALTY RULES

LOCAL ADMIRALTY RULES

RULE (a) AUTHORITY AND SCOPE

LAR(a)(1) AUTHORITY

The local admiralty rules for the United States District Court for the Western District of Pennsylvania are promulgated as authorized by and subject to the limitations of Federal Rule of Civil Procedure 83.

LAR(a)(2) SCOPE

A. General.

These local admiralty rules apply only to civil actions that are governed by the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions (Supplemental Rule or Rules). All other local civil rules are applicable in these cases; except as may otherwise be provided herein and further, to the extent that another local civil rule is inconsistent with the applicable local admiralty rules, the local admiralty rules shall govern.

B. Settlement Procedure for Seaman Suits.

The procedure for the compromise, settlement, discontinuance or dismissal of seaman suits shall be as set forth in LCvR 17.2.

LAR(a)(3) CITATION

The local admiralty rules may be cited by the letters "LAR" and the lower case letters and numbers in parentheses that appear at the beginning of each section. The lower case letter is intended to associate the local admiralty rule with the Supplemental Rule that bears the same capital letter.

LAR(a)(4) OFFICERS OF COURT

As used in the local admiralty rules, "judicial officer" means a United States District Judge or a United States Magistrate Judge; "Clerk of Court" means the clerk of the district court and includes deputy clerks of court; and "marshal" means the United States marshal and includes deputy marshals.

RULE (b) MARITIME ATTACHMENT AND GARNISHMENT**LAR(b)(1) AFFIDAVIT THAT DEFENDANT IS NOT FOUND WITHIN THE DISTRICT**

The affidavit required by Supplemental Rule B(1)(b) to accompany the complaint shall list the efforts made by and on behalf of plaintiff to find and serve the defendant within the district.

RULE (c) ACTIONS *IN REM*: SPECIAL PROVISIONS**LAR(c)(1) INTANGIBLE PROPERTY**

The summons issued pursuant to Supplemental Rule C(3) shall direct the person having control of intangible property to show cause no later than 14 days after service why the intangible property should not be delivered to the court to abide the judgment. A judicial officer for good cause shown may lengthen or shorten the time. Service of the summons has the effect of an arrest of the intangible property and brings it within the control of the court. The person who is served may deliver or pay over to the marshal the intangible property proceeded against to the extent sufficient to satisfy the plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. The claimant of the property may show cause as provided in Supplemental rule C(6) why the property should not be delivered to the court.

LAR(c)(2) PUBLICATION OF NOTICE OF ACTION AND ARREST

The notice required by Supplemental Rule C(4) shall be published once in a newspaper named in LAR(g)(3), and plaintiff's attorney shall file a copy of the notice as it was published with the clerk. The notice shall contain:

- A.** The court, title, and number of the action;
- B.** The date of the arrest;
- C.** An identification of the property arrested;
- D.** The name, address, and telephone number of the attorney for plaintiff;
- E.** A statement that the claim of the person who is entitled to possession or who claims an interest pursuant to Supplemental Rule C(6) must be filed with the clerk and served on the attorney for plaintiff within 14 days after publication;

F. A statement that an answer to the complaint must be filed and served within 30 days after publication, and that otherwise, default may be entered and condemnation ordered;

G. A statement that applications for intervention under Federal Rule 24 by person claiming maritime liens or other interests shall be filed within the time fixed by the court; and

H. The name, address, and telephone number of the marshal.

LAR(c)(3) DEFAULT IN ACTION *IN REM*

A. Notice Required. A party seeking a default judgment in an action *in rem* must satisfy the Judge that due notice of the action and arrest of the property has been given (1) by publication as required by LAR(c)(2), (2) by service upon the master or other person having custody of the property, and (3) by service under Federal Rule 5(b) upon every other person who has not appeared in the action and is known to have an interest in the property.

B. Persons with Recorded Interests.

1. If the defendant property is a vessel documented under the laws of the United States, the party seeking the default must attempt to notify all persons named in the United States Coast Guard certificate of ownership.
2. If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, plaintiff must attempt to notify the persons named in the records of the issuing authority.
3. If the defendant property is of such character that there exists a governmental registry of recorded property interests and/or security interests in the property, the plaintiff must attempt to notify all persons named in the records of each such registry.

LAR(c)(4) ENTRY OF DEFAULT AND DEFAULT JUDGMENT

After the time for filing an answer has expired, the plaintiff may move for entry of default under Federal Rule 55(a). Default will be entered upon showing that:

A. Notice has been given as required by LAR(c)(3)(a) and,

- B.** Notice has been attempted as required by LAR(c)(3)(b), where appropriate, and
- C.** The time for answer has expired, and
- D.** No one has appeared to claim the property.

The plaintiff may move for judgment under Federal Rule 55(b) at any time after default has been entered.

LAR(c)(5) UNDERTAKINGS IN LIEU OF ARREST

If, before or after commencement of suit, plaintiff accepts any written undertaking to respond on behalf of the vessel or other property sued in return for his/her forgoing the arrest or stipulating to the release of such vessel or other property, the undertaking shall become a defendant in place of the vessel or other property sued and be deemed referred to under the name of the vessel or other property in any pleading, order or judgment in any action referred to in the undertaking.

RULE (d) POSSESSORY, PETITORY AND PARTITION ACTIONS

LAR(d)(1) RETURN DATE

In a possessory action under Supplemental Rule D, a judicial officer may order that the claim and answer be filed on a date earlier than 21 days after arrest. The order may also set a date for expedited hearing of the action.

RULE (e) ACTIONS *IN REM* AND *QUASI IN REM*: GENERAL PROVISIONS

LAR(e)(1) ITEMIZED DEMAND FOR JUDGMENT

The demand for judgment in every complaint filed under Supplemental Rule B or C shall allege the dollar amount of the debt or damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of damage. The amount of the special bond posted under Supplemental Rule E(5)(a) may be based upon these allegations.

LAR(e)(2) VERIFICATION OF PLEADINGS

Every complaint filed in Supplemental Rule B, C, and D actions shall be verified upon oath or solemn affirmation, or in the form provided by 28 U.S.C. § 1746, by a party or by an authorized officer of a corporate party. If no party or authorized corporate officer is present within the district, verification of a complaint may be made by an agent, attorney in fact, or attorney of record, who shall state the sources of the knowledge, information and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why verification is not made by the party or an authorized corporate officer; and state that the affiant is authorized so to verify. A verification not made by a party or authorized corporate officer will be deemed to have been made by the party as if verified personally. If the verification was not made by a party or authorized corporate officer, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized corporate officer, which shall be procured by commission or as otherwise ordered.

LAR(e)(3) REVIEW BY JUDICIAL OFFICER

Unless otherwise required by the judicial officer, the review of complaints and papers called for by Supplemental Rules B(1) and C(3) does not require the affiant party or attorney to be present. The applicant for review shall include a form of order to the clerk which, upon signature by the judicial officer, will direct the arrest, attachment or garnishment sought by the applicant. In exigent circumstances, the certification of the plaintiff or his/her attorney under Supplemental Rules B and C shall consist of an affidavit.

LAR(e)(4) INSTRUCTIONS TO THE MARSHAL

The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the marshal.

LAR(e)(5) PROPERTY IN POSSESSION OF UNITED STATES OFFICER

When the property to be attached or arrested is in the custody of an employee or officer of the United States, the marshal will deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee if present, and otherwise to the custodian of the property. The marshal will instruct the officer or employee or custodian to retain custody of the property until ordered to do otherwise by a judicial officer.

LAR(e)(6) SECURITY FOR COSTS

In an action under the Supplemental Rules, a party may move upon notice to all parties for an order to compel an adverse party to post security for costs with the clerk pursuant to Supplemental Rule E(2)(b). Unless otherwise ordered, the amount of security shall be \$250. The party so ordered shall post the security within seven days after the order is entered. A party who fails to post security when due may not participate further in the proceedings. A party may move for an order increasing the amount of security for costs.

LAR(e)(7) ADVERSARY HEARING

The adversary hearing following arrest or attachment or garnishment that is called for in Supplemental Rule E(4)(f) shall be conducted by a judicial officer within three court days, unless otherwise ordered.

LAR(e)(8) APPRAISAL

An order for appraisal of property so that security may be given or altered will be entered by the clerk at the request of any interested party. If the parties do not agree in writing upon an appraiser, a judicial officer will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall give one day's notice of the time and place of making the appraisal to counsel of record. The appraiser shall promptly file the appraisal with the clerk and serve it upon counsel of record. The appraiser's fee normally will be paid by the moving party, but it is a taxable cost of the action.

LAR(e)(9) SECURITY DEPOSIT FOR SEIZURE OF VESSELS

The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall deposit with the marshal the sum estimated by the marshal to be sufficient to cover the expenses of the marshal including, but not limited to, dockage, keepers, maintenance and insurance for at least 30 days. The marshal is not required to execute process until the deposit is made. That party shall advance additional sums from time to time as requested to cover the marshal's estimated expenses until the property is released or disposed of as provided in Supplemental Rule E. If the first party fails to deposit requested funds, the marshal may seek relief from the district court including, but not limited to, the right to request the release of the property from arrest or attachment with a reservation of the right to proceed against the first party for any balance due.

LAR(e)(10) INTERVENORS' CLAIMS

A. Presentation of Claim. When a vessel or other property has been arrested, attached, or garnished, and is in the hands of the marshal or custodian substituted therefor, anyone having a claim against the vessel or property is required to present the claim by filing an intervening complaint, and not by filing an original complaint, unless otherwise ordered by a judicial officer. Upon the satisfaction of the requirements of Federal Rule 24, the clerk shall forthwith deliver a conformed copy of the complaint to the marshal, who shall deliver the copy to the vessel or custodian of the property. Intervenors shall thereafter be subject to the rights and obligations of parties, and the vessel or property shall stand arrested, attached, or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the marshal for seizure of a vessel as required by LAR(e)(9).

