RULES OF

PRACTICE AND PROCEDURE

of the

UNITED STATES

DISTRICT COURT

FOR THE MIDDLE DISTRICT

OF NORTH CAROLINA

Effective October 13, 2017

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PART ONE

LOCAL RULES OF CIVIL PRACTICE

CITE THE LOCAL CIVIL RULES AS:
LR ____ (e.g., LR16.1)

LR 1.1 SCOPE AND PURPOSE OF RULES

These local rules govern practice in the District Court for the Middle District of North Carolina consistent with the Federal Rules of Civil Procedure. These rules shall be interpreted and applied to foster civility in the practice of law before this Court, and to promote the just and prompt determination of all proceedings.

LR 5.1 ADDITIONAL COPIES FOR COURT USE

Unless a Judge has specified otherwise, a paper copy of the following documents shall be delivered or mailed to the clerk for use by the Court within two business days after the original is filed:

(1) a brief;
(2) proposed findings of fact and conclusions of law;
(3) requests for jury instructions; and
(4) any pleading which has an appendix and/or tabs.

LR 5.2 FILINGS WITHIN THREE DAYS OF SCHEDULED HEARINGS

A party who files documents which relate to a matter noticed for hearing within the next three business days shall so advise the clerk.

LR 5.3 ELECTRONIC FILING OF DOCUMENTS

(a) Electronic Filing Required. Except as expressly provided by this rule or in the exceptional circumstances preventing electronic filing, all documents shall be filed electronically.

(1) The following are exempted from the requirement of electronic filing:

(a) Sealed and Qui Tam Cases;

(b) The state court record and other Rule 5 materials in habeas corpus cases filed in 28 U.S.C. §2254 proceedings;

(c) Administrative records and transcripts in Social Security cases and transcripts or voluminous exhibits in other administrative review proceedings. (Pursuant to Local Rule 79.3 the Social Security administrative record will be returned to counsel at the conclusion of the case.);

(d) Pretrial hearing and trial exhibits;

(e) Consent to Proceed before Magistrate Judge;

(f) All pleadings and documents filed by pro se litigants (prisoner and non-prisoner);

(g) The charging document in a criminal case, such as the complaint, indictment, and information, as well as the criminal synopsis form;

(h) Applications/Affidavits for search and arrest warrants and related papers;

(i) CJA 23 Financial Affidavit;

(j) Fed.R.Crim.P. 20 and Fed.R.Crim.P.5 papers received from another court;

(k) Any pleading or document in a criminal case containing the signature of a defendant, such as appearance bonds, Orders Setting Conditions of Release, a waiver of indictment or plea agreement, letters from a defendant requesting specific relief; and

(l) Petitions for violations of supervised release.

(2) An attorney may for good cause apply to the assigned Judge for permission to file documents conventionally. Even if the assigned Judge initially grants an attorney permission to file documents conventionally, the assigned Judge may withdraw that permission at any time during the pendency of a case and require the attorney to file documents electronically using the System.

(b) Significance of Electronic Filing.

(1) Any document electronically filed or converted by the Clerk's Office to electronic format is the official record of the Court.

(2) Electronic transmission of a document to the Electronic Filing System with the transmission of the Notice of Electronic Filing (NEF) constitutes service of the filed document upon each party in the case who is registered as a Filing User or is a pro se party that has consented to receive service of documents electronically according to notice provided on the docket sheet. 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.

(c) Registration for Electronic Filing.

(1) Attorneys admitted to the bar of this Court and those making a special appearance pursuant to LR 83.1(d), shall register as filing users of the Court's CM/ECF system prior to filing any pleadings. Registration shall be submitted on an Attorney Registration Form, a copy of which is on the Court's web page (www.ncmd.uscourts.gov.) To be properly included on a case's docket sheet as an electronic filer, attorneys should electronically file a notice of appearance or a pleading.

(2) Upon the approval of the assigned Judge, a party to a case who is not represented by an attorney may register as an CM/ECF Filing User in the CM/ECF System solely for the purpose of the action.

(3) Registration constitutes consent to service of all documents by electronic means as provided in these procedures.

(4) Within ten days after receiving their initial password, attorneys must select a new password of their own choosing. Filing Users agree to protect the security of their passwords, and, if an attorney believes the security of an existing password has been compromised, the attorney must change their password immediately.

(d) Filing and Service of Civil Case Opening Documents

(1) Except for cases requesting to be placed under seal, cases shall be filed electronically using CM/ECF with filing fees being paid online using a credit card.

(2) Counsel should complete the summons form in Adobe interactive format, which is located on the Court's website, and e-mail it to newcases@ncmd.uscourts.gov for issuance.

(3) When filing a case with a motion for a temporary restraining order (TRO), the filing attorney shall notify the Clerk of Court by phone that a motion for TRO will be filed and submit the proposed TRO to clerk@ncmd.uscourts.gov.

(e) Signatures

(1) The electronic filing of complaints, petitions, pleadings, motions, or other documents by an attorney who is a registered participant in the Electronic Case Filing System shall constitute the signature of that attorney under Federal Rule of Civil Procedure 11.

(2) The name of the CM/ECF user under whose log-in and password the document is submitted must be preceded by a "/s/" and typed in the space where the signature would otherwise appear.

(3) If an attorney scans and files a document with original signatures and the attorney believes the signatures have intrinsic value, the attorney shall retain the original document until two (2) years after the expiration of the time for filing a timely appeal of a final judgment or decree, or after receipt by the Clerk of Court of an order terminating the action on appeal.

(4) The filing user of any document requiring more than one signature (e.g., pleadings filed by visiting lawyers, stipulations, joint status reports) must include either an image of the other signatures or an "/s/" before the typed name where the signature would otherwise appear. By submitting such a document, the filing attorney certifies that each of the other signatories has expressly agreed to the form and substance of the document and that the filing attorney has their actual authority to submit the document electronically.

(f) Entry of Court Orders.

(1) All orders, decrees, judgments, and proceedings of the Court will be filed electronically by the Court or Court personnel in accordance with these rules, which will constitute entry on the docket kept by the clerk. Orders may be issued as "text-only" entries on the docket, without an attached document. Any order filed electronically has the same force and effect as if the Judge had signed a paper copy of the order and it had been entered on the docket in a conventional manner.

(2) In accordance with Local Rules 7.3(j) and 77.2, a moving party shall submit to the District Judge after filing a motion for which no supporting brief is required, a proposed order granting the motion and setting forth the requested relief. The proposed order should be docketed as an attachment to the motion and a copy e-mailed to the appropriate Judge's e-mail address as specified in the NCMD CM/ECF Administrative Policies and Procedures Manual.

(3) Proposed orders on motions for enlargements of time made pursuant to Local Rule 77.2, requests for entry of default and proposed temporary restraining orders in new cases should be filed as an attachment and shall be e-mailed to clerk@ncmd.uscourts.gov. No other documents or pleadings may be sent to the Clerk's Office at this e-mail address.

(g) Technical Failures.

(1) A technical failure does not relieve a party of exercising due diligence to timely file and serve documents. The Clerk's Office shall deem the Court's CM/ECF site to be subject to a technical failure on a given day if the site is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 10:00 a.m. Eastern Time that day. Known systems outages will be posted on the Court's web page, if possible.

(2) If the Court's CM/ECF site experiences a technical failure, a Filing User may submit documents to the Court that day in an alternate manner provided that the documents are accompanied by the Filing User's affidavit stating that the Filing User attempted to file electronically at least two times in one hour increments after 10:00 a.m. that day.

LR 5.4 FILING DOCUMENTS UNDER SEAL

(a) If a party seeks to file documents or portions of documents under seal, that party should file a redacted, public version of the documents on the Court's docket, and should separately file a Motion to Seal, with complete, unredacted versions of the document or documents attached as sealed exhibits to the Motion to Seal. Documents may be filed under seal only if they are attached as exhibits to a Motion to Seal, or are excepted from this requirement in Paragraph (g) below. The Motion to Seal should include a non-confidential description of what is to be sealed, identifying the documents or portions thereof as to which sealing is requested.

(b) If the party filing the documents is the party asserting confidentiality, the Motion to Seal should also be supported by a Brief, which may be filed under seal and which should:

1. State the reasons why sealing is necessary;
2. Explain (for each document or group of documents) why less drastic alternatives to sealing will not afford adequate protection;
3. Address the factors governing sealing of documents reflected in governing case law; and
4. State whether permanent sealing is sought and, if not, state how long the document should remain under seal and how the document should be handled upon unsealing.

(c) If the party filing the documents is not the party claiming confidentiality (for example, if the material has been designated as confidential by another party pursuant to a protective order or agreement), the filing party should first confer with the party claiming confidentiality and obtain that party's position as to how much of the materials, if any, should be redacted or placed completely under seal. The filing party should then follow the procedure set out in paragraph (a). The Motion to Seal in that instance should also:

1. Confirm that the filing party has engaged in the consultation required by paragraph (c), or request to be excused from the consultation requirement for good cause;
2. State why the documents are relevant to a matter before the Court, and are not filed unnecessarily;
3. State the filing party's position on confidentiality; and
4. State that the party claiming confidentiality will have 14 days to file a Brief providing all of the information set out in paragraph (b) above.

This rule applies whether the party claiming confidentiality is a litigant or a non-litigant from whom documents were obtained during the discovery process pursuant to a protective order or agreement. If the party claiming confidentiality is a non-litigant, the filer must serve a copy of the Motion to Seal on the non-litigant.

(d) For cases under paragraph (c), if the party claiming confidentiality fails to file a Brief in accordance with paragraph (b) within 14 days after the Motion to Seal is filed, the Motion to Seal will ordinarily be denied and the materials will be unsealed. In addition, if the party claiming confidentiality fails to file a Brief or files a Brief but fails to provide a reasonable basis for the claim of confidentiality, the filing party may request as sanctions the costs incurred in filing the Motion to Seal.

(e) A motion to have an entire case kept under seal shall be subject to the requirements and procedures of sections (a), (b), (c) and (d).

(f) Exhibits admitted at trial, including documents previously filed under seal, will not be filed under seal except upon a separate motion and showing of necessity demonstrated to the trial judge.

(g) Exceptions. No Motion or Order is required to file the following under seal:

(1) Documents for which sealing is provided by a governing statute, rule, or order, but in that case the face of the document should specifically note the statute, rule, or order providing for sealing, and the CM/ECF filer or Clerk shall provide public notice by stating in the docket entry that the document contains sealed material pursuant to the specified statute, rule, or order.

(2) Financial Affidavits of individuals seeking representation of an attorney at government expense under the Criminal Justice Act;

(3) Motions for issuance of criminal subpoenas;

(4) Motions to seal indictments and for issuance of corresponding arrest warrants;

(5) Motions for leave to subpoena witnesses at Government expense under the Criminal Justice Act;

(6) Motions for issuance of writs of habeas corpus ad testificandum;

(7) Motions filed pursuant to Section 5K1.1 of the United States Sentencing Guidelines for a downward departure;

(8) Motions filed pursuant to Section 3553(e) of Title 18, United States Code, for authority to impose a sentence below a statutory minimum;

(9) Motions filed pursuant to Rule 35 (b) of the Federal Rules of Criminal Procedure to reduce a sentence for substantial assistance;

(10) Motions and pleadings identifying national security information;

(11) Motions filed pursuant to 18 U.S.C. § 4241 for determination of mental competency to stand trial and pursuant to 18 U.S.C. § 4242 for determination of the existence of insanity at the time of the offense;

(12) Administrative records in Social Security cases;

(13) Sentencing memorandums; and

(14) Unexecuted criminal summonses or warrants

Commentary

This rule describes the procedures in criminal and civil cases relating to sealed documents, including pleadings, motions, exhibits, and other material. Case law protects generally the right of public access to documents filed in court, both under the First Amendment and the common law. Motions to seal should be narrow and specific. When only part of an exhibit or a brief is confidential, the moving party should not seek to seal the entire brief or exhibit but rather should seek only partial sealing and should comply with Rule 5.4(a).

Often the parties to a case will enter into a confidentiality agreement that provides that certain information exchanged between them in the course of discovery will remain confidential. The procedures described in this rule do not affect the ability of the parties to enter into such an agreement. However, the parties cannot agree to the sealing of documents filed in court without following the mandatory procedures set forth in this rule.

In criminal cases, there are many instances where the local rules or federal statutes allow confidential or ex parte requests and orders. For example, Local Criminal Rule 32.3 addresses the confidentiality of presentence reports and any responses or objections. Federal Civil Rule 5.2 provides for the redaction of social security numbers, dates of birth, names of minors, and financial account numbers in certain situations. Statutory examples include ex parte applications for investigative, expert or other services under the Criminal Justice Act (18 U.S.C.A § 3006A(e)(1)), applications for interception of wire, oral or electronic communications (18 U.S.C. § 2518), applications for a pen register or a trap and trace device (18 U.S.C. § 3123), applications for tax information (26 U.S.C. § 6103(i)), documents disclosing the name of a child victim (18 U.S.C. § 3509(d)(2)), and civil actions for false claims (31 U.S.C. § 3730(b)(2)). When there is a statute or rule permitting the filing of sealed or redacted documents, a motion to seal is not required.

LR 6.1 EXTENSIONS OF TIME AND CONTINUANCES OF HEARINGS

(a) Motions for an Extension of Time to Perform an Act. All motions for an extension of time to perform an act required or allowed to be done within a specified time must comply with Fed.R.Civ.P. 6(b) and show prior consultation with opposing counsel and the views of opposing counsel.

(b) Motions for Continuance. All motions to continue a pretrial conference, hearing on a motion, or the trial of an action must be filed reasonably in advance of the hearing date and must reflect the views of opposing counsel.

LR 6.2 INACCESSIBILITY OF THE CLERK'S OFFICE

For purposes of applying Rule 6(a)(3) of the Federal Rules of Civil Procedure, the clerk's office is considered inaccessible for electronic filing when the Court's electronic filing system (CM/ECF) is not available and a suitable method of alternate delivery cannot be made as specified in the CM/ECF "Electronic Case Filing Administrative Policies and Procedures Manual." For paper filings, the clerk's office is considered inaccessible when a clerk's office closure, such as inclement weather or building emergency, prevents the filing of a document.

Whenever a party in computing a filing or service date relies upon Rule 6(a)(3) of the Federal Rules of Civil Procedure, counsel or parties appearing *pro se* must certify such reliance in the certificate of service or by separate written declaration.

LR 7.1 FORM OF PLEADINGS AND PAPERS

(a) Form. Pleadings, motions, briefs, and other papers submitted for filing must be typewritten, printed, or legibly handwritten on letter size paper. The pages shall be single-sided and shall be unfolded and bound at the top and numbered at the bottom, without manuscript cover. The margin at the top of each page shall not be less than one and one-quarter inches, and bottom, left and right margins shall be set at not less than one inch. Typewritten and handwritten documents shall be double spaced. Mechanically reproduced copies which bear an original signature will be accepted by the Court as originals.

All pleadings, motions and other original papers filed with the Clerk shall be in a fixed-pitch type size no smaller than ten characters per inch or in a proportional font size no smaller than 13 point. There shall be no more than 27 lines of regularly spaced text on a page.

(b) Telephone Numbers and Addresses. Parties or attorneys signing papers submitted for filing must state their telephone numbers, mailing addresses and e-mail addresses. Attorneys admitted to practice before this Court must also include their state bar number.

(c) Exhibits to Pleadings or Papers. Bulky or voluminous materials should not be submitted for filing with a pleading or paper, or incorporated by reference therein, unless such materials are essential. The Court may order any pleading or paper stricken if filed in violation of this rule.

(d) Civil Rights Actions by Prisoners, 42 U.S.C. §§ 1983. All *pro se* complaints filed by state prisoners seeking relief under 42 U.S.C. §§ 1983 shall be filed with the clerk in compliance with the instructions of the clerk and on appropriate forms which are available without charge in the clerk's office

LR 7.2 BRIEFS

(a) Contents.

Opening briefs filed with the Court shall contain:

(1) A statement of the nature of the matter before the Court.

(2) A concise statement of the facts. Each statement of fact should be supported by reference to a part of the official record in the case.

(3) A statement of the question or questions presented.

(4) The argument, which shall refer to all statutes, rules and authorities relied upon.

Response briefs filed with the court shall contain items (2) and (4) above. There shall be no need to include items (1) or (3), but those items can be included at the election of respondent to any extent respondent desires to include those items and/or believes respondent's statement of those items would be helpful to the court.

Reply briefs filed with the court shall contain item (4) above and may contain item (2) to the limited extent of responding to factual matters newly raised in the response. There shall be no need to include items (1) or (3) and those items ordinarily should not be included.

(b) Citation of Published Decisions. For purposes of these rules, published decisions include decisions published in widely used reports and electronic databases, specifically including Westlaw and LEXIS. The preferred form of citation is in accordance with The Bluebook, a Uniform System of Citation.

(c) Citation of Unpublished Decisions. Unpublished decisions may be cited only if the unpublished decision is furnished to the Court and to opposing parties or their counsel when the brief is filed. Unpublished decisions should be cited as follows: Wise v. Richardson, No. C-70-191-S (M.D.N.C., Aug. 11, 1971).

(d) Citation of Decisions Not Appearing in Certain Published Reports. Decisions published only in reports other than the West Federal Reporter System, Westlaw, LEXIS, the official North Carolina reports and the official United States Supreme Court reports (e.g., C.C.H. Reports, Labor Reports, U.S.P.Q., reported decisions of other states or other specialized reporting services) may be cited only if the decision is furnished to the Court and to opposing parties or their counsel when the brief is filed.

LR 7.3 MOTION PRACTICE

(a) Form. All motions, unless made during a hearing or at trial, shall be in writing and shall be accompanied by a brief except as provided in section (j) of this rule. Each motion shall be set out in a separate pleading.

(b) Content. All motions shall state with particularity the grounds therefor, shall cite any statute or rule of procedure relied upon, and shall set forth the relief or order sought.

(c) Decided on Motion Papers and Briefs.

(1) Motions shall be considered and decided by the Court on the pleadings, admissible evidence in the official court file, and motion papers and briefs, without hearing or oral argument, unless otherwise ordered by the Court. Special considerations thought by counsel sufficient to warrant a hearing or oral argument may be brought to the Court's attention in the motion or response.

(2) The clerk shall give at least seven days' notice of the date and place of oral argument. The Court, however, for good cause shown may shorten the seven day notice period.

(d) Limitations on Length of Briefs.

(1) Except with the Court's prior permission, briefs prepared on a computer in support of motions and responsive briefs shall not exceed 6,250 words and reply briefs shall not exceed 3,125 words. The word count shall include the body of the brief, headings and footnotes. The caption, signature lines, certificate of service, and any cover page or index are not included. Each brief shall include a certificate of word count, signed by counsel or a pro se party, which includes a certification that the brief complies with this rule. The filing party may rely on word count feature of word processing software in making this certification.

(2) Briefs prepared on a typewriter or by hand in support of motions and responsive briefs shall not exceed 20 pages, and reply briefs are limited to 10 pages.

(e) Movant's Supporting Documents. When allegations of facts not appearing of record are relied upon to support a motion, affidavits, parts of depositions, and other pertinent documents then available shall accompany the motion or related brief. If supporting documents are not then available, the party may move for an extension of time in accordance with section (g) of this rule.

(f) Response to Motion and Brief. The respondent, if opposing a motion, shall file a response, including brief, within 21 days after service of the motion (30 days if the motion is for summary judgment; see LR 56.1(d)) (14 days if the motion relates to discovery; see LR 26.2 and LR 37.1). If supporting documents are not then available, the respondent may move for an extension of time in accordance with section (g) of this rule. For good cause appearing therefor, a and respondent may be required to file any response and supporting documents, including brief, within such shorter period of time as the Court may specify.

(g) Extension of Time for Filing Supporting Documents and Briefs. Upon proper motion accompanied by a proposed order, the Court may enter an ex parte order, specifying the time within which supporting documents and briefs may be filed pursuant to sections (e) and (f), if it is shown in writing that such documents are not available or cannot be filed contemporaneously with the motion or response. The time allowed to an opposing party for filing a response shall not run during any such extension. If good cause to grant the motion is not apparent upon the face of the motion, the Court may direct that the motion be served upon the opposing party, who shall be allowed 14 days to respond.

(h) Reply Brief. A reply brief may be filed within 14 days after service of the response. A reply brief is limited to discussion of matters newly raised in the response. (7 days if the reply is related to a discovery motion; see LR 26.2 and LR 37.1).

(i) Suggestion of Subsequently Decided Authority. As an addendum to a brief, response brief, or reply brief - or after oral argument but before decision - a suggestion of subsequent pertinent and significant authorities may be filed at any time prior to the Court's ruling and shall contain only the citation to the case relied upon, if published, or a copy of the opinion if the case is unpublished.

(j) Motions Not Requiring Briefs. No brief is required by either movant or respondent, unless otherwise directed by the Court, with respect to the following motions: (1) discovery motions in which the parties have agreed to the expedited procedures described in LR 37.1(b); (2) for extension of time for the performance of an act required or allowed to be done, provided request therefor is made before the expiration of the period originally prescribed or as extended by previous orders; (3) to continue a pretrial conference, hearing, or the trial of an action; (4) to add parties; (5) to amend the pleadings; (6) to file supplemental pleadings; (7) to appoint a next friend or guardian ad litem; (8) for substitution of parties; and (9) to stay proceedings to enforce judgment. The above motions, while not required to be accompanied by a brief, must state good cause therefor and cite any applicable rule, statute, or other authority justifying the relief sought. These motions must be accompanied by a proposed order.

(k) Failure to File and Serve Motion Papers. The failure to file a brief or response within the time specified in this rule shall constitute a waiver of the right thereafter to file such brief or response, except upon a showing of excusable neglect. A motion unaccompanied by a required brief may, in the discretion of the Court, be summarily denied. A response unaccompanied by a required brief may, in the discretion of the Court, be disregarded and the pending motion may be considered and decided as an uncontested motion. If a respondent fails to file a response within the time required by this rule, the motion will be considered and decided as an uncontested motion, and ordinarily will be granted without further notice.

LR 7.4 EX PARTE MOTIONS

Unless the related case is already under seal, an ex parte motion shall only be sealed upon specific order of the Court.

LR 7.5 BRIEF OF AN AMICUS CURIAE

(a) When permitted. A brief may be filed by an amicus curiae only upon order of the Court after the submission of a motion for leave to file.

(b) Motion for Leave to File. A motion for leave to file an amicus brief shall concisely state the nature of the movant’s interest, identify the party or parties supported,

and set forth the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case. The motion shall be accompanied by a proposed order. The brief shall be conditionally filed with the motion for leave. Any party may file a response opposing a motion for leave to file an amicus brief, concisely stating the reasons for opposition, within 21 days after service of the motion. The determination of the motion for leave shall be in the discretion of the Court.

(c) Time for Filing. The amicus brief shall only be filed if presented for submission, accompanied by a motion for leave to file, within the time allowed for the filing of the brief of the party supported, or within such time as the Court may allow in its order permitting the amicus brief.

(d) Contents and Form. A brief filed by an amicus curiae shall conform to Local Rules 7.1 to 7.3 and shall be accompanied by proof of service. In addition, unless the amicus curiae is the United States or its officer or agency or a state, the amicus brief shall also contain a statement that indicates whether: (1) a party's counsel authored the brief in whole or in part; (2) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and (3) a person – other than the amicus curiae, its members, or its counsel - contributed money that was intended to fund preparing or submitting the brief, and if so, identifies each such person.

(e) Disclosure Statement. If the movant is a corporation, a disclosure statement like that required of parties by Fed. R. Civ. P. 7.1 shall also be filed.

(f) Oral Argument. Amicus curiae shall not be permitted oral argument unless leave is granted by the Court.

LR 7.6 EVIDENTIARY OBJECTIONS TO FACTUAL ALLEGATIONS CONTAINED IN MEMORANDA OR REPLIES SUPPORTING MOTIONS TO DISMISS, MOTIONS FOR SUMMARY JUDGMENT, AND OTHER MOTIONS

Rather than filing a motion to strike, a party may assert evidentiary objections in its response or reply memorandum to factual allegations contained in memoranda or replies supporting or opposing motions to dismiss, motions for summary judgment, and other motions. If an evidentiary objection is raised in the non-moving party's response memorandum, the moving party may address the objection in its reply memorandum. The non-moving party may not file further briefing on its evidentiary objection. If an evidentiary objection is raised by the moving party in its reply memorandum, the non-moving party may file a surreply memorandum pursuant to this subparagraph within seven (7) days addressing only the evidentiary objection. The moving party may not file further briefing on its evidentiary objection. If a party asserts an evidentiary objection in a motion to strike evidence, no reply memorandum is permitted. If a separate motion to strike is filed asserting evidentiary objections, the motion to strike may be summarily denied by the Court, and any issues instead addressed in the ruling on the underlying motion.

LR 11.1 PERSONS APPEARING *PRO SE* IN CIVIL AND CRIMINAL CASES

(a) Rules Governing Appearance. Any individual who is representing himself or herself without an attorney (*pro se*) must appear personally when required and may not delegate that duty to any other individual, including husband or wife, or any other *pro se* party. Any individual representing himself or herself without an attorney is bound by the Federal Rules of Civil or Criminal Procedure, this Court's Local Rules, and all other applicable law. All obligations placed on "counsel" by this Court's Local Rules apply to individuals appearing *pro se*. Failure to comply may be grounds for dismissal, judgment by default, or any other appropriate sanction. A corporation or other entity may appear only through an attorney.

(b) Address Changes. A party appearing *pro se* shall keep the Court and opposing parties advised as to his or her current address. If mail directed to a *pro se* plaintiff from the Clerk is returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing parties within sixty-three (63) days thereafter of a current address, the Court may dismiss the action without prejudice for failure to prosecute.

(c) Pro Se Party Exceptions to Electronic Filing. *Pro se* parties are exempted from the requirement of filing documents electronically. *Pro se* parties must file documents in person at the Clerk's Office or by mail, and any person appearing pro se may use electronic filing only with the permission of the assigned Judge. See LR 5.3(c)(2).

LR 15.1 AMENDED PLEADINGS

If a party is required by the Rules to file a motion in order to seek leave to amend a pleading, the moving party shall attach the proposed amended pleading to the motion.

LR 16.1 INITIAL PRETRIAL PROCEEDINGS

(a) Requirement for Initial Pretrial Order. There shall be an initial pretrial order entered pursuant to the provisions of Fed.R.Civ.P. 16(b) and 26(f) in every civil case, except in:

(1) Social Security cases and other actions for review of administrative decisions;
(2) Prisoner petitions;
(3) Summons or subpoena enforcement proceedings;
(4) Bankruptcy appeals;
(5) Government collection cases and forfeiture proceedings; and
(6) Cases brought by *pro se* plaintiffs or in which all defendants are appearing

pro se.

The above categories of cases are exempted from the timing-and-sequence-of-discovery provisions of Rule 26(d), and the meeting of parties described in Rule 26(f). Category (1), (2), (3), and (4) cases require no pretrial management and are ready for adjudication on the pleadings of the parties, unless the Court orders otherwise. Category (5) cases (government collections and forfeitures) shall be governed by a 90-day period of discovery from the filing of answer or other response, with dispositive motions due in accordance with LR 56.1. Category (6) cases (*pro se* parties) shall be governed by a scheduling order entered by the Court after an initial pretrial conference unless the Court determines, in its discretion, that no conference is necessary; discovery shall not commence until entry of the scheduling order.