B. Sharing Marshal's Fees and Expenses. In the absence of an order to the contrary after hearing, no intervenor shall be required to make contribution to the plaintiff for any of the costs enumerated in LAR (e)(9).

LAR(e)(11) CUSTODY OF PROPERTY

A. Safekeeping of Property. When a vessel or other property is brought into the marshal's custody by arrest or attachment, the marshal shall arrange for adequate safekeeping, which may include the placing of keepers on or near the vessel. A substitute custodian in place of the marshal may be appointed by order of the court.

B. Insurance. The marshal may order insurance to protect the marshal, his/her deputies, keepers, and substitute custodians, from liabilities assumed in arresting and holding the vessel, cargo, or other property, and in performing whatever services may be undertaken to protect the vessel, cargo, or other property, and to maintain the court's custody. The party who applies for arrest or attachment of the vessel, cargo, or other property shall reimburse the marshal for premiums paid for the insurance and shall be an added insured on the policy. The party who applies for removal of the vessel, cargo, or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the marshal therefor. The premiums charged for the liability insurance are taxable as administrative costs while the vessel, cargo, or other property is in custody of the court.

C. Cargo Handling, Repairs, and Movement of the Vessel. Following arrest or attachment of a vessel, no cargo handling, repairs, or movement may be made without an order of court. The applicant for such an order shall give notice to the marshal and to all parties of record unless the applicant avers that exigent circumstances exist. Upon proof of adequate insurance coverage of the applicant to indemnify the marshal for his/her liability, the court may direct the

marshal to permit cargo handling, repairs, movement of the vessel, or other operations. Before or after the marshal has taken custody of a vessel, cargo, or other property, any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the marshal and to all parties of record. The judicial officer will require that adequate insurance on the property will be maintained by the successor to the marshal, before issuing the order to change arrangements.

D. Claims by Suppliers for Payment of Charges. A person who furnishes supplies or services to a vessel, cargo, or other property in custody of the court who has not been paid and claims the right to payment as an expense of administration shall submit an invoice to the clerk in the form of a verified claim at any time before the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim on the marshal, substitute custodian if one has been appointed, and all parties of record. The court may consider the claims individually or schedule a single hearing for all claims.

LAR(e)(12) SALE OF PROPERTY

A. Notice. Notice of sale of arrested or attached property shall be published in one or more newspapers to be specified in the order of sale. Unless otherwise ordered by a Judge upon a showing of urgency or impracticality or unless otherwise provided by law, such notice shall be published for at least six days before the date of sale.

B. Payment of Bid. These provisions apply unless otherwise ordered in the order of sale: The person whose bid is accepted shall immediately pay the marshal the full purchase price if the bid is \$1,000 or less. If the bid exceeds \$1,000, the bidder shall immediately pay a deposit of at least \$1,000 or 10% of the bid, whichever is greater, and shall pay the balance within three court days after the day on which the bid was accepted. If an objection to the sale is filed within that three-day period, the bidder is excused from paying the balance of the purchase price until three court days after the sale is confirmed. Payment shall be made in cash, by certified check, or by cashier's check.

C. Late Payment. If the successful bidder does not pay the balance of the purchase price when it falls due, the bidder shall pay the marshal the cost of keeping the property from the due date until the balance is paid, and the marshal may refuse to release the property until this charge is paid.

D. Default. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder is deemed to be in default. In such a case, the judicial officer may accept the second highest bid or arrange a new sale. The defaulting bidder's deposit shall be forfeited and applied to any

additional costs incurred by the marshal because of the default, the balance being retained in the registry of the court awaiting its order.

E. Report of Sale by Marshal. At the conclusion of the sale, the marshal shall forthwith file a written report with the court of the fact of sale, the date, the price obtained, the name and address of the successful bidder, and any other pertinent information.

F. Time and Procedure for Objection to Sale. An interested person may object to the sale by filing a written objection with the clerk within three court days following the sale, serving the objection on all parties of record, the successful bidder, and the marshal, and depositing a sum with the marshal that is sufficient to pay the expense of keeping the property for at least seven days. Payment to the marshal shall be in cash, certified check, or cashier's check.

G. Confirmation of Sale. A sale shall be confirmed by order of the court within five court days but no sooner than three court days after the sale unless an objection to the sale has been filed, in which case the court shall hold a hearing on the confirmation of the sale. The marshal shall transfer title to the purchaser upon the order of the court.

H. Disposition of Deposits.

1. Objection Sustained. If an objection is sustained, sums deposited by the successful bidder will be returned to the bidder forthwith. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.

2. Objection Overruled. If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed, and any balance remaining will be returned to the objector forthwith.

I. Title to Property. Failure of a party to give the required notice of the action and arrest of the vessel, cargo, or other property, or required notice of the sale, may afford ground for objecting to the sale but does not affect the title of a bona fide purchase of the property without notice of the failure.

RULE (f) LIMITATION OF LIABILITY**LAR(f)(1) SECURITY FOR COSTS**

The amount of security for costs under Supplemental Rule F(1) shall be \$250, and it may be combined with the security for value and interest, unless otherwise ordered.

LAR(f)(2) ORDER OF PROOF AT TRIAL

Where the vessel interests seeking statutory limitation of liability have raised the statutory defense by way of answer or complaint, the plaintiff in the former or the damage claimant in the latter shall proceed with its proof first, as is normal at civil trials.

RULE (g) SPECIAL RULES**LAR(g)(1) SUITS UNDER 28 U.S.C. §§ 1915 AND 1916.**

In any case where a plaintiff is permitted to institute his/her action *in rem* or *quasi in rem* by the attachment of tangible property without the prepayment of the security required in LAR(e), no such process for attachment shall issue except upon proof of twenty-four (24) hours written notice to the owner of the res or his/her agent of the filing of the complaint unless such notice requirement is waived by a judicial officer.

LAR(g)(2) USE OF STATE PROCEDURES

When the plaintiff invokes a state procedure in order to attach or garnish under Federal Rule 4(e), the process of attachment or garnishment shall so state.

LAR(g)(3) NEWSPAPERS FOR PUBLISHING NOTICES

Every notice required to be published under the Local Admiralty Rules or any rules or statutes applying to admiralty and maritime proceedings except LAR(e)(12) shall be published in at least one of the following newspapers of general circulation in the district: The Pittsburgh Post-Gazette or The Pittsburgh Tribune Review for all proceedings in Pittsburgh; (the Erie Times or Morning News for all proceedings in Erie, and in the Johnstown Tribune Democrat for all proceedings in Johnstown.) LR 100.2 shall not apply to notices published pursuant to this LAR(g)(3) or under LAR(e)(12)(A).

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

LOCAL PATENT RULES

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LOCAL PATENT RULES

1. SCOPE OF RULES

LPR 1.1 AUTHORITY

The Local Patent Rules for the United States District Court for the Western District of Pennsylvania are promulgated as authorized by and subject to the limitations of Federal Rule of Civil Procedure 83.

LPR 1.2 CITATION

These are the Local Rules of Practice for Patent Cases before the United States District Court for the Western District of Pennsylvania. They should be cited as "LPR," followed by the applicable rule number and subsection.

LPR 1.3 APPLICATION AND CONSTRUCTION

These rules apply to all civil actions filed in or transferred to this Court which allege infringement of a utility patent in a complaint, counterclaim, cross-claim or third party claim, or which seek a declaratory judgment that a utility patent is not infringed, is invalid or is unenforceable. The Court may accelerate, extend, eliminate, or modify the obligations or deadlines set forth in these Local Patent Rules based on the circumstances of any particular case, including, without limitation, the complexity of the case or the number of patents, claims, products, or parties involved. If any motion filed prior to the Claim Construction Hearing provided for in LPR 4.4 raises claim construction issues, the Court may, for good cause shown, defer the motion until after completion of the disclosures, filings, or ruling following the Claim Construction Hearing. The Local Civil Rules of this Court shall also apply to these actions, except to the extent that they are inconsistent with these Local Patent Rules.

LPR 1.4 EFFECTIVE DATE

These Local Patent Rules shall take effect on April 1, 2005 and shall apply to any case filed thereafter. The parties to any other pending civil action in which the infringement, validity or enforceability of a utility patent is an issue shall meet and confer promptly after April 1, 2005, for the purpose of determining whether any provisions in these Local Patent Rules should be made applicable to that case. No later than seven (7) calendar days after the parties meet and confer, the parties shall file a stipulation setting forth a proposed order that relates to the application of these Local Patent Rules. Unless and until an order is entered applying these Local Patent Rules to any pending case, the Local Civil Rules previously applicable to pending patent cases shall govern.

LPR 1.5 ALTERNATIVE DISPUTE RESOLUTION

Unless the Court orders otherwise, the default form of alternative dispute resolution in any case governed by these Local Patent Rules shall be Early Neutral Evaluation, which shall occur in accordance with the procedures stated in the ADR Policies and Procedures, as adopted by the Board of Judges for the United States District Court for the Western District of Pennsylvania. However, if all parties (1) mutually agree to employ some other form of alternative dispute resolution, such as Mediation or Arbitration, and (2) mutually agree to the timing therefor, then, unless the Court orders otherwise, the deadline for completing such Mediation or Arbitration shall be 60 calendar days after the Court's decision on claim construction.