(b) Meeting of the Parties. Unless a case is exempt or the timing is altered by paragraph 16.1(a) above or otherwise, within the time set by Fed.R.Civ.P. Rule 16(b), the clerk shall schedule an initial pretrial conference and give at least thirty (30) days notice thereof. In cases that are exempt under paragraph 16.1(a) from the meeting of the parties described in Rule 26(f) because they involve pro se parties, parties in such cases may file proposed Rule 26(f) report(s) within the time allowed and as otherwise provided by this rule whether or not there is a meeting of the parties. The parties must hold their Fed.R.Civ.P. 26(f) meeting at least 14 days before the scheduled initial pretrial conference and submit to the Court their report within 10 days thereafter. The parties may not stipulate out of the Rule 26(f) meeting but must meet to discuss a proposed discovery plan. At the Rule 26(f) meeting, the parties shall discuss:

(1) All matters identified in Rules 16(b) and (c) and 26(f),
(2) The possibility of settlement,
(3) The proper management track for the case under LR 26.1,
(4) The timing of any mediated settlement conference under LR 16.4 and LR 83.9a-g, and the identity of any agreed-upon mediator,
(5) The nature of the documents and information believed necessary for the case,
(6) Issues of burden and relevance and the discoverability of different types of documents,
(7) A preliminary schedule for depositions, to be updated at reasonable intervals upon communication between the parties, and
(8) The decision of each party whether or not to consent to the trial jurisdiction of a Magistrate Judge.

The parties shall jointly prepare a Rule 26(f) Report (LR 16.2) if they are in agreement concerning a discovery plan for the case. If they do not agree, each shall file a separate Rule 26(f) Report (LR 16.3), setting forth its position on disputed matters. The Reports must be filed with the Court within 10 days of the Rule 26(f) meeting.

(c) Initial Pretrial Order by Conference. If the parties are unable to reach agreement on a discovery plan and therefore submit separate Rule 26(f) Reports (LR 16.3), they shall appear for the scheduled initial pretrial conference. Each party shall personally appear or be represented by an attorney who has full authority to bind the

party on the matters for discussion at the conference. After hearing from the parties, the Court will enter an initial pretrial order that will control the conduct of the litigation.

(d) Initial Pretrial Order Upon the Joint Rule 26(f) Report. If the parties reach agreement on a discovery plan and submit a joint Rule 26(f) Report, the Court will enter an order on the basis of the proposed plan as submitted or as modified by the Court. The Court may, on its own motion, modify the plan if it finds in its discretion that the plan provides for an excessive amount of discovery or the parties' selection of a case management track under LR 26.1 is unreasonable. The scheduled initial pretrial conference is automatically canceled upon the submission to the Court of the joint Rule 26(f) Report.

(e) Discovery with Respect to Expert Witnesses. The initial pretrial order, whether based upon a joint Rule 26(f) Report or a conference following the filing of separate reports, shall provide that discovery with respect to experts be conducted within the discovery period established in the case. The order shall set the date on which disclosure of expert information under Fed.R.Civ.P. 26(a)(2) must be made.

(f) Meeting on the Scope of Retention of Potentially Relevant Documents. At any time prior to the meeting of parties required by LR 16.1(b), the parties by consent may schedule a meeting relating to the scope of retention of potentially relevant documents, including but not limited to documents stored electronically and the need to suspend any automatic deletion or electronic documents or overwriting of backup material tapes which may contain potentially relevant information. If any party requests a meeting pursuant to LR 16.1(f) and does not obtain consent to such a meeting, the party may file a motion with the Court asking for the entry of an Order requiring a LR 16.1(f) meeting. If such a meeting occurs, by consent or by order, and no retention agreement can be reached, a party may file a motion within 10 days of the Rule 16.1(f) conference with the Court seeking an order on retention. A party's use of, or failure to use, the procedures contained herein, and any negotiations between the parties pursuant to this subparagraph shall be inadmissible.

LR 16.2 JOINT RULE 26(f) REPORT (FORM)

If the parties are in agreement concerning a discovery plan, they shall file a joint report in substantially the following form:

Joint Rule 26(f) Report

1. Pursuant to Fed.R.Civ.P. 26(f) and LR16.1(b), a meeting was held on date at place and was attended by _____ for Plaintiff(s), and _____ for Defendant(s).

2. Discovery Plan. The parties propose to the Court the following discovery plan:

If there is a pending dispositive motion: Discovery should/should not be postponed or limited pending determination of a pending dispositive motion.

The "commencement date" of discovery will be: [a date certain; upon entry of this Order; upon entry of the Court's Order denying a pending dispositive motion in whole or in part];

Discovery will be needed on the following subjects:

(brief descriptions) _____.

Discovery shall be placed on a case-management track established in LR 26.1. The parties agree that the appropriate plan for this case (with any stipulated modification by the parties as set out below) is that designated in LR 26.1(a) as:

Standard

Complex

Exceptional

The date for the completion of all discovery (general and expert) is: _____.

Stipulated modifications to the case management track include: _____.

Reports required by Rule 26(a)(2)(B) and disclosures required by Rule 26(a)(2)(C) are due during the discovery period:

From Plaintiff(s) by _____.

From Defendant(s) by _____.

Supplementations will be as provided in Rule 26(e) or as otherwise ordered by the court.

3. Mediation. [For cases selected for mediation under LR 16.4 and LR 83.9a-g et seq.]

Mediation should be conducted [early][midway] [late] in the discovery period, the exact date to be set by the mediator after consultation with the parties. The parties agree that the mediator shall be (identity) .

(If the parties report no agreement, the clerk will select a mediator from the Court's panel of mediators.)

4. Preliminary Deposition Schedule. Preliminarily, the parties agree to the following schedule for depositions: _____.

The parties will update this schedule at reasonable intervals.

5. Other items.

Plaintiff(s) should be allowed until date to request leave to join additional parties or amend pleadings.

Defendant(s) should be allowed until date to request leave to join additional parties or amend pleadings.

After these dates, the Court will consider, *inter alia*, whether the granting of leave would delay trial.

The parties have discussed special procedures for managing this case, including reference of the case to a Magistrate Judge on consent of the parties under 28 U.S.C. §§636(c), or appointment of a master:

(Report any agreements on these matters) .

Trial of the action is expected to take approximately _____ days. A jury trial [has][has not] been demanded.

Date:

Signatures of parties or counsel
Signatures of parties or counsel

LR 16.3 RULE 26(f) REPORT (FORM)

If the parties are unable to agree on a discovery plan, each party shall file a separate report in substantially the following form:

Rule 26(f) Report

1. Pursuant to Fed.R.Civ.P. 26(f) and LR16.1(b), a meeting was held on date at place and was attended by _____ for Plaintiff(s), and _____ for Defendant(s).

2. Discovery Plan. The undersigned party proposes to the Court the following discovery plan:

If there is a pending dispositive motion: Discovery should/should not be postponed or limited pending determination of a pending dispositive motion.
The "commencement date" of discovery will be: [a date certain; upon entry of this Order; upon entry of the Court's Order denying a pending dispositive motion in whole or in part];

Discovery will be needed on the following subjects:
(brief descriptions) _____.

Discovery shall be placed on a case-management track established in LR 26.1. The undersigned party proposes that the appropriate plan for this case (with any stipulated modification by the parties as set out below) is that designated in LR 26.1(a) as:

Standard
Complex
Exceptional

The date for the completion of all discovery (general and expert) is: _____.

Stipulated modifications to the case management track include: _____.

Reports required by Rule 26(a)(2)(B) and disclosures required by Rule 26(a)(2)(C) are due during the discovery period:

From Plaintiff(s) by _____.

From Defendant(s) by _____.

Supplementations will be as provided in Rule 26(e) or as otherwise ordered by the court.

3. Mediation. [For cases selected for mediation under LR 16.4 and LR 83.9a-g et seq.]

Mediation should be conducted [early][midway] [late] in the discovery period, the exact date to be set by the mediator after consultation with the parties. The parties agree that the mediator shall be (identity) .

(If the parties report no agreement, the clerk will select a mediator from the Court's panel of mediators.)

4. Preliminary Deposition Schedule. The undersigned proposes the following schedule for depositions: _____.

The parties will update this schedule at reasonable intervals.

5. Other items.

Plaintiff(s) should be allowed until date to request leave to join additional parties or amend pleadings.

Defendant(s) should be allowed until date to request leave to join additional parties or amend pleadings.

After these dates, the Court will consider, *inter alia*, whether the granting of leave would delay trial.

The parties have discussed special procedures for managing this case, including reference of the case to a Magistrate Judge on consent of the parties under 28 U.S.C. §§636(c), or appointment of a master:

(Report any agreements on these matters) .

Trial of the action is expected to take approximately _____ days. A jury trial [has][has not] been demanded.

Date:

Signatures of party or counsel

LR 16.4 MEDIATED SETTLEMENT CONFERENCES

(a) Mediated Settlement Conferences During Discovery. In selected civil cases (see section [b] for a description of cases automatically selected for mediation) there shall be conducted a mediated settlement conference in accordance with LR 83.9a-g. The conference may be set for any time during the discovery period, as agreed by the parties. In appropriate cases, the parties may wish to schedule the mediation early in the discovery period, after a first round of depositions or other discovery. In other cases, the parties may choose to set the conference near the end of the discovery period after all, or substantially all, discovery is complete. The parties shall discuss the timing of the mediated settlement conference during the Rule 26(f) meeting of the parties.

(b) Automatic Selection by these Rules. Several categories of civil cases are

automatically selected for mediated settlement conferences, without specific order by the Court. These categories include, according to the nature of suit designations made in opening the case in CM/ECF or as listed within the court forms appearing at www.ncmd.uscourts.gov, (1) contract [categories 110-140 and 160-195, specifically excluding 150-153], (2) tort [all categories, 310-385], (3) civil rights [all categories, 440-444], (4) labor [all categories, 710-791], (5) property rights [all categories, 820-840], (6) antitrust [category 410], (7) banks and banking [category 430], (8) securities/commodities/ exchange [category 850] and (9) environmental matters [category 893]. The parties to these actions shall discuss mediation plans at the Fed.R.Civ.P. 26(f) meeting of the parties and report such plans in their Rule 26(f) Report in preparation for the entry of an initial pretrial order. See LR16.1(b)(c) and (d). Cases wherein the United States is a party or the plaintiff appears *pro se* are not included within this automatic selection for mediation.

(c) Exemption from Mediated Settlement Conference. Any party, or parties jointly, may move for exemption from the requirement for a mediated settlement conference. The Court will grant such a request only for good cause. A general assertion that settlement is unlikely or only a remote possibility does not serve as good cause for exemption.

LR 17.1 MINORS AND INCOMPETENTS AS PARTIES

(a) Capacity to Sue or Be Sued. Minors and incompetent persons may sue or defend only by their general or testamentary guardians within this state or by guardians ad litem appointed by this Court.

(b) Appointment of Guardian ad Litem.

(1) Application for the appointment of a guardian ad litem to sue on behalf of a minor or incompetent may be made by motion submitted contemporaneously with a complaint. The complaint may be filed when the appointment is made by a Judge.

(2) Application for the appointment of a guardian ad litem to defend on behalf of a minor or incompetent person may be filed after service of the summons and complaint and before time has expired to answer or otherwise to respond.

(3) Applications for the appointment of a guardian ad litem by this Court must:

(i) set out facts requiring such appointment,

(ii) suggest a natural person suitable for appointment,

(iii) contain information about that person, including willingness to serve, upon which the Court can judge his or her qualifications, and

(iv) be accompanied by a proposed order of appointment.

(c) Termination of Actions; Court Hearing and Approval.

(1) No civil action or proceeding in which a minor or incompetent

person is a party may be compromised, settled, dismissed, or otherwise terminated without the approval of the Court.

(2) In order to obtain court approval, a party must file a motion setting forth reasons justifying the termination and explaining its effect upon the rights of the minor or incompetent person.

(3) The Court will conduct a hearing to determine whether the termination is fair, reasonable, and in the best interest of the minor or incompetent person. The following persons must be present at the hearing unless excused by the Court:

(i) attorneys for all parties,

(ii) the minor or incompetent party,

(iii) the guardian ad litem or other legal representative, and

(iv) a parent or other person in loco parentis.

(4) At the hearing the parties must establish to the satisfaction of the Court:

(i) the facts giving rise to the cause of action and the contentions of the parties with respect to liability and damage;

(ii) the facts concerning the nature and extent of any injury or damage suffered by the minor or incompetent person, supported by medical records and reports in personal injury cases;

(iii) medical and hospital expenses, if any, incurred or likely to be incurred;

(iv) the concurrence of the attorney, guardian ad litem or other legal representative that the proposed settlement is fair, reasonable, and in the best interest of the minor or incompetent person;

(v) the facts with respect to any related claims or liens, including separate claims of parents for expenses, and the disposition or status of such other claims.

(5) Ordinarily, the requirements of section (c)(4) of this rule may be satisfied by summaries made by the parties or their attorneys. In every case, the parties may present sworn testimony of witnesses, affidavits or documentary evidence, and the Court reserves the right to call for such evidence at any time.

(d) Fees. At the hearing, the Court will consider requests for counsel fees and a fee for services by the guardian ad litem or other legal representative and may make appropriate orders relating to payment of fees.

(e) Consent Judgments Approving Settlement.

(1) Before a judgment approving a compromise settlement of claims of a minor or incompetent is presented to the Court, it shall be consented and agreed to by counsel for the parties to the action and by the guardian ad litem or other legal representative of the minor or incompetent.

(2) The judgment presented should provide, inter alia, that the parties have agreed to a settlement of all matters in controversy between them, and the amount of the settlement; that the Court has conducted a hearing on the matter;

that the Court has found that the proposed compromise settlement is fair, reasonable, and in the best interest of the minor or incompetent; and that the Court has approved the compromise settlement agreement.

(f) Payment of Judgment. The amount of the judgment shall be paid into the office of the Clerk of Court, and the Clerk shall make such disbursements from the proceeds as provided by the judgment of the Court. The balance of the proceeds of the judgment shall be paid to the legal guardian of the minor or incompetent, if within this state. If there is no such guardian, the balance of the proceeds shall be paid to the clerk of superior court of the county in this state in which the minor or incompetent resides. If the minor or incompetent does not reside within this state, the balance shall be paid to a legal guardian approved by the Court.

LR 23.1 CLASS ACTIONS

(a) Class Action Complaint. The complaint shall bear next to its caption the legend, "Complaint -- Class Action." The complaint shall contain under a separate heading, styled "Class Action Allegations":

(1) A reference to the portion or portions of Rule 23, Fed.R.Civ.P., under which it is claimed that the suit is properly maintainable as a class action.

(2) Appropriate allegations claimed to justify class treatment, including, but not necessarily limited to:

(i) the size and definition of the alleged class,

(ii) the basis upon which the plaintiff claims

(A) to be an adequate representative of the class, or

(B) if the class is comprised of defendants, that those named as parties are adequate representatives of the class,

(iii) the alleged questions of law or fact claimed to be common to the class, and

(iv) for actions sought to be maintained under Rule 23(b)(3), Fed.R.Civ.P., allegations thought to support the findings required by that subdivision.

(b) Motion for Class Action Determination. Within 90 days after the filing of a complaint in a class action, unless this period is extended by court order, the plaintiff shall file a separate motion for a determination under Rule 23(c)(1), Fed.R.Civ.P., as to whether the case may be maintained as a class action. If a party wishes to present oral testimony to support or oppose the class action motion, the party must so inform the Court in its motion or opposition. In ruling upon such a motion, the Court may allow the action to be so maintained, may disallow and strike the class action allegations, or may order postponement of the determination pending discovery or such other preliminary procedures as appear to be appropriate and necessary in the circumstances. Whenever possible, where it is held that the determination should be postponed, a date will be fixed by the Court for renewal of the motion.

(c) Class Action Counterclaims or Cross-Claims. The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim or cross-claim alleged to be brought for or against a class.

(d) Burden of Proof; Notice. The burden shall be upon any party seeking to maintain a case as a class action to present an evidentiary basis to the Court showing that the action is properly maintainable as such. If the Court determines that an action may be maintained as a class action, the party obtaining that determination shall initially bear the expenses of and be responsible for giving such notice as the Court may order to members of the class.

LR 26.1 DIFFERENTIATED CASE MANAGEMENT AND DISCOVERY

(a) Differentiated Case Management and Commencement of Discovery. Every case in which an initial pretrial order is entered pursuant to LR16.1(b)-(d) shall be assigned, by agreement of the parties (if adopted by the Court) or by order of the Court, to one of three case-management tracks. (See LR16.2 and 16.3 for forms of the Fed.R.Civ.P. 26(f) report wherein parties advise the Court regarding case management tracks.) Unless otherwise ordered by the Court, commencement of discovery in each case will be in accordance with the initial pretrial order once entered by the Court. In submitting their reports under LR 26.1, the parties shall address whether there is a reason to delay commencement of discovery or to place limits on the scope of discovery for a period of time.[1] When one or more of the parties advocates for delay in discovery or limitation of discovery, the report shall also set out the party's position on the scope and length of discovery needed absent or following any delay or limitation. Whether or not any party believes that the timing, scope, and/or sequence of discovery should be affected by a pending motion, the parties shall address the appropriate track for the case at whatever point discovery may proceed in the matter. The three tracks are defined as follows:

(1) **Standard**. Discovery (including all discovery with respect to experts) in cases assigned to this track shall be completed within four (4) months from the date of the commencement date established in the initial pretrial order. Presumptively, subject to stipulation of the parties or order of the Court on good cause shown, interrogatories (including subparts) and requests for admission are limited to 15 in number by each party. Depositions are presumptively limited to four (4) depositions (including any experts) by the plaintiffs, by the defendants, and by third-party defendants.

(2) **Complex**. Discovery (including all discovery with respect to experts) in cases assigned to this track shall be completed within six (6) months from the date of the commencement date established in the initial pretrial order, subject to agreement of the parties for a larger discovery period, if approved by the Court. Presumptively, subject to stipulation of the parties or order of the Court on good cause shown, interrogatories

[1] For instance, when a party has filed a dispositive motion, particularly when filed in lieu of an answer, which could dispose of the entire case or significant issues in the case, there may be a good reason to delay the start of discovery or to place limits on discovery while the motion is pending.

(including subparts) and requests for admission are limited to 25 in number by each party. Depositions are presumptively limited to seven (7) depositions (including any experts) by the plaintiffs, by the defendants, and by third-party defendants.

(3) **Exceptional.** Discovery (including all discovery with respect to experts) in cases assigned to this track shall be completed within nine (9) months from the date of the commencement date established in the initial pretrial order. Presumptively, subject to stipulation of the parties or order of the Court on good cause shown, interrogatories (including subparts) and requests for admission are limited to 30 in number by each party. Depositions are presumptively limited to 10 depositions (including any experts) by the plaintiffs, by the defendants, and by third-party defendants. This management track is reserved for cases of exceptional complexity. It is not to be used for ordinary federal cases even though such cases have some complexity and require significant discovery.

(b) Discovery Procedures and Materials.

(1) The Court expects counsel to conduct discovery in good faith and to cooperate and be courteous with each other in all phases of the discovery process. As a part of their Rule 26(f) Report, the parties must formulate a preliminary deposition schedule. They must continue to communicate throughout the discovery period to update the schedule.

(2) Interrogatories, requests for production of documents, or requests for admission shall be numbered consecutively by each party regardless of the number of sets into which they are divided.

(3) Initial disclosures, disclosures of expert testimony, depositions and deposition notices, interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless the Court so orders or unless the Court will need such documents in a pretrial proceeding. All discovery papers must be served on other counsel or parties. The party taking a deposition or obtaining any material through discovery is responsible for its preservation and delivery to the Court when needed or ordered. Any party seeking to compel discovery or other pretrial relief based upon discovery material which has not been filed with the clerk must identify the specific portion of the material which is directly relevant and ensure that it is filed as an attachment to the application for relief.

(c) Completion of Discovery. The requirement that discovery be completed within a specified time means that adequate provisions must be made for interrogatories and requests for admission to be answered, for documents to be produced, and for depositions to be held within the discovery period.

(d) Extension of the Discovery Period or Request for More Discovery. Motions seeking an extension of the discovery period or permission to take more discovery than is permitted under the initial pretrial order must be made or presented prior to the expiration of the time within which discovery is required to be completed. They must set forth good cause justifying the additional time and will be granted or approved only upon a showing that the parties have diligently pursued discovery. The Court will permit additional depositions only on a showing of exceptional good cause.

(e) Trial Preparation After the Close of Discovery. For good cause

appearing therefor, the physical or mental examination of a party may be ordered at any time prior to trial. Ordinarily, the deposition of a material witness not subject to subpoena should be taken during discovery. However, the deposition of a material witness who agrees to appear at trial, but who later becomes unable or refuses to attend, may be ordered at any time prior to trial.

LR 26.2 PROTECTIVE ORDERS AND EXCHANGE OF CLAIMED CONFIDENTIAL MATERIAL IN DISCOVERY

(a) If a party, or parties jointly, seek entry of a protective order to shield information provided in discovery from dissemination, the movant or movants must demonstrate with specificity that

(i) the information qualifies for protection under Rule 26(c) of the Federal Rules of Civil Procedure, and

(ii) good cause exists for restricting dissemination on the ground that harm would result from its disclosure.

(b) Consent Protective Orders may not include a provision for prospective sealing of items filed with the Court, as sealing must be in accordance with LR 5.4.

(c) Nothing in this Local Rule is intended to require prior judicial approval of protective agreements intended to limit access to and use of materials gained in discovery. Instead, the parties may agree to protective agreements that will facilitate the exchange of materials in discovery, including materials as to which there is a claim of confidentiality, without the necessity of Court intervention.

(d) Documents or information designated as confidential in discovery or that a party otherwise maintains should not be subject to public disclosure may be provisionally filed under seal pursuant to LR 5.4 and will be maintained under seal pending disposition of the motion to seal filed pursuant to LR 5.4(b).

(e) Any response to a motion for entry of a protective order shall be within 14 days after service of the motion. Any reply to a response shall be filed within 7 days after service of the response.

LR 30.1 CONDUCT OF DEPOSITIONS

Depositions shall be conducted in accordance with the following guidelines:

(1) Counsel shall not direct or request that a witness not answer a question, unless that counsel has objected to the question on the ground that the answer is protected by a privilege or a limitation on evidence directed by the Court.

(2) Counsel shall not make objections or statements which might suggest an answer to a witness. Counsels' statements when making objections should be succinct, stating the basis of the objection and nothing more.

(3) Counsel and their witness-clients shall not engage in private, off-the-record conferences while the deposition is proceeding in session, except for the purpose of deciding whether to assert a privilege. Counsel may confer with their clients during mid-morning, lunch, mid-afternoon, or overnight breaks in the deposition. However, counsel for a deponent may not request such a break while a question is pending or while there continues a line of questioning that may be completed within a reasonable time preceding such scheduled breaks.

(4) Deposing counsel shall provide to the witness's counsel a copy of all documents shown to the witness during the deposition. The copies shall be provided either before the deposition begins or contemporaneously with the showing of each document to the witness. The witness and the witness's counsel do not have the right to discuss documents privately before the witness answers questions about them.

LR 37.1 MOTIONS TO COMPEL DISCOVERY

(a) Conference of Attorneys with Respect to Motions and Objections Relating to Discovery. The Court will not consider motions and objections relating to discovery unless moving counsel files a certificate that after personal consultation and diligent attempts to resolve differences the parties are unable to reach an accord. The certificate shall set forth the date of the conference, the names of the participating attorneys, and the specific results achieved. It shall be the responsibility of counsel for the movant to arrange for the conference and, in the absence of an agreement to the contrary, the conference shall be held in the office of the attorney nearest the court location where the initial pretrial conference was convened or, in the absence thereof, nearest to Greensboro. Alternatively, at any party's request, the conference may be held by telephone.

(b) Expedited Resolution of Some Discovery Disputes. If, after a LR 37.1(a) conference, the parties agree that a discovery dispute can be ruled upon in a telephone conference of no more than 30 minutes, the Magistrate Judge will schedule such a conference and rule on the dispute without briefing by the parties. Alternatively, if the parties agree that the dispute can be ruled upon in an in-court hearing of no more than one hour, without briefing, the Magistrate Judge will schedule an early hearing. The fact that these proceedings are expedited and without briefing does not alter the application of Fed.R.Civ.P. 37(a)(5) regarding the imposition of sanctions in discovery motions.

(c) Time for Filing Response and Reply. Any response to a motion to compel discovery shall be filed within 14 days after service of the motion. Any reply to a response shall be filed within 7 days after service of the response.

LR 40.1 TRIAL DATES AND FINAL PRETRIAL PREPARATION

(a) Establishment of Trial Date. While the case is in discovery, the clerk shall establish a trial date and give at least 4 months' notice thereof to the parties. The case may be set on a trial calendar of the assigned Judge or placed on a master calendar to be called by one or more District Judges. A Magistrate Judge may assist with the master calendar, although no case may be referred to the Magistrate Judge for trial unless the parties consent to the Magistrate Judge's trial jurisdiction.

(b) Continuance of Trial. The Court will consider a request to continue a trial date only if the request is signed by both the party and counsel for the party.

(c) Final Pretrial Preparation. The parties shall comply in all respects with Fed.R.Civ.P. 26(a)(3) regarding final pretrial disclosures, including the time requirements set out therein. Additionally, no later than 21 days before trial, each party shall file a trial brief, along with proposed instructions on the issues (jury cases) or findings of fact and conclusions of law (non-jury cases). Except with the Court's prior permission, trial briefs must not exceed 6,250 words or 20 pages in the manner specified in LR 7.3(d). Any party, or the Court on its own motion, may request a pretrial hearing or telephone conference to address matters relating to final pretrial preparation or settlement of the case. At any settlement conference, the Court may require the attendance of parties and insurers.

LR 43.1 TRIAL PROCEDURE

(a) Opening Statements in Civil Actions. At the commencement of the trial of civil actions, the party with the burden of proof may, without argument, state his or her cause of action and the evidence by which the party expects to sustain the party's claim. The adverse party may then, without argument, state his or her defense and the evidence by which the adverse party expects to sustain a defense. If the trial is to a jury, the opening statement shall be made immediately after the jury is sworn. If the trial is to the Court, the opening statement shall be made immediately after the case is called for trial. Opening statements shall be subject to such time limitations as may be imposed by the Court.

(b) Documents, Other than Exhibits, Used at Trial. When counsel expects to examine or cross-examine a witness concerning a document which will not be offered as an exhibit, counsel shall have at trial a copy of the document for use by the Judge.

(c) Absence During Return of Verdict. In a jury trial, if a party or counsel is voluntarily absent from the courtroom prior to the return of the verdict, it shall be conclusively presumed that such party or counsel waived presence.

LR 47.1 JURIES

(a) Examination of Jurors.

(1) The Court will conduct the examination of prospective jurors.

(2) When the Court's examination is completed, attorneys and parties appearing *pro se* may request that the Court ask additional questions to the prospective jurors.

(b) Contacts Prohibited.

(1) All parties, witnesses, and attorneys shall avoid any extra-judicial contact or communication with a grand juror or member of a petit jury venire or panel who has been or may be selected in a case in which that person is involved. No person may have any extra-judicial contact or communication, either directly or indirectly, with a grand juror, member of a petit jury venire or panel which may reasonably have the effect of influencing, or which is intended to influence, the grand juror, potential petit juror, or sitting petit juror.

(2) Attorneys for parties shall inform their clients and witnesses of this rule.

(3) No person shall approach a juror, either directly or through any member of the juror's immediate family, in an effort to secure information concerning the juror's background.