2. GENERAL PROVISIONS

LPR 2.1 GOVERNING PROCEDURE

Initial Scheduling Conference. When the parties confer with each other pursuant to Fed. R. Civ. P. 26(f), in addition to the matters covered by Fed. R. Civ. P. 26, the parties must discuss and address in the statement filed pursuant to Fed. R. Civ. P. 26(f), the following topics:

Proposed modification of the deadlines provided for in these Local Patent Rules and/or set forth in the Court's Scheduling Order (see Model Scheduling Order at "Appendix LPR 2.1" for types of deadlines that might be included) and the effect of any such modification on the date and time of the Claim Construction Hearing, if any;

The joint nomination of a special master to be appointed in the case for purposes of claim construction, based upon mutual agreement of the parties;

Whether the Court will hear live testimony at the Claim Construction Hearing;

The need for and any specific procedures or limits on discovery relating to claim construction, including depositions of witnesses, including expert witnesses;

The order of presentation at the Claim Construction Hearing;

Whether parties are willing to go to trial in front of a Magistrate Judge; and

The form(s) of alternative dispute resolution (Early Neutral Evaluation, Arbitration, or Mediation) that will be utilized in the case, along with the following information:

- the joint nomination of the neutral(s) to be appointed by the Court for purposes of alternative dispute resolution, based upon mutual agreement of the parties;
- percentage of payment responsibility by each party for any fees and expenses associated with the neutral(s);
- the date(s) on which the selected form of alternative dispute resolution will occur; and
- identification of each party representative(s) who will attend the selected alternative dispute resolution session(s).

Further Scheduling Conferences. To the extent that some or all of the matters provided for in LPR 2.1 are not resolved or decided at the Initial Scheduling Conference, the parties shall propose dates for further Scheduling Conferences at which such matters shall be decided.

LPR 2.2 CONFIDENTIALITY

All documents or information produced under these Local Patent Rules shall be governed by the terms and conditions of the Protective Order in "Appendix LPR 2.2." Such Protective Order shall be deemed automatically entered upon the filing or transfer of any civil action to which these Local Patent Rules apply pursuant to LPR 1.3, unless otherwise modified by agreement of the parties or Order of Court.

LPR 2.3 CERTIFICATION OF INITIAL DISCLOSURES

All statements, disclosures, or charts filed or served in accordance with these Local Patent Rules must be dated and signed by counsel of record (or by the party if unrepresented by counsel). Pursuant to Rules 11 and 26(g) of the Federal Rules of Civil Procedure, counsel's signature (or the signature of the unrepresented party) shall constitute a certification that to the best of his or her knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the information contained in the statement, disclosure, or chart is complete and correct at the time it is made.

LPR 2.4 ADMISSIBILITY OF DISCLOSURES

Except as hereinafter provided, statements, disclosures, or charts governed by these Local Patent Rules are admissible to the extent permitted by the Federal Rules of Evidence or Procedure. However, the statements or disclosures provided for in LPR 4.1 and 4.2 are not admissible for any purpose other than in connection with motions seeking an extension or modification of the time periods within which actions contemplated by these Local Patent Rules must be taken.

LPR 2.5 RELATIONSHIP TO FEDERAL RULES OF CIVIL PROCEDURE

Except as provided in this paragraph or as otherwise ordered, it shall not be a legitimate ground for objecting to an opposing party's discovery request (e.g., interrogatory, document request, request for admission, deposition question) or declining to provide information otherwise required to be disclosed pursuant to Fed. R. Civ. P. 26(a)(1) that the discovery request or disclosure requirement is premature in light of or otherwise conflicts with, these Local Patent Rules. A party may object, however, to the following categories of discovery requests (or decline to provide information in its initial disclosures under Fed. R. Civ. P. 26(a)(1)) on the ground that they are premature in light of the timetable provided in the Local Patent Rules:

Requests seeking to elicit a party's claim construction position;

Requests seeking to elicit from the patent claimant a comparison of the asserted claims and the accused apparatus, device, process, method, act, or other instrumentality; and

Requests seeking to elicit from an accused infringer a comparison of the asserted claims and the prior art.

Where a party properly objects to a discovery request (or declines to provide information in its initial disclosures under Fed. R. Civ. P. 26(a)(1)) as set forth above, that party shall provide the requested information on the date on which it is required to provide the requested information to an opposing party under these Local Patent Rules, unless there exists another legitimate ground for objection.

The parties are reminded that the obligations under Fed. R. Civ. P. 26(e) to supplement disclosure and discovery responses shall apply to all Patent Initial Disclosures and all other discovery responses associated with these Local Patent Rules.

3. PATENT INITIAL DISCLOSURES

LPR 3.1 INITIAL DISCLOSURES

Not later than fourteen (14) days before the Initial Scheduling Conference, the parties shall exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1) ("Initial Disclosures").

With the Initial Disclosures of the party asserting a claim of patent infringement, such party shall produce or make available for inspection and copying, among other items:

All Documents (e.g., contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreement, and third party or joint development agreements) sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell or other manner of transfer, the claimed invention prior to the date of application for the patent in suit. A party's production of a document as required herein shall not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102;

All documents evidencing the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application for the patent in suit or a priority date otherwise identified for the patent in suit, whichever is earlier; and

All documents evidencing communications to and from the U.S. Patent Office for each patent in suit and for each patent on which a claim for priority is based.

The producing party shall separately identify by production number which documents correspond to each category.

With the Initial Disclosures of the party opposing a claim of patent infringement, such party shall produce or make available for inspection and copying, among other items:

Source code, specifications, schematics, flow charts, artwork, formulas, drawings or other documentation, including sales literature, sufficient to show the operation of any aspects or elements of each accused apparatus, product, device, process, method or other instrumentality identified in the claims pled of the party asserting patent infringement; and

A copy of each item of prior art, of which the opposing party is aware, that allegedly anticipates each asserted patent and its related claims or renders them obvious.

LPR 3.2 DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS

Not later than thirty (30) calendar days after the Initial Scheduling Conference, a party claiming patent infringement must serve on all parties a "Disclosure of Asserted Claims and Infringement Contentions." Separately for each opposing party, the "Disclosure of Asserted Claims and Infringement Contentions" shall contain the following information:

Each claim of each patent in suit that is allegedly infringed by each opposing party;

Separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality ("Accused Instrumentality") of each opposing party of which the party claiming infringement is aware. This identification shall be as specific as possible. Each product, device, and apparatus must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

A chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by 35 U.S.C. § 112(6), a description of the claimed function of that element and the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;

Whether each element of each asserted claim is claimed to be literally present or present under the doctrine of equivalents in the Accused Instrumentality, and if present under the doctrine of equivalents, the asserting party shall also explain each function, way, and result that it contends are equivalent, and why it contends that any differences are not substantial;

For any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled; and

If a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party must identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim.

LPR 3.3 DOCUMENT PRODUCTION ACCOMPANYING DISCLOSURE

With the "Disclosure of Asserted Claims and Infringement Contentions," the party claiming patent infringement shall supplement its Initial Disclosures, if applicable, based upon the Initial Disclosures of the opposing party.

LPR 3.4 NON-INFRINGEMENT AND/OR INVALIDITY CONTENTIONS

Not later than fourteen (14) days after service upon it of the "Disclosure of Asserted Claims and Infringement Contentions," each party asserting non-infringement and/or invalidity of a patent, shall serve upon all parties its "Non-infringement and/or Invalidity Contentions." Non-infringement Contentions shall contain a chart, responsive to the chart required by LPR 3.2, that states as to each identified element in each asserted claim, whether such element is present literally or under the doctrine of equivalents in each Accused Instrumentality, and, if not, the reason for such denial and the relevant distinctions. Invalidity Contentions must contain the following information:

The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication must be identified by its title, date of publication, and where feasible, author and publisher. Prior art under 35 U.S.C. § 102(b) shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. Prior art under 35 U.S.C. § 102(f) shall be identified by providing --

The name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. Prior art under 35 U.S.C. § 102(g) shall be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);

Whether each item of prior art allegedly anticipates each asserted claim or renders it obvious. If a combination of items of prior art allegedly makes a claim obvious, each such combination, and the motivation to combine such items, must be identified;

A chart identifying where specifically in each alleged item of prior art each element of each asserted claim is found, including for each element that such party contends is governed by 35 U.S.C. § 112(6), a description of the claimed function of that element and the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and

Any grounds of invalidity based on indefiniteness under 35 U.S.C. § 112(2) or enablement or written description under 35 U.S.C. § 112(1) of any of the asserted claims.

LPR 3.5 DOCUMENT PRODUCTION ACCOMPANYING INVALIDITY CONTENTIONS

With the "Non-infringement and/or Invalidity Contentions," the party asserting non-infringement and/or invalidity of a patent shall supplement its Initial Disclosures and, in particular, must produce or make available for inspection and copying:

Any additional documentation showing the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its LPR 3.2 chart; and

A copy of any additional items of prior art identified pursuant to LPR 3.4 which does not appear in the file history of the patent(s) at issue.

LPR 3.6 DISCLOSURE REQUIREMENT IN PATENT CASES INITIATED BY DECLARATORY JUDGMENT

Non-infringement and/or Invalidity Contentions If No Claim of Infringement. In all cases in which a party files a complaint or other pleading seeking a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable, LPR 3.2 and 3.3 shall not apply unless and until a claim for patent infringement is made by a party. If the defendant does not assert a claim for patent infringement in its answer to the complaint, no later than thirty (30) calendar days after the Initial Scheduling Conference, the party seeking a declaratory judgment must serve upon each opposing party its Non-infringement and/or Invalidity Contentions that conform to LPR 3.4 and produce or make available for inspection and copying the documentation described in LPR 3.5.