(4) No provision of this rule is intended to prohibit communication with a petit juror after the juror has been dismissed from further service, so long as the communication does not tend to harass, humiliate, or intimidate the juror in any fashion.

(c) Disclosure of Names and Addresses of Prospective Jurors.

(1) The names of prospective jurors for any session of court or for a specific case may not be disclosed prior to their reporting for duty except in compliance with instructions of the Court. The clerk will make available to counsel for the parties, and to any parties appearing *pro se*, a list which sets forth the name, general address, and occupation of each potential juror when court is opened for the session for which the jurors have been summoned.

(2) The names, addresses, and telephone numbers of persons who have served as jurors may not be disclosed by the clerk's office without court permission.

LR 51.1 JURY ARGUMENTS AND INSTRUCTIONS

(a) Jury Arguments. In the trial of civil actions the party having the burden of proof shall have the right to open and close the jury argument, without regard to whether the defendant has offered evidence. If each of the parties has the burden of proof on one or more issues, the Court, in its discretion, shall determine the order of arguments. All arguments shall be subject to such time limitations as may be imposed by the Court.

(b) Instructions to Jury. In all cases tried to a jury, a party who desires the jury to be instructed on a particular point must set it out in writing and furnish it to the Court before jury arguments commence.

LR 54.1 TAXATION OF COSTS

(a) Filing Bill of Costs.

(1) A prevailing party may request the clerk to tax allowable costs in a civil action as a part of a judgment or decree by filing a bill of costs, on a form available in the clerk's office, within 30 days

(i) after the expiration of time allowed for appeal of a final judgment or decree, or

(ii) after receipt by the clerk of an order terminating the action on appeal.

(2) The original of the bill of costs shall be filed with the clerk, with copies served on adverse parties.

(3) The failure of a prevailing party to timely file a bill of costs shall constitute a waiver of any claim for costs.

(b) Objections to Bill of Costs.

(1) If an adverse party objects to the bill of costs or any item claimed by a prevailing party, that party must state objection in a motion for disallowance with a supporting brief within 14 days after the filing of the bill of costs. Within seven days thereafter, the prevailing party may file a response and brief. Unless a hearing is ordered by the clerk, a ruling will be made by the clerk on the record.

(2) A party may request review of the clerk's ruling by filing a motion within seven days after the action of the clerk. The Court's review of the clerk's action will be made on the existing record unless otherwise ordered.

(c) Taxable Costs.

(1) Items normally taxed include, without limitation:

(i) Those items specifically listed on the bill of costs form. The costs incident to the taking of depositions (when allowable as necessarily obtained for use in the litigation) normally include only the reporter's attendance fee and charge for one transcript of the deposition.

(ii) Premiums on required bonds.

(iii) Actual mileage, subsistence, and attendance allowances for necessary witnesses at actual cost, but not to exceed the applicable statutory rates, whether they reside in or out of this district.

(iv) One copy of the trial transcript for each party represented by separate counsel.

(v) Reasonable costs for service by private process servers.

(2) Items normally not taxed include, without limitation:

(i) Witness fees, subsistence, and mileage for individual parties, real parties in interest, parties suing in representative capacities, and the officers and directors of corporate parties.

(ii) Daily copy of trial transcripts, unless prior court approval has been obtained.

(d) Costs in Settlements. The Court will not tax costs in any action terminated by compromise or settlement. Settlement agreements must resolve any issue relating to costs. In the absence of specific agreement, each party will bear its own costs.

(e) Payment of Costs. Costs are to be paid directly to the party entitled to reimbursement, who must file a certificate of satisfaction within 21 days of receipt of payment.

LR 54.2 AWARD OF STATUTORY ATTORNEY'S FEES

The Court will not consider a motion to award statutory attorney's fees until moving counsel shall first advise the Court in writing that after consultation the parties are unable to reach an agreement in regard to the fee award. The statement of consultation shall set forth the date of the consultation, the names of the participating attorneys, and the specific results achieved.

Within 60 days after the entry of final judgment, (i) the parties shall file an appropriate stipulation and request for an order if they have reached an agreement on an award of statutory attorney's fees; or (ii) if the parties have not reached such an agreement, the moving party shall file the statement of consultation required by this rule and a motion, supported by affidavits, time records, or other evidence, setting forth the factual basis for each criterion which the Court will consider in making such an award.

LR 56.1 SUMMARY JUDGMENT MOTIONS

(a) Notice of Dispositive Motion. Any party who intends to file a motion for summary judgment, or any other dispositive motion, must file and serve notice of intention to file a dispositive motion within 14 days following the close of the discovery period.

(b) Filing of Dispositive Motions. All dispositive motions and supporting briefs must be filed and served within 30 days following the close of the discovery period.

(c) Limitations of Length of Briefs. The word and page limitations for briefs on all motions, established by LR 7.3(d), apply to summary judgment briefs. Principal briefs prepared on computers must not exceed 6,250 words in the manner specified in LR 7.3(d), and reply briefs prepared by computer must not exceed 3,125 words in the manner specified in LR 7.3(d). Briefs prepared on a typewriter or by hand in support of motions and responsive briefs shall not exceed 20 pages, and reply briefs are limited to 10 pages. .

(d) Form of Briefs -- Summary Judgment Motion by Claimant. A party requesting summary judgment on its claim shall set out a statement of the nature of the matter before the Court, a statement of facts, and a statement of the questions presented as provided in LR 7.2(a)(1)-(3). The party shall also set out the elements that it must prove (with citations to supporting authority), and the specific, authenticated facts

existing in the record or set forth in accompanying affidavits that would be sufficient to support a jury finding of the existence of those elements.

In a responsive brief the opposing party may, within 30 days after service of the summary judgment motion and brief, set out the statements required by LR 7.2(a)(1)-(3) and also set out the elements that the claimant must prove (with citations to supporting authority), and either identify any element as to which evidence is insufficient (and explain why the evidence is insufficient), or point to specific, authenticated facts existing in the record or set forth in accompanying affidavits that show a genuine issue of material fact, or explain why some rule of law (e.g., an applicable statute of limitations) would defeat the claim. The failure to file a response may cause the Court to find that the motion is uncontested.

In a reply brief the claimant may, within 14 days of service of the response, address matters newly raised in the response.

(e) Form of Briefs -- Summary Judgment Motion by Defending Party. A party moving for summary judgment upon an opposing party's claim shall set out a statement of the nature of the matter before the Court, a statement of facts, and a statement of the questions presented as provided in LR 7.2(a)(1)-(3). The party shall also set out the elements that the claimant must prove (with citations to supporting authority), and explain why the evidence is insufficient to support a jury verdict on an element or elements, or why some other rule of law would defeat the claim.

In a responsive brief the party having made the challenged claim may, within 30 days after service of the summary judgment motion and brief, file with the Court a response that sets out the statements required by LR 7.2(a)(1)-(3) and also sets out the elements that it must prove (with citations to supporting authority), and the specific, authenticated facts existing in the record or set forth in accompanying affidavits that would be sufficient to support a jury finding of the existence of the disputed elements. The failure to file a response may cause the Court to find that the motion is uncontested.

In a reply brief the defending party may, within 14 days of service of the response, address matters newly raised in the response.

(f) Summary Judgment Motions and Trial Dates. The pendency of summary judgment motions will not serve to delay trial on the date set by the Court in accordance with LR 40.1. If by the time set for trial, the Court has been unable to reach any pending summary judgment motion, the case will nonetheless be reached according to the trial calendar. The Court will rule on the motion at the outset of trial.

(g) Failure to Timely File Dispositive Motions. A dispositive motion which is not noticed and filed within the prescribed time will not be reached by the Court prior to trial unless the Court determines that its consideration will not cause delay to the proceedings.

LR 65.1 INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS

(a) Form of Application. A prayer for a temporary restraining order or preliminary injunction set forth in a pleading will not bring the issue before the Court prior to the time of trial. If a ruling before trial is desired, a party must separately file a motion and brief.

(b) Hearing. A motion seeking a preliminary injunction will be considered and determined on the official court file including affidavits, briefs and other documents filed in support thereof without oral argument or testimony unless otherwise ordered by the Court. A request for leave to present oral argument or testimony in support of or in opposition to such motion must be included in the motion or response.

LR 65.1.1 SURETIES

(a) Security. Except as otherwise provided by law or by order of the Court, all bonds, guaranties, and undertakings must be secured by:

(1) Deposit of cash, certified check, certificate of deposit, bank draft, Post Office money order, negotiable bond, note of the United States as defined in 6 U.S.C. § 15, or other bond or note of the United States with the agreement provided for in 6 U.S.C. § 15;

(2) Undertaking of guaranty of a company holding a certificate of authority from the U.S. Department of Treasury as an acceptable surety on federal bonds; which company has filed with the clerk the designation of a resident of this district as agent, dated not more than three years earlier than the date of the undertaking, upon whom process may be served; and which company is otherwise qualified by having met all requirements of the law of North Carolina and of 6 U.S.C. §§ 6-13; or

(3) Undertaking of individual surety or sureties who are residents of North Carolina and own property within the state worth double the amount of the bond or undertaking over all exemptions, debts, liabilities and other obligations.

(b) Individual Sureties.

(1) An individual surety must execute an affidavit of justification giving full name, occupation, residence address, business address, and facts showing his or her financial qualification to act as surety.

(2) A husband and wife are considered as one surety.

(3) Members of the bar, officers and employees of this Court, and employees of the Department of Justice serving in this district may not serve as sureties in any suit, action, or proceeding in this Court.

(c) Approval. All bonds, guaranties, undertakings, and individual sureties must be approved by a Judge or the Clerk. Individual sureties who justify on the basis of ownership of real or personal property may be required to provide proof of ownership, such as a certificate of title, and a title search conducted by an attorney other than the

attorney representing the party on whose behalf the bond is being posted, and give security in the form of a proper security instrument or deed of trust.

LR 67.1 DEPOSIT AND DISBURSEMENT OF REGISTRY FUNDS PURSUANT TO FED. R. CIV. P. 67(1)

(a) Receipt of Funds

(1) No money shall be sent to the Court or its officers for deposit into the Court's Registry without a court order by the Judge assigned to the case.

(2) Unless otherwise directed, all registry funds ordered to be paid into the Court or received by its officers in any case pending or adjudicated shall be deposited with the Treasurer of the United States in the name and to the credit of this Court pursuant to 28 U.S.C. § 2041 through depositories designated by the Treasury to accept such deposit on its behalf.

(3) The party or attorney making the deposit or transferring funds to the Court's Registry shall provide the order permitting the deposit or transfer on the Clerk of Court, the Chief Deputy Clerk or Finance Manager.

(b) Investment of Registry Funds

(1) Where, by order of the Court, funds on deposit with the Court are to be placed in some form of interest-bearing account or invested in a court-approved, interest-bearing instrument in accordance with Rule 67 of the Federal Rules of Civil Procedure, the Court Registry Investment System ("CRIS"), administered by the Administrative Office of the United States Courts under 28 U.S.C. § 2045, shall be the only investment mechanism authorized.

(2) Interpleader funds deposited under 28 U.S.C. § 1335 meet the IRS definition of a "Disputed Ownership Fund" (DOF), a taxable entity that requires tax administration. Unless otherwise ordered by the court, interpleader funds shall be deposited in the DOF established within the CRIS and administered by the Administrative Office of the United States Courts, which shall be responsible for meeting all DOF tax administration requirements.

(3) The Director of Administrative Office of the United States Courts is designated as custodian for all CRIS funds. The Director or the Director's designee shall perform the duties of custodian. Funds held in the CRIS remain subject to the control and jurisdiction of the Court.

(4) Money from each case deposited in the CRIS shall be "pooled" together with those on deposit with Treasury to the credit of other courts in the CRIS and used to purchase Government Account Series securities through the Bureau of Public Debt, which will be held at Treasury, in an account in the name and to the credit of the Director of Administrative Office of the United States Courts. The pooled funds will be invested in accordance with the principles of the CRIS Investment Policy as approved by the Registry Monitoring Group.

(5) An account will be established in the CRIS Liquidity Fund titled in the name of the case giving rise to the deposit invested in the fund. Income generated from fund investments will be distributed to each case based on the ratio each account's principal and earnings has to the aggregate principal and income total in the fund after the CRIS fee has been applied. Reports showing the interest earned and the principal amounts contributed in each case will be prepared and distributed to each court participating in the CRIS and made available to litigants and/or their counsel.

(6) For each interpleader case, an account shall be established in the CRIS Disputed Ownership Fund, titled in the name of the case giving rise to the deposit invested in the fund. Income generated from fund investments will be distributed to each case after the DOF fee has been applied and tax withholdings have been deducted from the fund. Reports showing the interest earned and the principal amounts contributed in each case will be available through the FedInvest/CMS application for each court participating in the CRIS and made available to litigants and/or their counsel. On appointment of an administrator authorized to incur expenses on behalf of the DOF in a case, the case DOF funds should be transferred to another investment account as directed by court order.

(c) Fees and Taxes

(1) The custodian is authorized and directed by this Order to deduct the CRIS fee of an annualized 10 basis points on assets on deposit for all CRIS funds, excluding the case funds held in the DOF, for the management of investments in the CRIS. According to the Court's Miscellaneous Fee Schedule, the CRIS fee is assessed from interest earnings to the pool before a pro rata distribution of earnings is made to court cases.1

(2) The custodian is authorized and directed by this Order to deduct the DOF fee of annualized 20 basis points on assets on deposit in the DOF for management of investments and tax administration. According to the Court's Miscellaneous Fee Schedule, the DOF fee is assessed from interest earnings to the pool before a pro rata distribution of earnings is made to court cases. The custodian is further authorized and directed by this Order to withhold and pay federal taxes due on behalf of the DOF.

LR 72.1 AUTHORITY OF MAGISTRATE JUDGES

(a) Designation to Conduct Trials and to Perform Other Duties.

(1) Magistrate Judges are authorized and designated to exercise the powers and authority and to perform the duties enumerated in 28 U.S.C. §§ 636(b)(1) and (2).

(2) Magistrate Judges serving this Court are specially designated to:

(i) exercise civil jurisdiction to conduct any or all proceedings in jury or non-jury cases and order the entry of judgment in any case referred to them for that purpose, pursuant to 28 U.S.C. §§ 636(c), and

(ii) exercise jurisdiction to try persons accused of, and sentence persons convicted of, criminal misdemeanors.

(b) Authority to Perform Additional Duties. Pursuant to 28 U.S.C. §§ 636(b)(3), Magistrate Judges are authorized to perform additional functions and duties, including the following:

(1) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings;

(2) Conduct calendar and status calls for civil and criminal calendars, and determine motions to expedite or postpone the trial of cases;

(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) Conduct voir dire and select petit juries for the Court;

(5) Accept petit jury verdicts in civil cases in the absence of a District Judge;

(6) Conduct preliminary proceedings relating to the potential revocation of probation;

(7) 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;

(8) Order the exoneration or forfeiture of bonds;

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

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

(11) Review petitions in civil commitment proceedings under Title III of the Narcotic Addict Rehabilitation Act;

(12) Conduct such hearings as are necessary or appropriate, and submit to a District Judge proposed findings of fact and recommendations for disposition of applications for judgment by default pursuant to Rule 55(b) of the Federal Rules of Civil Procedure, or motions to set aside judgments by default pursuant to Rule 55(c) of the Federal Rules of Civil Procedure;

(13) Consider an application by complainant pursuant to 42 U.S.C. §§ 2000e-5(f)(1), and in such circumstances as may be deemed just, appoint an attorney for such complainant, and authorize the commencement of an action without payment of fees, costs, or giving security therefor;

(14) Issue orders or warrants authorizing acts necessary in the performance of the duties of administrative and regulatory agencies and departments of the United States Government;

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

(16) Supervise proceedings conducted pursuant to letters rogatory, in accordance with 28 U.S.C. §§ 1782;

(17) Require compliance with local rules with regard to *pro se* petitions under 42 U.S.C. §§ 1983;

(18) Issue orders of withdrawal from the court registry of funds pursuant to 28 U.S.C. §§ 2042; and

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

LR 72.2 ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES

Duties and cases may be assigned or referred to a Magistrate Judge by a court order entered in the action or by the clerk in compliance with standing orders or the instructions of a District Judge.

LR 72.3 STAY OF ORDER

Application for stay of a Magistrate Judge's order pending review of objections made thereto must first be made to the Magistrate Judge.

LR 72.4 OBJECTIONS AND RESPONSES TO RECOMMENDATION OR ORDER

Objections and responses to a magistrate judge’s recommendations or orders shall not exceed 6,250 words or 20 pages in the manner specified in LR 7.3(d).

LR 73.1 CONSENT TO CIVIL TRIAL JURISDICTION

(a) Consent to Exercise of Civil Trial Jurisdiction.

(1) The consent of a party to the exercise of civil trial jurisdiction authorized in 28 U.S.C. §§ 636(c)(1) may be communicated to the clerk by letter, or by a form available in the clerk's office, signed by the party or the party's attorney, or by any other manner provided for by law.

(2) The consent of a party will be placed in the public court file only when the Court has ordered the case referred to a Magistrate Judge.

(b) Withdrawal of Consent. After a case has been referred, the consent of the parties to the exercise of a Magistrate Judge's jurisdiction may not be withdrawn without the approval of the District Judge who signed the order of reference.

(c) Reference Discretionary. Reference of a case to a Magistrate Judge after consent of all parties is within the discretion of the Court.

LR 77.1 COURT SCHEDULE AND CONDUCT OF BUSINESS

(a) Headquarters. The headquarters of the Court shall be located in Greensboro. All paper documents submitted for filing shall be delivered to the clerk in Greensboro, except that papers may be filed in open court in any court location when permitted by a Judge.

(b) Scheduling. Conferences, hearings, and trials will be scheduled by the Court or by the Clerk at the Court's direction. All sessions of court will commence at 9:30 a.m. unless otherwise announced.

(c) Naturalization. Petitions for naturalization will be considered by the Court at Greensboro, North Carolina, on Fridays after the third Mondays in February, May, August, and on the Friday before Thanksgiving in November. In its discretion, the Court may at other times consider petitions for naturalization when made by members of the armed services, seamen on merchant vessels registered under the laws of the United States, members of the immediate families and dependents of such personnel, or other persons in exceptional circumstances.

LR 77.2 ORDERS AND JUDGMENTS GRANTABLE BY CLERK

(a) Orders and Judgments. The clerk is authorized to grant the following orders and judgments without direction by the Court:

(1) Upon a showing of good cause, consent orders in civil actions for extending for not more than 30 days (plus an additional 30 days in exceptional circumstances) the time within which to answer or otherwise plead.

(2) Upon a showing of good cause, consent orders in social security administrative review cases for extending for not more than 30 days (plus an additional 30 days in exceptional circumstances) the time within which to file dispositive motions.

(b) Clerk's Action Reviewable. The actions of the clerk may be suspended, altered, or rescinded by the Court upon cause shown.

LR 77.3 COURT LIBRARIES

The court's libraries are maintained for the exclusive use of the Judges and the Clerk.

LR 79.1 ACCESS TO COURT RECORDS

(a) Access. The public records of the Court are available for examination in the clerk's office during normal business hours.

(1) No file, pleading, paper, or index card may be removed from the clerk's office without the approval of a Judge.

(2) When removal of a file or document is authorized, the clerk will set a date for its return and will require a written receipt for its release.

(b) Copies. The clerk will make and furnish copies of official court records upon request and upon payment of prescribed fees. The official court record for documents filed prior to March 1, 2005 consists of items filed on the right side of the case folder; items filed on the left side of the case folder, while available for public examination, may not be copied without the written approval of a Judge. Requests for copies of items filed on the left side of the case folder must be submitted in writing to the Clerk of Court, who will refer the matter to the appropriate Judge and advise the requester of the Judge's decision. For documents filed on or after March 1, 2005, the CM/ECF electronic documents are the official court record.

LR 79.2 RELEASE OF INFORMATION BY COURT PERSONNEL

All court personnel, including, among others, the United States Marshal and deputies, the Clerk of Court and deputies, the chief probation officer and officers, the chief pretrial services officer and officers, bailiffs, and court reporters, are prohibited from disclosing to any person, without authorization by the Court, information relating to a case that is not part of the public records of the Court. This proscription applies to the divulgence of information concerning arguments and hearings held in chambers or otherwise outside the presence of the public.

LR 79.3 ADMINISTRATIVE RECORDS IN SOCIAL SECURITY CASES

Administrative records and transcripts in Social Security cases and transcripts or voluminous exhibits in other administrative proceedings will be returned to counsel at the conclusion of action.

LR 79.4 CUSTODY AND DISPOSITION OF TRIAL EXHIBITS, SEALED DOCUMENTS, AND FILED DEPOSITIONS

(a) Custody with the Clerk. Unless otherwise directed by the Court, all trial exhibits admitted into evidence in criminal and civil actions shall be placed in the custody of the clerk, except as provided in section (b) below.

(b) Custody with the Offering Party. All exhibits not suitable for filing and transmission to the court of appeals as a part of a record on appeal shall be retained in the custody of the party offering them, subject to the orders of the Court. Such exhibits shall include, but not be limited to, the following types of bulky or sensitive exhibits: narcotics and other controlled substances, firearms, ammunition, explosive devices, jewelry, liquor,

poisonous or dangerous chemicals, money or articles of high monetary value, counterfeit money, and documents or physical exhibits of unusual bulk or weight.

At the conclusion of a trial or proceeding, the party offering such exhibits shall retain custody of them and be responsible to the Court for preserving them in their condition as of the time admitted until any appeal is resolved or the time for appeal has expired. The party retaining custody shall make such exhibits available to opposing counsel for use in preparation of an appeal and be responsible for their safe transmission to the appellate court, if required.

(c) Disposition of Exhibits, Sealed Documents, and Filed Depositions by Clerk. Any exhibit, sealed document, disk, or filed deposition in the clerk's custody more than 30 days after the time for appeal, if any, has expired, or an appeal has been decided and mandate received, may be returned to the parties or destroyed by the clerk. Complaints, answers, motions, responses and replies, whether sealed or not, must be forwarded to the General Services Administration for permanent storage. The confidentiality of sealed documents cannot be assured after the case file is transferred to the General Services Administration for records holding.

(d) Depositions. Depositions read into the court record are considered exhibits for which the parties shall be responsible as provided in section (b) above. Depositions on file admitted into evidence but not read into the record shall be retained in the clerk's custody and disposed of as authorized in section (c) of this rule.

LR 83.1 ATTORNEYS

(a) Roll of Attorneys. The bar of this Court shall consist of those attorneys admitted to practice before this Court.

(b) Eligibility and Admission. To be eligible for admission to the bar of the Court, a person must be admitted to the practice of law in this state and in good standing with the Supreme Court of North Carolina. A Judge will consider a request for admission only upon motion made in open court by a member of the bar of this Court. Prior to being admitted to practice, an attorney must certify, on the application for admission to practice form provided for use in this Court, that the attorney has read and is familiar with the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Local Rules of this Court, and the North Carolina Code of Professional Responsibility. Attorneys seeking admission to practice in this Court must take an oath or make an affirmation in a form approved by the Court and pay the filing fee required by the Administrative Office of the United States Courts for admission to practice in this district. When the application form prescribed for use by this Court is completed and the appropriate filing fee has been paid to the Clerk of Court of this Court, a judge or magistrate judge of the Eastern or Western Districts of North Carolina, upon being presented evidence that the above-mentioned application has been filed and that the requisite fees have been paid, may admit an attorney who is qualified according to these rules to practice before this Court. Attorneys already admitted to the bars of either the

United States District Court for the Eastern District of North Carolina or the United States District Court for the Western District of North Carolina may be admitted to the bar of this Court upon tendering the application and fees required by this rule, together with a copy of the order admitting the attorney to practice or certificate of good standing from either of the aforementioned districts.

(c) Litigants Must Be Represented by a Member of the Bar of this Court.

(1) Litigants in civil and criminal actions and parties in bankruptcy proceedings before this Court, except parties appearing *pro se*, must be represented by at least one attorney who is a member of the bar of this Court. Federal government attorneys representing the interests of the United States are not required to secure local counsel. The service of all pleadings and papers permitted by the Federal Rules of Civil and Criminal Procedure shall be sufficient if made upon such attorney.

(2) All pleadings and papers presented to the clerk for filing, except by attorneys representing governmental agencies or parties appearing *pro se*, shall be signed by a member of the bar of this Court.

(d) Special Appearance.

(1) Attorneys who are members in good standing of the bar of the highest court of any state or the District of Columbia may practice in this Court for a particular case in association with a member of the bar of this Court. To appear by special appearance, an attorney shall associate with a member of the bar of this Court and shall register as a filing user with the Court's CM/ECF system. See LR 5.3(c)(1). No motion is required. By entering an appearance, an attorney agrees that:

(i) the attorney will be responsible for ensuring the presence of an attorney who is familiar with the case and has authority to control the litigation at all conferences, hearings, trials and other proceedings; and that

(ii) the attorney submits to the disciplinary jurisdiction of the Court for any misconduct in connection with the litigation for which the attorney is specially appearing.

(2) A member of the bar of this Court who accepts employment in association with a specially appearing attorney is responsible to this Court for the conduct of the litigation or proceeding and must sign all pleadings and papers, except for certificates of service. Such member must be present during pretrial conferences, potentially dispositive proceedings, and trial.

(e) Withdrawal of Appearance.

(1) No attorney who has entered an appearance in any civil or criminal action shall be permitted to withdraw an appearance, or have it stricken from the record, except on order of the Court or when the attorney has provided notice of substitution of counsel by an attorney who is a member of the withdrawing attorney's law firm.

(2) Substitution of counsel of record for Federal government attorneys and for other governmental agency attorneys can be accomplished by the submission of a Notice of Substitution of Counsel.

(3) In cases where withdrawal is sought without substitution of counsel, an attorney must seek leave of court by filing a motion to withdraw. The motion to

withdraw must be served on the client and include the client's mailing address in the certificate of service.

LR 83.2 COURTROOM PRACTICES

(a) Addressing the Court. Attorneys or litigants shall rise when addressing the Court, and shall make all statements to the Court from behind the counsel table or the lectern facing the Court. They shall not approach the bench, except upon the permission of the Court.

(b) Questioning Witnesses. While questioning witnesses, attorneys or *pro se* litigants shall remain seated or standing behind the counsel table or standing at the lectern. They shall not approach the witness except for the purpose of examining the witness with respect to an exhibit. Only one attorney for each party may participate in the examination or cross-examination of a witness.

LR 83.3 SETTLEMENT

Attorneys or *pro se* litigants shall immediately notify the clerk of an agreement in principle reached by the parties which resolves the litigation as to any or all parties. Whenever any civil action scheduled for a jury trial is settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, all jury costs, including any marshal's fees, mileage and per diem, may be assessed equally against the parties or otherwise assessed as determined by the Court, unless the clerk's office is notified at least one full business day prior to the date on which the action is scheduled for trial or in sufficient time to notify jurors that their presence will not be required.

LR 83.4 SANCTIONS

(a) Imposition of Sanctions. If an attorney or a party fails to comply with a local rule of this Court, the Court may impose sanctions against the attorney or party, or both. The Court may make such orders as are just under the circumstances of the case, including the following:

(1) an order that designated matters or facts shall be taken as established for purposes of the action;

(2) an order refusing to allow the failing party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters in evidence;

(3) an order striking out pleadings or parts thereof, or staying proceedings until the rule is complied with, or dismissing the action or any part thereof, or rendering a judgment by default against the failing party;

(4) an order imposing costs, including attorney's fees, against the party, or the party's attorney, who has failed to comply with a local rule.