Application of Rules When No Specified Triggering Event. If the filings or actions in a case do not trigger the application of these Local Patent Rules under the terms set forth herein, the parties shall, as soon as such circumstances become known, meet and confer for the purpose of agreeing on the application of these Local Patent Rules to the case.

Inapplicability of Rule. This LPR 3.6 shall not apply to cases in which a request for a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable is filed in response to a complaint for infringement of the same patent.

LPR 3.7 AMENDMENT TO CONTENTIONS

Amendments or modifications of the Infringement Contentions or the Non-infringement and/or Invalidity Contentions are permissible, subject to other applicable rules of procedure and disclosure requirements, if made in a timely fashion and asserted in good faith and without purpose of delay. The Court's ruling on claim construction may support a timely amendment or modification of the Infringement Contentions or the Non-infringement and/or Invalidity Contentions.

4. CLAIM CONSTRUCTION PROCEEDINGS

LPR 4.1 EXCHANGE OF PROPOSED CLAIM TERMS AND PHRASES FOR CONSTRUCTION

Not later than fourteen (14) days after: (i) service of the Non-infringement and/or Invalidity Contentions pursuant to LPR 3.4; or (ii) an agreement of the parties to expedite claim construction following the Initial Scheduling Conference pursuant to LPR 2.1, each party shall simultaneously exchange a list of claim terms and phrases which that party contends should be construed by the Court, and identify any claim element which that party contends should be governed by 35 U.S.C. § 112(6).

LPR 4.2 PREPARATION AND FILING OF JOINT DISPUTED CLAIM TERMS CHART

Not later than fourteen (14) days after the exchange set forth in LPR 4.1, the parties shall meet and confer to identify claim terms and phrases that are in dispute, and claim terms and phrases that are not in dispute, and shall prepare and file a Joint Disputed Claim Terms Chart listing claim terms and phrases and corresponding intrinsic evidence for each disputed claim term and phrase, asserted by each party. The Joint Disputed Claim Terms Chart shall be in the format shown in "Appendix LPR 4.2." Each party shall also file with the Joint Disputed Claim Terms Chart an appendix containing a copy of each exhibit of intrinsic evidence cited by the party in the Joint Disputed Claim Terms Chart.

LPR 4.3 CLAIM CONSTRUCTION BRIEFING AND EXTRINSIC EVIDENCE

Not later than thirty (30) calendar days after filing of the Joint Disputed Claim Terms Chart pursuant to LPR 4.2, the Plaintiff (including the Plaintiff alleging non-infringement in a declaratory judgment action), unless otherwise stipulated by the parties, shall serve and file an Opening Claim Construction Brief including a proposed construction of each claim term and phrase which the parties collectively have identified as being in dispute. Such Opening Claim Construction Brief shall also, for each element which the party contends is governed by 35 U.S.C. § 112(6), describe the claimed function of that element and identify the structure(s), act(s), or material(s) corresponding to that element. Such Opening Claim Construction Brief shall further include a statement of the anticipated length of time necessary for the party to present its case at the claim construction hearing. For purposes of this rule, if there is no claim of patent infringement present in the complaint as originally filed, then the party first alleging infringement or non-infringement of the subject patent shall serve and file the Opening Claim Construction Brief.

At the same time the party serves its Opening Claim Construction Brief, that party shall serve and file an identification of extrinsic evidence, including testimony of lay and expert witnesses the party contends supports its claim construction. The party shall identify each such item of extrinsic evidence by production number or produce a copy of any such item not

previously produced. With respect to any such witness, lay or expert, the party shall also serve and file an affidavit signed by the witness that sets forth the substance of that witness' proposed testimony sufficient for the opposing party to conduct meaningful examination of the witness(es).

Not later than twenty-one (21) days after service of the Opening Claim Construction Brief, the opposing party shall serve and file a Response to Opening Claim Construction Brief including the party's proposed construction of each claim term and phrase which the parties collectively have identified as being in dispute. Such Response shall also, for each element which the opposing party contends is governed by 35 U.S.C. § 112(6), describe the claimed function of that element and identify the structure(s), act(s), or material(s) corresponding to that element. Such Response shall further include a statement of the anticipated length of time necessary for the party to present its case at the Claim Construction Hearing and a concise statement not to exceed five (5) pages as to whether the party objects to the opening party's offer of extrinsic evidence.

At the same time the opposing party serves its Response, that party shall serve and file an identification of extrinsic evidence, including testimony of lay and expert witnesses the party contends supports its claim construction. The party shall identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced. With respect to any such witness, lay or expert, the party shall also serve and file an affidavit signed by the witness that sets forth the substance of that witness' proposed testimony sufficient for the opposing party to conduct meaningful examination of the witness(es).

Not later than fourteen (14) days after service of the Response, the opening party may serve and file a Reply directly rebutting the opposing party's Response. Such Reply shall further include a concise statement not to exceed five (5) pages as to whether the party objects to the opposing party's offer of extrinsic evidence.

In the event that the party bearing the burden of proof on the issue of infringement is the party filing the Response, that party may file a Surreply directly rebutting the opposing party's Reply without leave of Court. Such Surreply shall be filed no later than fourteen (14) days after the service of the Reply and shall not exceed five (5) pages.

Prior to the Claim Construction Hearing, the Court may issue an order stating whether it will receive extrinsic evidence and, if so, the particular evidence that it will exclude and that it will receive, and any other matter the Court deems appropriate concerning the conduct of the hearing.

LPR 4.4 CLAIM CONSTRUCTION HEARING

Subject to the convenience of the Court's calendar, fourteen (14) days following submission of the Reply specified in LPR 4.3, the Court shall conduct a Claim Construction Hearing.

LPR 4.5 SPECIAL MASTER REPORT AND RECOMMENDATION ON CLAIM CONSTRUCTION

If a Special Master for the purpose of claim construction is appointed, the Special Master shall be empowered to hold hearings and receive and report evidence on the issue of claim construction.

Within 30 calendar days following the hearing on the issue of claim construction, the Special Master shall submit to the Court a report and recommendation on the issue of claim construction. Either party may file objections to -- or a motion to adopt or modify -- the Special Master's report and recommendation, no later than fourteen (14) days from the time the Special Master's report and recommendations are submitted. A party may file a response to such objection or motion within fourteen (14) days of the initial filing of such objection or motion.

The compensation to be paid to the Special Master shall be fixed and determined by the Court pursuant to Federal Rule of Civil Procedure 53(a). Unless otherwise ordered by the Court, the parties shall equally split the costs and fees for services rendered by the Special Master.

5. EXPERT WITNESSES**LPR 5.1 DISCLOSURE OF EXPERTS AND EXPERT REPORTS**

For issues other than claim construction to which expert testimony shall be directed, expert witness disclosures and depositions shall be governed by this Rule.

No later than thirty (30) calendar days after the court's ruling on claim construction, each party shall make its initial expert witness disclosures required by Rule 26 on the issues on which each bears the burden of proof.

No later than thirty (30) calendar days after the first round of disclosures, each party shall make its initial expert witness disclosures required by Rule 26 on the issues on which the opposing party bears the burden of proof.

Unless otherwise ordered by the Court, no later than fourteen (14) days after the second round of disclosures, each party shall make any rebuttal expert witness disclosures permitted by Rule 26.

LPR 5.2 DEPOSITIONS OF EXPERTS

Depositions of expert witnesses disclosed under this Rule, if any, shall commence within seven (7) calendar days after rebuttal reports are served and shall be completed within thirty (30) calendar days after commencement of the deposition period.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

APPENDICES TO RULES

APPENDIX LCvR 7.1A
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

)	
)	Civil Action No. _____
)	
vs.)	or
)	
)	Criminal Action No. _____
)	

DISCLOSURE STATEMENT

Pursuant to LCvR 7.1 of the Western District of Pennsylvania and to enable Judges and Magistrate Judges to evaluate possible disqualification or recusal, the undersigned counsel for _____, in the above captioned action, certifies that the following are parents, subsidiaries and/or affiliates of said party that have issued shares or debt securities to the public:

or

Pursuant to LCvR 7.1 of the Western District of Pennsylvania and to enable Judges and Magistrate Judges to evaluate possible disqualification or recusal, the undersigned counsel for _____, in the above captioned action, certifies that there are no parents, subsidiaries and/or affiliates of said party that have issued shares or debt securities to the public.

Date

Signature of Attorney or Litigant

APPENDIX LCvR 7.1B

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

_____)
)
)
 vs.) Civil Action No. _____
)
)
 _____)

RICO CASE STATEMENT

Pursuant to LCvR 7.1B, any party filing a civil action under 18 U.S.C. §§ 1961-1968 shall set forth those facts upon which such party relied to initiate the RICO claim as a result of the "reasonable inquiry" required by Fed. R. Civ. P. 11. The statement shall be in paragraph form corresponding by number and letter to the paragraphs and subparagraphs appearing below and shall provide in detail and with specificity the information required herein.

1. State whether the alleged unlawful conduct is in violation of any or all of the provisions of 18 U.S.C. §§ 1962(a), (b), (c) or (d).
2. List each defendant and state the alleged misconduct and basis of liability of each defendant.
3. List alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each.
4. List the alleged victims and state how each victim has been allegedly injured.