(b) Sanctions Within the Discretion of the Court. The imposition of sanctions for violation of a local rule is discretionary with the Court. In considering the imposition of sanctions, the Court may consider whether a party's failure was substantially justified or whether other circumstances make the imposition of sanctions inappropriate.

LR 83.5 DISPOSITION OF PRIVATE PROPERTY

(a) Disposition. Whenever, during the course of an investigation, a trial of any action, or any other proceeding in this Court, money, contraband, or other private property comes into the possession or custody of a law enforcement officer or an officer of the Court, which will require an order of this Court to determine its ownership or proper disposition, it is the responsibility of the attorney representing the party having original custody or control of such property to apply to the Court for an order determining its ownership and directing its disposition.

(1) This application must be made before the conclusion of the litigation while all parties are before the Court in person or through their attorneys.

(2) If the Court cannot determine ownership or the proper disposition on the basis of the record or information from the parties before it, application must be made for an order providing for temporary custody pending institution of appropriate civil proceedings to determine final ownership or disposition.

(b) Sanctions. The Court may impose sanctions as provided in LR 83.4 against any party or attorney whose failure to comply with this rule necessitates a subsequent hearing or court proceeding which would otherwise not have been necessary.

LR 83.6 CLAIM OF UNCONSTITUTIONALITY; THREE-JUDGE COURTS

(a) Notification. If at any time prior to the trial of an action to which (1) neither the United States nor any of its officers, agencies, or employees is a party and a party draws in question the constitutionality of an act of Congress affecting the public interest, or (2) neither the state nor any of its agencies, officers, or employees is a party and a party draws in question the constitutionality of any statute of that state affecting the public interest, that party, to enable the Court to comply with 28 U.S.C. §§ 2403, shall notify the Court. The notice shall be in writing, stating the title of the action, the statute in question, and the respects in which it is claimed the statute is unconstitutional, and a copy shall be served upon the Attorney General of the United States and the United States Attorney in this district or the North Carolina Attorney General, as applicable.

(b) Additional Copies. In any action or proceeding required by act of Congress to be heard and determined by a district court of three judges, all pleadings,

papers, and documents filed subsequent to the designation of the Court, as provided in 28 U.S.C. §§ 2284(a), shall be filed in triplicate, original and two copies, with the clerk. The clerk shall make timely distribution of these documents to the designated judges.

LR 83.7 PHOTOGRAPHS, RECORDINGS, AND BROADCASTS

Radio, television, Internet broadcasting and the use of photographic, electronic, or mechanical reproduction or recording equipment is prohibited in courtrooms or their environs. "Environs" is defined to mean the courtrooms, the offices of the Judges, Clerk, probation officers, or any corridor connecting or adjacent thereto. Ceremonial proceedings such as the administration of oaths of office to appointed officials of the Court, naturalization, and presentation of portraits, may be photographed in or broadcast from the courtroom under the supervision of the Court. Pursuant to Standing Order No. 2, attorneys may request Court permission to bring certain electronic devices into courtrooms or their environs by obtaining an Electronic Device Request and Acknowledgment Form from the clerk's office. However, attorneys may not use such devices to photograph, audio record, verbatim reproduce or broadcast any proceedings.

LR 83.8 COURTROOM SECURITY

(a) The United States Marshal or a Court Security Officer shall be present at all proceedings held in open court, unless otherwise ordered by the Court.

(b) Firearms, or weapons, or any device that may be used as a weapon are prohibited in any courtroom in the District: except those possessed by an employee of the United States Marshal's Service; or those possessed by a credentialed law enforcement officer or agent of the United States with express prior approval, on a case by case basis, of the United States Marshal or the Marshal's designee.

LR 83.9a PURPOSE OF MEDIATED SETTLEMENT CONFERENCES

These rules govern reference of selected civil actions for mediated settlement conferences. Their purpose is to provide for an informal process conducted by a mediator with the objective of helping the parties reach a mutually acceptable settlement of their dispute. The rules are not intended to force settlement upon any party. The rules shall be construed to secure the speedy, fair, and economical resolution of controversies while preserving the right of all parties to a conventional trial.

LR 83.9b SELECTION OF CASES FOR MEDIATED SETTLEMENT CONFERENCES

(a) Automatic Selection by these Rules. Several categories of civil cases are automatically selected for mediated settlement conferences, without specific order by the Court. These categories include, according to the nature of suit designations made in opening the case in CM/ECF or as listed within the court forms appearing at www.ncmd.uscourts.gov, (1) contract [categories 110-140 and 160-195, specifically excluding 150-153], (2) tort [all categories, 310-385], (3) civil rights [all categories, 440-444], (4) labor [all categories, 710-791], (5) property rights [all categories, 820-840], (6) antitrust [category 410], (7) banks and banking [category 430], (8) securities/commodities/ exchange [category 850], and (9) environmental matters [category 893]. The parties to these actions shall discuss mediation plans at the Fed.R.Civ.P. 26(f) meeting of the parties and report such plans in their Rule 26(f) Report in preparation for the entry of an initial pretrial order. See LR16.1(b)(c) and (d). Cases wherein the United States is a party or the plaintiff appears *pro se* are not included within this automatic selection for mediation.

(b) Discretionary Selection by the Court. In its discretion, the Court may order a mediated settlement conference in any action not automatically selected under section (a), above. After entry of such an order, the parties shall have 21 days to file a statement identifying an agreed-upon mediator.

(c) Stipulated Selection by the Parties. In any case where selection for a mediated settlement conference is not automatic under section (a) of this rule, the parties may file a stipulation for mediation. In such stipulation, the parties may state any agreements they have reached regarding the identity of the mediator, the timing of the conference, and any modification of the procedures described by these rules.

(d) Exemption from Mediation. Any party, or parties jointly, may file a motion for exemption from mediation. Such a motion will be granted only on a showing of good cause. A general assertion that a case is not likely to settle or that settlement possibilities are remote does not constitute good cause.

LR 83.9c MEDIATORS

(a) Certification. The clerk shall maintain a list of mediators who have agreed to serve under these rules. The list shall identify areas of subject matter expertise of each mediator according to the categories identified in LR 83.9b(a) and include such biographical information as each mediator may wish to provide. Attorneys who have been certified as mediators pursuant to the rules of the North Carolina Supreme Court and who have at least 8 years of civil trial practice or membership on the faculty of an accredited law school may serve on the panel of mediators. Further, attorneys who were on the Court's panel of arbitrators as of December 1, 1993 may serve on the panel of mediators. Appointment to the list does not guarantee any mediator that he or she will be

appointed to serve in any case before the Court.

(b) Compensation of Mediators. Mediators under these rules shall be compensated by the parties at the hourly rate set by the Chief Judge, except that in the case of an agreed-upon mediator, the parties may agree to greater compensation and expense reimbursement. The parties shall make payment directly to the mediator at the termination of the mediated settlement conference, whether or not the case is settled. The mediator shall be compensated for up to 2 hours of preparation time and for the time expended in the conference. The only compensable expense of the mediator is travel mileage at the ordinary government rate. The mediator's fee and travel expense shall be paid in one equal share by the plaintiff (or plaintiffs), one equal share by the defendant (or defendants), and one equal share by any third party (or parties), unless otherwise agreed by all parties or ordered by the Court in the interest of fairness.

(c) Compensation of Mediators when a Party is Unable to Pay. If a party contends it is unable to pay its share of the mediator's fee, that party shall, before the conference, file a motion with the Court to be relieved of the obligation to pay. The motion shall be accompanied by an affidavit of financial standing. The mediated settlement conference should proceed without payment by the moving party, and the Court will rule on the motion upon completion of the case. The Court will take into consideration the outcome of the case, whether by settlement or judgment, and may relieve the party of its obligation to pay the mediator if payment would cause a substantial financial hardship. If the party is relieved of its obligation, the mediator shall remain uncompensated as to that portion of his or her fee, a circumstance that reflects the mediator's duty of pro bono service.

LR 83.9d SELECTION OF THE MEDIATOR

(a) Selection by Agreement. The parties are encouraged to select their own mediator by agreement. If, within 21 days of the initial pretrial order, the parties submit to the clerk a statement identifying an agreed-upon mediator, such statement shall be effective to select the mediator, and the clerk will notify the mediator of his or her selection. The parties may select an agreed-upon mediator who is not on the clerk's list of certified mediators, but any such mediator must, prior to service, agree to be bound by all provisions of these rules.

(b) Selection by the Clerk. If no timely statement pursuant to section (a) of this rule is submitted, the clerk shall appoint a mediator from the certified list. The appointment is within the discretion of the clerk, who may consider subject matter expertise in making the appointment. The clerk shall give notice of the appointment to the mediator and the parties.

(c) Disqualification. On motion made to the Court not later than 21 days before a scheduled mediated settlement conference, a mediator may be disqualified by the Court for bias or prejudice as provided in 28 U.S.C. §§144. Further, a mediator shall

disqualify himself or herself if the mediator could be required to do so under 28 U.S.C. §§455 if he or she were a justice, judge, or magistrate judge.

(d) Copies of the Pleadings. On request of the mediator, the clerk shall furnish to the mediator a copy of the complaint, answer, and any third-party pleadings in the action.

LR 83.9e PROCEDURES FOR MEDIATED SETTLEMENT CONFERENCES

(a) Time Period for the Mediated Settlement Conference. The mediated settlement conference shall be held during the discovery period unless the Court specifically orders otherwise.

(b) Scheduling the Mediated Settlement Conference. The mediated settlement conference shall ordinarily be held in the office of the mediator, but may be held at any other place agreed to by the parties and the mediator. Because of space limitations, the federal courthouses are not available for mediated settlement conferences. After conferring with the attorneys for the parties regarding scheduling matters, the mediator shall determine the place and time of the conference (within the period established by these rules), and give notice to the parties.

(c) Submission of Position Papers to Mediator. No later than seven (7) days before the scheduled date of the mediated settlement conference, any party may submit a confidential position paper to the mediator. The position paper shall be limited in length to five (5) pages, double-spaced, and may be accompanied by up to five (5) pages of exhibits. Position papers are confidential, shall be held so by the mediator, and need not be served on other parties. The purpose of these submissions is to help the mediator become familiar with the assertions of the parties, and the parties may agree to the submission of additional information if they believe the information will facilitate the mediated settlement conference.

(d) Duties of Parties, Representatives, and Attorneys. The following persons shall be physically present at the entire mediated settlement conference unless excused by the mediator:

(1) Individual parties; an officer, manager, or director of a corporate or entity party, such representative to have full authority to negotiate on behalf of the entity and to approve or recommend a settlement;

(2) At least one attorney of record for each represented party; and

(3) A representative of the insurance carrier for any party against whom a claim is made. The representative must have full authority to settle the claim and must be a person other than the carrier's outside counsel.

Upon reaching a settlement agreement at a mediated settlement conference, the parties shall forthwith reduce the agreement to writing and prepare a stipulation of dismissal or consent judgment for presentation to the Court.

(e) Authority of the Mediator. The mediator is authorized by these rules to exercise control over the mediated settlement conference and to direct all proceedings

therein. The mediator is specifically authorized to meet or consult privately with any party or their counsel during the conference. The mediator may report in writing to the Court, with copies to the parties, any conduct of any party that may be in violation of these rules for mediated settlement conferences.

(f) Duties of the Mediator. At the beginning of the mediated settlement conference, the mediator shall describe the following matters to the parties:

(1) The process of mediation,

(2) The differences between mediation and other forms of conflict resolution,

(3) The costs of the mediated settlement conference,

(4) The fact that the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their right to trial if they do not reach settlement,

(5) The circumstances under which the mediator may meet alone with either of the parties or any other person,

(6) The conditions under which communications with the mediator will be held in confidence during the conference,

(7) The inadmissibility of negotiating statements and offers at trial,

(8) The fact that the Court will not permit parties in other litigations to conduct discovery regarding the mediation in this case,

(9) The duties and responsibilities of the mediator and the parties, and

(10) The fact that any agreement reached will be reached by mutual consent of the parties.

The mediator may recess or suspend the conference at any time and set a schedule for reconvening. It is the duty of the mediator to determine if an impasse has been reached or mediation should for any reason be terminated. He shall then inform the parties that mediation is terminated.

(g) Agreement to Modify Mediation Procedures. By agreement filed with the Court, the parties, with the consent of the mediator, may modify the mediation procedures described in these rules, except that the parties may not alter time limitations set by these rules or by order of the Court.

(h) Sanctions for Failure to Appear. If a person fails to attend a mediated settlement conference without good cause, the Court may impose on that person (or any associated party) any lawful sanction, including, but not limited to, the imposing of the cost of attorney's fees, mediator's fees, and expenses of persons incurred in attending the conference.

(i) Inadmissibility of Negotiations.

(1) Evidence of statements made and conduct occurring in a mediated settlement conference or otherwise in communications with a mediator during the mediation process, whether attributable to a party, the mediator, or a neutral observer present at the conference (e.g., mediator candidate, interpreter, person studying dispute resolution), shall not be subject to

discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, except:

(i) In proceedings for sanctions under these rules;

(ii) In proceedings to enforce or rescind a settlement of the action;

(iii) In disciplinary proceedings before the Court, the North Carolina State Bar, or any agency established to enforce standards of conduct for mediators; or

(iv) In proceedings to enforce laws concerning juvenile or elder abuse.

(2) No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference.

(3) No mediator or neutral observer present at a mediated settlement conference shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any agreements, and except proceedings for sanctions under these rules, and disciplinary proceedings before this Court, the State Bar, or an agency established to enforce standards of conduct for mediators, and proceedings to enforce laws concerning juvenile or elder abuse.

LR 83.9f COMPLETION OF THE MEDIATED SETTLEMENT CONFERENCE

When the mediated settlement conference is completed, the mediator shall immediately submit to the clerk a report of the status of the case, on a form supplied by the clerk. If the case is resolved, it is the duty of the parties to file a stipulation of dismissal or consent judgment. If the case is not resolved, it proceeds without further order of the Court in accordance with the local rules of the Court.