5. Describe in detail the pattern of racketeering activity or collection of unlawful debts alleged for each RICO claim. The description of the pattern of racketeering shall include the following information:

- a. A list of the alleged predicate acts and the specific statutes which were allegedly violated;
- b. The date of each predicate act, the participants in each such predicate act and the relevant facts surrounding each such predicate act;
- c. The time, place and contents of each alleged misrepresentation, the identity of persons by whom and to whom such alleged misrepresentation was made and if the predicate act was an offense of wire fraud, mail fraud or fraud in the sale of securities. The "circumstances constituting fraud or mistake" shall be stated with particularity as provided by Fed. R. Civ. P. 9(b);
- d. Whether there has been a criminal conviction for violation of any predicate act and, if so, a description of each such act;
- e. Whether civil litigation has resulted in a judgment in regard to any predicate act and, if so, a description of each such act;
- f. A description of how the predicate acts form a "pattern of racketeering activity."

6. State whether the alleged predicate acts referred to above relate to each other as part of a common plan, and, if so, describe in detail the alleged enterprise for each RICO claim. A description of the enterprise shall include the following information:

- a. The names of each individual partnership, corporation, association or other legal entity which allegedly constitute the enterprise;
- b. A description of the structure, purpose, function and course of conduct of the enterprise;
- c. Whether each defendant is an employee, officer or director of the alleged enterprise;
- d. Whether each defendant is associated with the alleged enterprise;
- e. Whether it is alleged that each defendant is an individual or entity separate from the alleged enterprise, or that such defendant is the enterprise itself, or a member of the enterprise; and
- f. If any defendant is alleged to be the enterprise itself, or a member of the enterprise, an explanation whether each such defendant is a perpetrator, passive instrument or victim of the alleged racketeering activity.

7. State and describe in detail whether it is alleged that the pattern of racketeering activity and the enterprise are separate or have merged into one entity.

8. Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.

9. Describe what benefits, if any, the alleged enterprise receives from the alleged pattern of racketeering.

10. Describe the effect of the activities of the enterprise on interstate or foreign commerce.

11. If the complaint alleges a violation of 18 U.S.C. § 1962(a), provide the following information:

a. The recipient of the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and

b. A description of the use or investment of such income.

12. If the complaint alleges a violation of 18 U.S.C. § 1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.

13. If the complaint alleges a violation of 18 U.S.C. § 1962(c), provide the following information:

a. The identity of each person or entity employed by, or associated with, the enterprise and

b. Whether the same entity is both the liable "person" and the "enterprise" under § 1962(c).

14. If the complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the alleged conspiracy.

15. Describe the alleged injury to business or property.

16. Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.

17. List the damages sustained by each plaintiff for which each defendant is allegedly liable.

18. List all other federal causes of action, if any, and provide the relevant statute numbers.

19. List all pendent state claims, if any.

20. Provide any additional relevant information that would be helpful to the court in processing the RICO claim.

APPENDIX LCvR 16.1A**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA**

[CAPTION]

[JUDICIAL OFFICER(S)]

Fed. R. Civ. P. 26(f) REPORT OF THE PARTIES

Counsel for the parties and unrepresented parties shall confer regarding the matters identified herein and prepare a signed report in the following form to be filed at least 21 days before the Initial LCvR 16.1 Scheduling Conference or at such other time as ordered by the court. This report form may be downloaded from the Court's website as a word-processing document and the information filled in as requested on the downloaded form. The dates to be provided in the report are suggested dates and may be accepted or modified by the Court.

- 1. Identification of counsel and unrepresented parties.** Set forth the names, addresses, telephone and fax numbers and e-mail addresses of each unrepresented party and of each counsel and identify the parties whom such counsel represent:
- 2. Set forth the general nature of the case** (patent, civil rights, anti-trust, class action, etc):
- 3. Date Rule 26(f) Conference was held, the identification of those participating therein and the identification of any party who may not yet have been served or entered an appearance as of the date of said Conference:**
- 4. Date of Rule 16 Initial Scheduling Conference as scheduled by the Court:** (Lead Trial Counsel and unrepresented parties shall attend the Rule16 Initial Scheduling Conference with their calendars in hand for the purpose of scheduling other pre-trial events and procedures, including a Post-Discovery Status Conference; Counsel and unrepresented parties shall attend the Rule 16 Initial Scheduling Conference prepared to discuss the anticipated number of depositions and identities of potential deponents and the anticipated dates by which interrogatories, requests for production of documents and requests for admissions will be served):

5. **Identify any party who has filed or anticipates filing a dispositive motion pursuant to Fed. R. Civ. P. 12 and the date(s) by which any such anticipated motion may be filed:**
6. **Designate the specific Alternative Dispute Resolution (ADR) process the parties have discussed and selected, if any, and specify the anticipated time frame for completion of the ADR process. Set forth any other information the parties wish to communicate to the court regarding the ADR designation:**
7. **Set forth any change that any party proposes to be made in the timing, form or requirements of Fed. R. Civ. P. Rule 26(a) disclosures, whether such change is opposed by any other party, whether any party has filed a motion seeking such change and whether any such motion has been ruled on by the Court:**
8. **Subjects on which fact discovery may be needed.** (By executing this report, no party shall be deemed to (1) have waived the right to conduct discovery on subjects not listed herein or (2) be required to first seek the permission of the Court to conduct discovery with regard to subjects not listed herein):
9. **Set forth suggested dates for the following** (The parties may elect by agreement to schedule a Post-Discovery Status Conference, as identified in Paragraph 12, below, at the conclusion of Fact-Discovery rather than at the conclusion of Expert Discovery. In that event, the parties should provide suggested dates only for the events identified in sub-paragraphs 9.a through 9.e, below. The parties shall provide such information even if dispositive motions pursuant to Fed. R. Civ. P. 12 have been or are anticipated to be filed. If there are dates on which the parties have been unable to agree, set forth the date each party proposes and a brief statement in support of each such party's proposed date. Attach to this report form a proposed Court Order setting forth all dates agreed to below and leaving a blank for the insertion of a date by the Court for any date not agreed to):
 - a. **Date(s) on which disclosures required by Fed. R. Civ. P. 26(a) have been or will be made:**
 - b. **Date by which any additional parties shall be joined:**
 - c. **Date by which the pleadings shall be amended:**
 - d. **Date by which fact discovery should be completed:**
 - e. **If the parties agree that discovery should be conducted in phases or limited to or focused on particular issues, identify the proposed phases or issues and the dates by which discovery as to each phase or issue should be completed:**
 - f. **Date by which plaintiff's expert reports should be filed:**

- g. Date by which depositions of plaintiff's expert(s) should be completed:**
- h. Date by which defendant's expert reports should be filed:**
- i. Date by which depositions of defendant's expert(s) should be completed:**
- j. Date by which third party expert's reports should be filed:**
- k. Date by which depositions of third party's expert(s) should be completed:**
- 10.** If the parties agree that changes should be made to the limitations on discovery imposed by the Federal Rules of Civil Procedure or Local Rule or that any other limitations should be imposed on discovery, set forth such changes or limitations:
- 11.** Set forth whether the parties have considered the need for special deadlines, procedures or orders of court dealing with discovery of electronically-stored information (electronic discovery), including the need for the preservation of discoverable information and the protection of the right to assert privilege(s) after the production of privileged information and if so, set forth the results of such consideration. In particular, answer the following questions:
- a.** ESI. Is either party seeking the discovery of ESI in this case? Yes No
- If disputed, identify the nature of the dispute _____
- b.** Metadata: Will any metadata be relevant in this case? Yes No
- If yes, with respect to what ESI _____
- If disputed, identify the nature of the dispute _____
- c.** Format. Have the parties agreed on the format(s) for production of ESI?
- Yes No
- If no, what disputes remain outstanding _____
- d.** Clawback Agreement. Will the parties be using the Form Inadvertent Production Provision of LCvR 16.1.D? Yes No
- If no, will an alternative provision be proposed? Yes (Please attach) No

- e. Search terms. Have the parties agreed on any protocol for review of electronic data? Yes No

If yes, please describe _____

If no, please identify what issues remain outstanding _____

- f. Accessibility. Have the parties agreed on what ESI is "reasonably accessible" as defined in R. 26(b)(2)(B)? Yes No

If no, please identify the nature of the dispute _____

- g. Preservation. Are there any unresolved issues pertaining to the preservation of ESI? If so, please describe _____

- h. Other. Identify all outstanding issues or disputes concerning ESI

12. Set forth whether the parties have elected to schedule the Post-Discovery Status Conference following the completion of Fact Discovery or Expert Discovery; in either event the parties shall be prepared at the Post-Discovery Status Conference to discuss and/or schedule the following: (The parties are *not* required during their Rule 26(f) Conference to consider or propose dates for the items identified below. Those dates will be determined, if necessary, at the Post-Discovery Status Conference. Lead trial counsel for each party and each unrepresented party are required to attend the Post-Discovery Status Conference with their calendars in hand to discuss those items listed below that require scheduling. In addition, a representative with settlement authority of each party shall be required to attend; representatives with settlement authority of any insurance company providing any coverage shall be available throughout the Conference by telephone):

- a. **Settlement and/or transfer to an ADR procedure;**
- b. **Dates for the filing of expert reports and the completion of expert discovery as itemized in sub-paragraphs 9.f. through 9.k., above, if the parties elected to defer such discovery until after the Post-Discovery Status Conference;**
- c. **Dates by which dispositive motions pursuant to Fed. R. Civ. P. 56, replies thereto and responses to replies should be filed;**
- d. **Dates by which parties' pre-trial statements should be filed;**

- e. **Dates by which *in limine* and *Daubert* motions and responses thereto should be filed;**
 - f. **Dates on which motions *in limine* and *Daubert* motions shall be heard;**
 - g. **Dates proposed for final pre-trial conference;**
 - h. **Presumptive and final trial dates.**
13. Set forth any other order(s) that the parties agree should be entered by the court pursuant to Fed. R. Civ. P. 16(b) or 26(c):
14. Set forth whether the parties anticipate that the court may have to appoint a special master to deal with any matter and if so, specify the proposed role of any such master and any special qualifications that such master may require to perform such role:
15. If the parties have failed to agree with regard to any subject for which a report is required as set forth above, except for proposed dates required in paragraph 9, above, briefly set forth the position of each party with regard to each matter on which agreement has not been reached:
16. Set forth whether the parties have considered the possibility of settlement of the action and describe briefly the nature of that consideration:

Respectfully submitted,

(Signatures of counsel and unrepresented parties)

APPENDIX LCvR 23.E

Fed. R. Civ. P. 26(f) JOINT REPORT OF THE PARTIES (CLASS ACTION)

- 1. Identification of counsel and unrepresented parties.**
- 2. Set forth the general nature of the case** (anti-trust, consumer finance, securities, employment, etc):
- 3. Date Rule 26(f) Conference was held, the identification of those participating therein and the identification of any party who may not yet have been served or entered an appearance as of the date of said Conference:**
- 4. Date of Rule 16 Initial Scheduling Conference as scheduled by the Court:** *(Lead Trial Counsel and unrepresented parties shall attend the Rule 16 Initial Scheduling Conference with their calendars in hand for the purpose of scheduling other pre-trial events and procedures, including a Post-Discovery Status Conference; Counsel and unrepresented parties shall attend the Rule 16 Initial Scheduling Conference prepared to discuss the anticipated number of depositions and identities of potential deponents and the anticipated dates by which interrogatories, requests for production of documents and requests for admissions will be served):*
- 5. Identify any party who has filed or anticipates filing a dispositive motion pursuant to Fed. R. Civ. P. 12 and the date(s) by which any such anticipated motion may be filed:**
- 6. Designate the specific Alternative Dispute Resolution (ADR) process the parties have discussed and selected, if any, and specify the anticipated time frame for completion of the ADR process. Set forth any other information the parties wish to communicate to the court regarding the ADR designation:**
- 7. Set forth any change that any party proposes to be made in the timing, form or requirements of Fed. R. Civ. P. Rule 26(a) disclosures, whether such change is opposed by any other party, whether any party has filed a motion seeking such change and whether any such motion has been ruled on by the Court:**
- 8. Discovery prior to Class Certification must be sufficient to permit the Court to determine whether the requirements of Fed. R. Civ. P. Rule 23 are satisfied, including a preliminary inquiry into the merits of the case to ensure appropriate management of the case as a Class Action. However, in order to ensure that a class certification decision be issued at an early practicable time, priority shall be given to discovery on class issues. Once Class Certification is decided, the Court may, upon motion of a party, enter a second scheduling and discovery order, if necessary.**

- 9. Subjects on which class certification discovery may be needed. (By executing this report, no party shall be deemed to (1) have waived the right to conduct discovery on subjects not listed herein or (2) be required to first seek the permission of the Court to conduct discovery with regard to subjects not listed herein):**
- 10. Set forth suggested dates for the following** *(The parties shall provide such information even if dispositive motions pursuant to Fed. R. Civ. P. 12 have been or are anticipated to be filed, except to the extent discovery and other proceedings have been or will be stayed under the Private Securities Litigation Reform Act or otherwise. If there are dates on which the parties have been unable to agree, set forth the date each party proposes and a brief statement in support of each such party's proposed date. Attach to this report form a proposed Court Order setting forth all dates agreed to below and leaving a blank for the insertion of a date by the Court for any date not agreed to):*
- a. Date(s) on which disclosures required by Fed. R. Civ. P. 26(a) have been or will be made:**
 - b. Date by which any additional parties shall be joined:**
 - c. Date by which the pleadings shall be amended:**
 - d. Date by which class certification discovery shall be completed:**
 - e. Date by which plaintiffs' expert reports as to class certification shall be filed:**
 - f. Date by which defendants' expert reports as to class certification shall be filed:**
 - g. Date by which depositions of class certification experts must be completed:**
 - h. Plaintiffs' Motion for Class Certification, Memorandum in Support, and all supporting evidence shall be filed by _____:**
 - i. Defendants' Memorandum in Opposition to Class Certification and all supporting evidence shall be filed by _____:**
 - j. Plaintiffs' Reply Memorandum in support of class certification, if any, shall be filed by _____:**
 - k. The Class Certification hearing shall be as scheduled by the Court.**
- 11. After the resolution of the motion for class certification, the Court shall hold a Post-Certification Determination Conference to discuss how the case shall proceed in light of the disposition of the Class motion. If the parties wish to establish a schedule for post-Class Certification pretrial matters at this time, set forth suggested dates for the following:**

- a. **Date by which fact discovery should be completed:**
 - b. **Date by which plaintiff's expert reports should be filed:**
 - c. **Date by which depositions of plaintiff's expert(s) should be completed:**
 - d. **Date by which defendant's expert reports should be filed:**
 - e. **Date by which depositions of defendant's expert(s) should be completed:**
 - g. **Date by which third party expert's reports should be filed:**
 - h. **Date by which depositions of third party's experts should be completed.**
12. **If the parties agree that changes should be made to the limitations on discovery imposed by the Federal Rules of Civil Procedure or Local Rule or that any other limitations should be imposed on discovery, set forth such changes or limitations:**
13. **Set forth whether the parties have considered the need for special deadlines, procedures or orders of court dealing with discovery of electronically-stored information (electronic discovery), including the need for the preservation of discoverable information and the protection of the right to assert privilege(s) after the production of privileged information and if so, set forth the results of such consideration:**
14. **Set forth whether the parties have elected to schedule the Post-Discovery Status Conference following the completion of Fact Discovery or Expert Discovery; in either event the parties shall be prepared at the Post-Discovery Status Conference to discuss and/or schedule the following:** *(The parties are not required during their Rule 26(f) Conference to consider or propose dates for the items identified below. Those dates will be determined, if necessary, at the Post-Discovery Status Conference. Lead trial counsel for each party and each unrepresented party are required to attend the Post-Discovery Status Conference with their calendars in hand to discuss those items listed below that require scheduling. In addition, a representative with settlement authority of each party shall be required to attend; representatives with settlement authority of any insurance company providing any coverage shall be available throughout the Conference by telephone):*
- a. **Settlement and/or transfer to an ADR procedure;**
 - b. **Dates for the filing of expert reports and the completion of expert discovery as itemized in sub-paragraphs 11.b. through 11.h., above, if the parties elected to defer such discovery until after the Post-Discovery Status Conference;**
 - c. **Dates by which dispositive motions pursuant to Fed. R. Civ. P. 56, replies thereto and responses to replies should be filed;**
 - d. **Dates by which parties' pre-trial statements should be filed;**

- e. **Dates by which *in limine* and *Daubert* motions and responses thereto should be filed;**
 - f. **Dates on which motions *in limine* and *Daubert* motions shall be heard;**
 - g. **Dates proposed for final pre-trial conference;**
 - h. **Presumptive and final trial dates.**
15. **Set forth any other order(s) that the parties agree should be entered by the court pursuant to Fed. R. Civ. P. 16(b) or 26(c):**
16. **Set forth whether the parties anticipate that the court may have to appoint a special master to deal with any matter and if so, specify the proposed role of any such master and any special qualifications that such master may require to perform such role:**
17. **If the parties have failed to agree with regard to any subject for which a report is required as set forth above, except for proposed dates required in paragraph 10 and/or 11, above, briefly set forth the position of each party with regard to each matter on which agreement has not been reached:**
18. **Set forth whether the parties have considered the possibility of settlement of the action and describe briefly the nature of that consideration:**

Respectfully submitted,

APPENDIX LCvR 83.2B-MOTION
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

)	
)	
vs.)	Civil Action No. _____
)	
)	
)	

MOTION FOR ADMISSION *PRO HAC VICE* OF _____

[Affiant], undersigned counsel for [Plaintiff/Defendant] _____, hereby moves that [Affiant] be admitted to appear and practice in this Court in the above-captioned matter as counsel pro hac vice for [Plaintiff/Defendant] _____ in the above-captioned matter pursuant to LCvR 83.2 and LCvR 83.3 and this Court's Standing Order Regarding Pro Hac Vice Admissions dated May 31, 2006 (Misc. No. 06-151).

In support of this motion, undersigned counsel attaches the Affidavit for Admission Pro Hac Vice of [Affiant] filed herewith, which, it is averred, satisfies the requirements of the foregoing Local Rules and Standing Order.

Respectfully submitted,

Dated: _____

[Affiant's name] (Bar. ID NO. _____)

[Affiant's Address/Contact Details]

Counsel for [Plaintiff/Defendant]

APPENDIX LCvR 83.2B-AFFIDAVIT

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

_____)	
)	
vs.)	Civil Action No. _____
)	
_____)	
)	

**AFFIDAVIT OF _____ IN SUPPORT OF
MOTION FOR ADMISSION *PRO HAC VICE***

I, _____, make this affidavit in support of the motion for my admission to appear and practice in this Court in the above-captioned matter as counsel pro hac vice for [Plaintiff/Defendant]_____ in the above-captioned matter pursuant to LCvR 83.2 and LCvR 83.3 and this Court's Standing Order Regarding Pro Hac Vice Admissions dated May 31, 2006 (Misc. No. 06-151).

I, _____, being duly sworn, do hereby depose and say as follows:

1. I am a [Lawyer/Partner/Associate] of the law firm [_____].
2. My business address is _____.
3. I am a member in good standing of the bar[s] of _____.
4. My bar identification number(s) [is/are] _____.
5. A current certificate of good standing from _____ is attached to this Affidavit as Exhibit ____.
6. [if applicable] The following are a complete list of any previous disciplinary proceedings concerning my practice of law that resulted in a non-confidential negative finding or sanction by the disciplinary authority of the bar of any state or any United States court: _____: [Insert additional explanation as appropriate.]

7. I attest that I am a registered user of ECF in the United States District Court for the Western District of Pennsylvania.
8. I attest that I have read, know and understand the Local Rules of Court for the United States District Court for the Western District of Pennsylvania
9. Based upon the foregoing, I respectfully request that I be granted pro hac vice admission in this matter.

I certify and attest that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.

Dated: _____

[Affiant]

APPENDIX LPR 2.1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Plaintiff v. Defendant.) Civil Action No.

MODEL SCHEDULING ORDER FOR USE IN PATENT CASES

AND NOW, this _____ day of _____, 20____,

IT IS ORDERED that this action is placed under the Local Patent Rules of this Court for pretrial proceedings and all provisions of these Rules will be strictly enforced.

IT IS FURTHER ORDERED that counsel shall confer with their clients prior to all scheduling, status, or pretrial conferences to obtain authority to participate in settlement negotiations which may be conducted or ordered by the Court.

IT IS FURTHER ORDERED that compliance with provisions of Local Rule 16 and the Local Patent Rules shall be completed as follows:

- (1) The parties shall move to amend the pleadings or add new parties by _____;
- (2) The party claiming patent infringement must serve on all parties a Disclosure of Asserted Claims and Infringement Contentions by _____; [30 calendar days after the Initial Scheduling Conference; LPR 3.2]
- (3) The party claiming non-infringement and/or invalidity must serve on all parties a Disclosure of Non-infringement and/or Invalidity Contentions by _____; [14 days after service of Disclosure of Asserted Claims and Infringement Contentions; LPR 3.4]

(4) Each party will simultaneously exchange Proposed Claim Terms and Phrases for Construction by _____; *[14 days after service of the Non-infringement and/or Invalidity Contention; LPR 4.1]*

(5) The parties shall meet and confer by _____ to identify claim terms and phrases that are in dispute, and claim terms and phrases that are not in dispute and prepare and file a Joint Disputed Claim Terms Chart. Each party shall also file with the Joint Disputed Claim Terms Chart an appendix containing a copy of each item of intrinsic evidence cited by the party in the Joint Disputed Claim Terms Chart; *[Not later than 14 days after the exchange of proposed claim terms and phrases; LPR 4.2]*

(6) It is hereby Ordered that _____ is appointed Special Master pursuant to Federal Rule of Civil Procedure 53 to serve in accordance with the LPRs in this action;

(7) The parties have agreed to submit this case to _____ *[Early Neutral Evaluation, Mediation, or Arbitration]*. As such, it is hereby Ordered that _____ is/are appointed as the *[Early Neutral Evaluator, Mediator, or Arbitrator]* to serve in accordance with the ADR Policies and Procedures in this action;

(8) The above-mentioned alternative dispute resolution shall take place on _____ and on such other dates as the parties may agree; *[if Mediation is selected, then the deadline shall be 60 calendar days after the Court's decision on claim construction, unless the Court rules otherwise; LPR 2.1]*

(9) Plaintiff shall file and serve an Opening Claim Construction Brief and an identification of extrinsic evidence by _____; *[30 calendar days after filing of the joint disputed claim terms chart; LPR 4.3]*

(10) The Opposing Party shall file and serve a response to the Opening Claims Construction Brief, an identification of extrinsic evidence and any objections to extrinsic evidence by _____; *[21 days after service of the opening claim construction brief; LPR 4.3]*

(11) The opening party may serve and file a Reply directly rebutting the opposing party's Response, and any objections to extrinsic evidence by _____; *[14 days after opposing party's response is served; LPR 4.3]*

(12) If the Opposing Party bears the burden of proof on infringement, it may file a Surreply directly rebutting the opening party's Reply by _____; *[14 days after opening party's Reply is served; LPR 4.3]*

(13) The Court will conduct a hearing on the issue of Claim Construction on _____, *[14 days after submission of the reply; LPR 4]*

(14) The Report and Recommendation of the Special Master on the issue of claim construction shall be due on _____; [30 calendar days after the hearing on claim construction; LPR 4.5]

(15) The parties shall complete fact discovery by _____, and all interrogatories, depositions, requests for admissions, and requests for production shall be served within sufficient time to allow responses to be completed prior to the close of discovery;

(16) Each party shall make its initial expert witness disclosures, as required under Rule 26, on the issues on which each bears the burden of proof by _____, [30 calendar days after court's ruling on claim construction; LPR 5.1]

(17) Each party shall make its initial expert witness disclosures, as required under Rule 26, on the issues on which the opposing party bears the burden of proof by _____; [30 calendar days after the first round of expert disclosures; LPR 5.1]

(18) Rebuttal expert witness disclosures are to be made by _____; [14 days after second round of expert disclosures; LPR 5.1]

(19) Expert Depositions, if any, shall begin by _____; [within 7 calendar days after service of the rebuttal expert reports] and be completed by _____; [30 calendar days after commencement of deposition period; LPR5.2]

(20) Motions for summary judgment with evidentiary material and accompanying brief, if appropriate, shall be filed by _____, and responses to such motions shall be filed within _____ calendar days thereafter. Reply and surreply briefs shall not be filed unless approved/requested by the Court;

(21) Plaintiff's pretrial narrative statement shall comply with Rule 16.1.C.1, and be filed by _____;

(22) Defendant's pretrial narrative statement shall comply with Rule 16.1.C.2, and be filed by _____;

(23) The parties shall not amend or supplement their pretrial narrative statements without leave of Court;

(24) All parties shall file an indication whether or not they are willing to proceed to trial in front of a Magistrate Judge by _____;

(25) The Court shall conduct a pretrial conference on _____ 20_____, at _____ (time) Room _____ U.S. Post Office & Courthouse, Seventh Avenue and Grant Street, Pittsburgh, Pennsylvania, and all trial counsel must attend; and

(26) The trial shall commence on _____, 20_____,
at _____ (time), Courtroom No. _____.

United States District Judge

cc: All Counsel of Record

APPENDIX LPR 2.2**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

Plaintiff v. Defendant.) Civil Action No.

PROTECTIVE ORDER

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the following Protective Order has been entered by Court.

Proceedings and Information Governed.

1. This Order and any amendments or modifications hereto ("Protective Order") shall govern any document, information or other thing furnished by any party, to any other party, and includes non-parties who receive a subpoena in connection with this action. The information protected includes, but is not limited to, answers to interrogatories, answers to requests for admission, responses to requests for production of documents, deposition transcripts and videotapes, deposition exhibits, and other writings or things produced, given or filed in this action that are designated by a party as "Confidential Information" or "Confidential Attorney Eyes Only Information" in accordance with the terms of this Order, as well as to any copies, excerpts, abstracts, analyses, summaries, descriptions, or other forms of recorded information containing, reflecting, or disclosing such information.

Designation and Maintenance of Information.

2. For purposes of this Protective Order, (a) the "Confidential Information" designation shall mean that the document is comprised of trade secrets or commercial information which is not publicly known and is of technical or commercial advantage to its possessor, in accordance with Fed. R. Civ. P. 26(c)(7), or other information required by law or agreement to be kept confidential and (b) the "Confidential Attorney Eyes Only" designation shall mean that the document is comprised of information that the producing party deems especially sensitive, which may include, but is not limited to, confidential research and development, financial, technical, marketing, any other sensitive trade secret information, or information capable of being utilized for the preparation or prosecution of a patent application dealing with such subject matter. Confidential Information and Confidential Attorney Eyes Only

Information does not include, and this Protective Order shall not apply to, information that is already in the knowledge or possession of the party to whom disclosure is made unless that party is already bound by agreement not to disclose such information, or information that has been disclosed to the public or third persons in a manner making such information no longer confidential.

3. Documents and things produced during the course of this litigation within the scope of paragraph 2(a) above, may be designated by the producing party as containing Confidential Information by placing on each page and each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION
SUBJECT TO PROTECTIVE ORDER

(a) Documents and things produced during the course of this litigation within the scope of paragraph 2(b) above may be designated by the producing party as containing Confidential Attorney Eyes Only Information by placing on each page and each thing a legend substantially as follows:

CONFIDENTIAL ATTORNEY EYES ONLY INFORMATION
SUBJECT TO PROTECTIVE ORDER

A party may designate information disclosed at a deposition as Confidential Information or Confidential Attorney Eyes Only Information by requesting the reporter to so designate the transcript or any portion thereof at the time of the deposition. If no such designation is made at the time of the deposition, any party shall have fourteen (14) calendar days after the date of the deposition to designate, in writing to the other parties and to the court reporter, whether the transcript is to be designated as Confidential Information or Confidential Attorneys Eyes Only Information. If no such designation is made at the deposition or within such fourteen (14) calendar day period (during which period, the transcript shall be treated as Confidential Attorneys Eyes Only Information, unless the disclosing party consents to less confidential treatment of the information), the entire deposition will be considered devoid of Confidential Information or Confidential Attorneys Eyes Only Information. Each party and the court reporter shall attach a copy of any final and timely written designation notice to the transcript and each copy thereof in its possession, custody or control, and the portions designated in such notice shall thereafter be treated in accordance with this Protective Order.

It is the responsibility of counsel for each party to maintain materials containing Confidential Information or Confidential Attorney Eyes Only Information in a secure manner and appropriately identified so as to allow access to such information only to such persons and under such terms as is permitted under this Protective Order.

Inadvertent Failure to Designate.

4. The inadvertent failure to designate or withhold any information as confidential or privileged will not be deemed to waive a later claim as to its confidential or privileged nature, or to stop the producing party from designating such information as confidential at a later date in writing and with particularity. The information shall be treated by the receiving party as confidential from the time the receiving party is notified in writing of the change in the designation.

Challenge to Designations.

5. A receiving party may challenge a producing party's designation at any time. Any receiving party disagreeing with a designation may request in writing that the producing party change the designation. The producing party shall then have fourteen 14 days after receipt of a challenge notice to advise the receiving party whether or not it will change the designation. If the parties are unable to reach agreement after the expiration of this fourteen (14) day time frame, and after the conference required under Local Rule 37.1, the receiving party may at any time thereafter seek a Court Order to alter the confidential status of the designated information. Until any dispute under this paragraph is ruled upon by the Court, the designation shall remain in full force and effect and the information shall continue to be accorded the confidential treatment required by this Protective Order.

Disclosure and Use of Confidential Information.

6. Information designated as Confidential Information or Confidential Attorney Eyes Only Information may only be used for purposes of preparation, trial and appeal of this action. Confidential Information or Confidential Attorney Eyes Only Information may not be used under any circumstances for prosecuting any patent application, for patent licensing or for any other purpose. The provisions of LCvR 16.1.D, relating to the inadvertent disclosure of privileged information, shall apply in all cases governed by this Protective Order.

7. Subject to paragraph 9 below, Confidential Information may be disclosed by the receiving party only to the following individuals provided that such individuals are informed of the terms of this Protective Order: (a) two (2) employees of the receiving party who are required in good faith to provide assistance in the conduct of this litigation, including any settlement discussions, and who are identified as such in writing to counsel for the designating party in advance of the disclosure; (b) two (2) in-house counsel who are identified by the receiving party; (c) outside counsel for the receiving party; (d) supporting personnel employed by (b) and (c),

such as paralegals, legal secretaries, data entry clerks, legal clerks and private photocopying services; (e) experts or consultants; and (f) any persons requested by counsel to furnish services such as document coding, image scanning, mock trial, jury profiling, translation services, court reporting services, demonstrative exhibit preparation, or the creation of any computer database from documents.

8. Subject to paragraph 9 below, Confidential Attorney Eyes Only Information may be disclosed by the receiving party only to the following individuals provided that such individuals are informed of the terms of this Protective Order: (a) two (2) in-house counsel who are identified by the receiving party; (b) outside counsel for the receiving party; (c) supporting personnel employed by (a) and (b), such as paralegals, legal secretaries, data entry clerks, legal clerks, private photocopying services; (d) experts or consultants; and (e) those individuals designated in paragraph 11(c).

9. Further, prior to disclosing Confidential Information or Confidential Attorney Eyes Only Information to a receiving party's proposed expert, consultant or employees, the receiving party shall provide to the producing party a signed Confidentiality Agreement in the form attached as Exhibit A, the resume or curriculum vitae of the proposed expert or consultant, the expert or consultant's business affiliation, and any current and past consulting relationships in the industry. The producing party shall thereafter have fourteen (14) days from receipt of the Confidentiality Agreement to object to any proposed individual. Such objection must be made for good cause and in writing, stating with particularity the reasons for objection. Failure to object within fourteen (14) days shall constitute approval. If the parties are unable to resolve any objection, the receiving party may apply to the Court to resolve the matter. There shall be no disclosure to any proposed individual during the fourteen (14) day objection period, unless that period is waived by the producing party, or if any objection is made, until the parties have resolved the objection, or the Court has ruled upon any resultant motion.

10. Counsel shall be responsible for the adherence by third-party vendors to the terms and conditions of this Protective Order. Counsel may fulfill this obligation by obtaining a signed Confidentiality Agreement in the form attached as Exhibit B.

11. Confidential Information or Confidential Attorney Eyes Only Information may be disclosed to a person, not already allowed access to such information under this Protective Order, if:

the information was previously received or authored by the person or was authored or received by a director, officer, employee or agent of the company for which the person is testifying as a Rule 30(b)(6) designee;

the designating party is the person or is a party for whom the person is a director, officer, employee, consultant or agent; or

counsel for the party designating the material agrees that the material may be disclosed to the person. In the event of disclosure under this paragraph, only the reporter, the person, his or her counsel, the judge and persons to whom disclosure may be made, and who are bound by the Protective Order, may be present during the disclosure or discussion of Confidential Information. Disclosure of material pursuant to

this paragraph shall not constitute a waiver of the confidential status of the material so disclosed.

Non-Party Information.

12. The existence of this Protective Order shall be disclosed to any person producing documents, tangible things or testimony in this action who may reasonably be expected to desire confidential treatment for such documents, tangible things or testimony. Any such person may designate documents, tangible things or testimony confidential pursuant to this Protective Order.

Filing Documents With the Court.

13. In the event that any party wishes to submit Confidential Information to the Court, such party shall follow the procedures prescribed by the Court, including obtaining leave of Court prior to filing any documents under seal.

No Prejudice.

14. Producing or receiving confidential information, or otherwise complying with the terms of this Protective Order, shall not (a) operate as an admission by any party that any particular Confidential Information contains or reflects trade secrets or any other type of confidential or proprietary information; (b) prejudice the rights of a party to object to the production of information or material that the party does not consider to be within the scope of discovery; (c) prejudice the rights of a party to seek a determination by the Court that particular materials be produced; (d) prejudice the rights of a party to apply to the Court for further protective orders; or (e) prevent the parties from agreeing in writing to alter or waive the provisions or protections provided for herein with respect to any particular information or material.

Conclusion of Litigation.

15. Within sixty (60) calendar days after final judgment in this action, including the exhaustion of all appeals, or within sixty (60) calendar days after dismissal pursuant to a settlement agreement, each party or other person subject to the terms of this Protective Order shall be under an obligation to destroy or return to the producing party all materials and documents containing Confidential Information or Confidential Attorney Eyes Only Information, and to certify to the producing party such destruction or return. However, outside counsel for any party shall be entitled to retain all court papers, trial transcripts, exhibits and attorney work provided that any such materials are maintained and protected in accordance with the terms of this Protective Order.

Other Proceedings.

16. By entering this Order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or parties subject to this Protective Order that may be subject to a motion to disclose another party's information designated Confidential pursuant to this Protective Order, shall promptly notify that party of the motion so that it may have an opportunity to appear and be heard on whether that information should be disclosed.

Remedies.

17. It is Ordered by the Court that this Protective Order will be enforced by the sanctions set forth in Rule 37(b) of the Federal Rules of Civil Procedure and such other sanctions as may be available to the Court, including the power to hold parties or other violators of this Protective Order in contempt. All other remedies available to any person(s) injured by a violation of this Protective Order are fully reserved.

18. Any party may petition the Court for good cause shown, in the event such party desires relief from a term or condition of this Order.

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Plaintiff v. Defendant.) Civil Action No.

**CONFIDENTIALITY AGREEMENT FOR EXPERT,
CONSULTANT OR EMPLOYEES OF ANY PARTY**

I hereby affirm that:

Information, including documents and things, designated as "Confidential Information," or "Confidential Attorney Eyes Only Information," as defined in the Protective Order entered in the above-captioned action (hereinafter "Protective Order"), is being provided to me pursuant to the terms and restrictions of the Protective Order.

I have been given a copy of and have read the Protective Order.

I am familiar with the terms of the Protective Order and I agree to comply with and to be bound by such terms.

I submit to the jurisdiction of this Court for enforcement of the Protective Order.

I agree not to use any Confidential Information or Confidential Attorney Eyes Only Information disclosed to me pursuant to the Protective Order except for purposes of the above-captioned litigation and not to disclose any such information to persons other than those specifically authorized by said Protective Order, without the express written consent of the party who designated such information as confidential or by order of this Court. I also agree to notify any stenographic, clerical or technical personnel who are required to assist me of the terms of this Protective Order and of its binding effect on them and me.

I understand that I am to retain all documents or materials designated as or containing Confidential Information or Confidential Attorney Eyes Only Information in a secure manner, and that all such documents and materials are to remain in my personal custody until the completion of my assigned duties in this matter, whereupon all such documents and materials, including all copies thereof, and any writings prepared by me containing any Confidential Information or Confidential Attorney Eyes Only Information are to be returned to counsel who provided me with such documents and materials.

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Plaintiff v. Defendant.) Civil Action No.

CONFIDENTIALITY AGREEMENT FOR THIRD-PARTY VENDORS

I hereby affirm that:

Information, including documents and things, designated as "Confidential Information," or "Confidential Attorney Eyes Only Information," as defined in the Protective Order entered in the above-captioned action (hereinafter "Protective Order"), is being provided to me pursuant to the terms and restrictions of the Protective Order.

I have been given a copy of and have read the Protective Order.

I am familiar with the terms of the Protective Order and I agree to comply with and to be bound by such terms.

I submit to the jurisdiction of this Court for enforcement of the Protective Order.

I agree not to use any Confidential Information or Confidential Attorney Eyes Only Information disclosed to me pursuant to the Protective Order except for purposes of the above-captioned litigation and not to disclose any such information to persons other than those specifically authorized by said Protective Order, without the express written consent of the party who designated such information as confidential or by order of this Court.

APPENDIX LPR 4.2

JOINT DISPUTED CLAIM TERMS CHART**Plaintiff v. Defendant, Civ. Action No. 00-000-XXX

Disputed Claim Term	Plaintiff Proposed Construction	Plaintiff Citation To Intrinsic Evidence	Defendant Proposed Construction	Defendant Citation To Intrinsic Evidence
1. "Term 1"				
2. "Term 2"				
3. "Term 3"				
4. "Term 4"				

** This chart shall not contain legal argument.