LR 83.9g EVALUATION OF THE MEDIATION PROGRAM

The mediation program established by these rules is experimental in nature and will be periodically reviewed by the Court. For purposes of evaluation of the program, the mediator, the attorneys, and the litigants may be requested to complete confidential evaluation reports at the completion of the mediation. These reports shall be kept confidential by the clerk and shall be maintained in a file separate and apart from the case file. The clerk shall compile information from the evaluation reports to assist the Court in determining the effectiveness of the mediation program.

LR 83.10a PURPOSE OF DISCIPLINARY RULES

The Court, in furtherance of its inherent power and responsibility to supervise attorneys who practice before it, adopts these rules of disciplinary enforcement.

LR 83.10b ATTORNEYS CONVICTED OF A CRIME

(a) Suspension Upon Filing of Judgment. Upon the filing of a certified copy of a judgment of conviction demonstrating that any attorney practicing before the Court has been convicted in any court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States, of a serious crime as herein defined, the Court may enter an order immediately suspending that attorney from practice until final disposition of a disciplinary proceeding before this Court, or until final disposition is made by the appropriate state bar.

(b) Definition of Serious Crime. "Serious crime" shall include any felony and also any other crime which involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy of solicitation of another to commit a "serious crime."

(c) Conviction of Serious Crime. Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Court may refer the matter to counsel for institution of a disciplinary proceeding before the Court, providing that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded. Alternatively, the Court may refer the matter to the appropriate state bar.

(d) Conviction of Other Crime. Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime," the Court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the Court. Alternatively, the Court may refer the matter to the appropriate state bar. The Court is not restricted from taking such other disciplinary action as is within the inherent authority of the Court.

(e) Reinstatement after Suspension. An attorney suspended under the provisions of this rule will be reinstated immediately upon the filing of a certificate demonstrating that the conviction of a serious crime has been reversed, but the reinstatement will not terminate any disciplinary proceeding then pending, 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.

LR 83.10c DISCIPLINE IMPOSED BY ANOTHER COURT OR BY A STATE BAR

(a) Duty to Inform the Clerk. Any attorney practicing before this Court shall, upon being subjected to public discipline by any court or by the state bar of any state, promptly inform the clerk of such action.

(b) Show Cause Order. Upon the filing of a certified copy of a judgment or order demonstrating that an attorney has been disciplined by another court or by a state bar, this Court shall forthwith issue a notice containing a copy of the judgment or order and an order to show cause directing that the attorney inform this Court within 21 days why imposition of the identical discipline by this Court would be unwarranted and the reasons therefor.

(c) Imposition of Discipline. Upon expiration of 21 days from service of the show cause order, this Court will presume the misconduct to have been established and will impose the identical discipline unless the attorney demonstrates that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

(1) that the attorney was deprived of due process; or

(2) that there was such an infirmity of proof that this Court could not accept as final the conclusion on that subject; or

(3) that the imposition of the same discipline by this Court would result in grave injustice; or

(4) that the misconduct established is deemed by this Court to warrant substantially different discipline. Where this Court determines that any of said elements exist, it shall enter such order as it deems appropriate. The grant of a stay of discipline by the other jurisdiction shall constitute grounds for a similar grant by this Court.

LR 83.10d DISBARMENT ON CONSENT OR RESIGNATION IN ANOTHER COURT OR BEFORE A STATE BAR

Any attorney practicing before this Court who shall be disbarred on consent or resign from the bar of any court or state while an investigation into allegations of misconduct is pending, shall promptly inform the clerk, and upon the filing with this Court of a certified copy of the judgment or order accepting such disbarment on consent or resignation, shall cease to be permitted to practice before this Court.

LR 83.10e STANDARDS FOR PROFESSIONAL CONDUCT

(a) Disciplinary Enforcement. For misconduct defined in these rules, and after notice of an opportunity to be heard, any attorney practicing before this Court may be disbarred, suspended from practice, reprimanded, or subjected to such other disciplinary action as the circumstances may warrant.

(b) Standards for Conduct. Acts or omissions by an attorney practicing before this Court which violate the Code of Professional Responsibility adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Code of Professional Responsibility adopted by this Court is the Code of Professional Responsibility adopted by the Supreme Court of North Carolina, as amended from time to time by that state court, except as otherwise provided by a specific rule of this Court.

LR 83.10f DISCIPLINARY PROCEEDINGS

(a) Referral of Complaints to Counsel or to a State Bar. When allegations of misconduct by an attorney practicing before this Court come to the attention of a Judge of this Court, whether by complaint or otherwise, the Judge may refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate. Alternatively, the Judge may refer the matter to the appropriate state bar. The Court is not restricted from taking such other disciplinary action as is within the inherent authority of the Court.

(b) Recommendation by Counsel. Should counsel conclude after investigation that a formal disciplinary proceeding should not be initiated against the attorney, counsel shall file with the Court a recommendation for disposition of the matter, whether by dismissal, admonition, or deferral and shall set forth the reasons for such recommendation.

(c) Initiation of Disciplinary Proceedings. To initiate formal disciplinary proceedings, counsel shall obtain an order of the Court upon a showing of probable cause requiring the attorney to show cause within 21 days after service of the order why the attorney should not be disciplined.

(d) Hearing. Upon the attorney's answer to the order to show cause, if any issue of fact is raised or the attorney wishes to be heard, the Court shall set the matter for prompt hearing.

LR 83.10g DISBARMENT ON CONSENT WHILE UNDER DISCIPLINARY INVESTIGATION OR PROSECUTION

(a) Consent to Disbarment. Any attorney practicing before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and that:

(1) the attorney's consent is freely given,
(2) the attorney is aware of the pending investigation or proceeding,
(3) the attorney acknowledges the material facts of misconduct, and
(4) the attorney consents because the attorney knows that he or she could not defend successfully against charges of misconduct.

(b) Order of Disbarment. Upon receipt of the required affidavit, this Court shall enter an order disbarring the attorney.

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

LR 83.10h REINSTATEMENT

(a) Automatic Reinstatement; Reinstatement by Order. An attorney suspended for 3 months or less shall be automatically reinstated at the end of the period of suspension upon filing with the Court an affidavit of compliance with the provisions of the suspension order. An attorney actively suspended for more than three months or disbarred may not resume practice until reinstated by order of this Court.

(b) Time for Petition. An attorney who has been disbarred after hearing or by consent may not petition for reinstatement until the expiration of at least 5 years from the effective date of disbarment.

(c) Procedure. Petitions for reinstatement by a disbarred or suspended attorney under this rule shall be filed with the Court. Upon receipt of the petition, the Chief Judge shall assign the matter for a prompt hearing before a Judge (or Judges) of the Court and may, in the Chief Judge's discretion, refer the petition to counsel for investigation. The Judge assigned to the matter shall schedule a hearing at which petitioner shall have the burden of demonstrating by clear and convincing evidence that the attorney has the moral qualifications, competency, and learning of the law required for admission to practice law before this Court, and that the attorney's resumption of the practice of law will not be detrimental to the integrity and standing of the Bar or the administration of justice or subversive of the public interest. In all proceedings upon a petition for reinstatement, cross-examination of the witnesses of the attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel if the matter has been referred to counsel by the Court.

(d) Costs. The Petitioner shall pay the ordinary fee for admission, together with any other costs assessed by the Court for the reinstatement proceeding.

(e) Order of Reinstatement. If the petitioner is found to be unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found to be fit to resume the practice of law, the judgment shall reinstate the petitioner, 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 5 years or more, reinstatement may be conditioned, in the discretion of the Judge, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of North Carolina of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

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

LR 83.10i ATTORNEYS SPECIALLY APPEARING

Whenever an attorney appears for purposes of a particular proceeding, 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 preparation for such proceeding.

LR 83.10j SERVICE OF PAPERS AND OTHER NOTICES

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the attorney. Service of any other papers or notices required by these rules shall be deemed to have been made if such paper or notice is addressed to the attorney or to the attorney's counsel and is posted by regular mail.

LR 83.10k APPOINTMENT OF COUNSEL

Whenever counsel is to be appointed by these rules to investigate allegations of misconduct or to prosecute disciplinary proceedings or in conjunction with a reinstatement petition, the Court may appoint as counsel the disciplinary agency of the Supreme Court of North Carolina or any other disciplinary agency having jurisdiction. Alternatively, the Court may appoint as counsel one or more members of the Bar, provided, however, that the respondent-attorney may move to disqualify an attorney so

appointed who is or who has been engaged as an adversary of the respondent-attorney in any manner. Counsel, once appointed, may not resign unless permission to do so is given by the Court. Nothing in this rule limits the Court's authority to refer any matter to the appropriate state bar for investigation, prosecution of disciplinary proceedings, or reinstatement.

LR 83.10l DUTIES OF THE CLERK

(a) Obtaining Certificate of Conviction. Upon being informed that an attorney practicing before this Court has been convicted of any crime, the clerk shall determine whether the clerk of the Court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If certificate has not been so forwarded, the clerk shall promptly obtain a certificate and file it with this Court.

(b) Obtaining Certificate of Disciplinary Judgment or Order. Upon being informed that an attorney practicing before this Court has been subjected to discipline by another court or a state bar, the clerk shall determine whether a certified copy of the disciplinary judgment or order has been filed with this Court, and, if not, the clerk shall promptly obtain a certified copy of the disciplinary judgment or order and file it with this Court.

(c) Clerk to Inform Other Jurisdictions. Whenever it appears that any attorney convicted of any crime, disbarred, suspended, censured, or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other court, the clerk shall, within 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 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 attorney.

(d) Clerk to Inform the National Discipline Data Bank. The clerk shall, likewise, promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney practicing before this Court.

LR 83.10m JURISDICTION

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

LR 83.10n PUBLIC DISCIPLINARY RECORD

The general order imposing disciplinary action or reinstating an attorney shall be a matter of public record. All other records pertaining to attorney disciplinary action(s), which are not already public records, shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

LR 83.11 REFERRAL OF BANKRUPTCY MATTERS

(a) Pursuant to 28 U.S.C. § 157(a), the Court hereby continues its reference to the Bankruptcy Judges for this District all cases under Title 11 and all proceedings arising under Title 11 or arising in or related to a case under Title 11.

(b) If a Bankruptcy Judge or District Judge determines that entry of a final order or judgment by a Bankruptcy Judge would not be consistent with Article III of the United States Constitution in a particular proceeding referred under this local rule and determined to be a core matter, the Bankruptcy Judge shall, unless otherwise ordered by the District Court, hear the proceeding and submit proposed findings of fact and conclusions of law to the District Court made in compliance with Fed. R. Civ. P. 52(a)(1) in the form of findings and conclusions stated on the record or in an opinion or memorandum of decision.

(c) The District Court may treat any order of a Bankruptcy Judge as proposed findings of fact and conclusions of law in the event the District Court concludes that the Bankruptcy Judge could not have entered a final order or judgment consistent with Article III of the United States Constitution.

LR 83.12 OBJECTIONS TO BANKRPTCY JUDGE'S FINDINGS & RECOMMENDATIONS

(a) The procedure for filing objections to a Bankruptcy Judge's recommendation issued pursuant to 28 U.S.C. § 157(c)(1) on a dispositive or other matter shall be as set forth in Rule 72(b) of the Federal Rules of Civil Procedure. For the purpose of reading and implementing this local rule, Rule 72(b)of the Federal Rules of Civil Procedure shall be read to substitute the words "bankruptcy judge" for the word "magistrate" in every instance where "magistrate" appears.

(b) The Clerk of the Bankruptcy Court for the Middle District of North Carolina shall mail a notice setting forth the pertinent portion of Rule 72(b) of the Federal Rules of Civil Procedure to appropriate parties in a bankruptcy case or adversary proceeding at the time that the Bankruptcy Judge's findings and recommendations are issued from the office of the Bankruptcy Court Clerk.

LOCAL RULES FOR PATENT CASES

LR 101.1 TITLE

These are the local rules of practice for Patent Cases before the United States District Court for the Middle District of North Carolina. They should be cited as "LR __."

LR 101.2 PURPOSE, SCOPE AND CONSTRUCTION

(a) These rules are intended to supplement the Local Civil Rules of this District to facilitate the speedy, fair and efficient resolution of patent disputes.

(b) 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.

(c) 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 LR 104.6 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.

LR 101.3 EFFECTIVE DATE

Local Civil Rules 101 et seq shall apply to any case filed or transferred to this Court after April 2, 2012. Relevant provisions of these rules may be applied to any pending case by the Court, on its own motion or on motion by any party.

LR 102.1 INITIAL SCHEDULING CONFERENCE

(a) Initial Rule 26(f) Scheduling Conference ("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 Discovery Plan filed pursuant to FED. R. CIV. P. 26(f) and Local Civil Rule 26.1(e)(2) the following additional deadlines and procedural matters:

(1) Proposed modification of the deadlines provided for in the local patent rules, and the effect of any such modification on the date and time of the Claim Construction Hearing provided for in LR 104.6, if any;

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

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

(4) The order of presentation at the Claim Construction Hearing.

(b) Further Scheduling Conferences. To the extent that some or all of the matters provided for in Local Patent Rule 102.1(a)(1)-(4) 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.

LR 102.2 CONFIDENTIALITY

(a) The Court understands that patent cases typically involve a higher volume of confidential information than most civil litigation, and also is aware of the need of the parties to exchange such information early in the case and before a protective order has been entered. Thus, if any document or information produced under these Local Civil Rules is deemed confidential by the producing party and if the Court has not entered a protective order or otherwise ruled on the confidentiality of the document or information, then until a protective order is issued by the Court, the document shall be marked "confidential" or with some other confidential designation (such as "Confidential Outside Attorneys Eyes Only") by the disclosing party and disclosure of the confidential document or information shall be limited to each party's outside attorney(s) of record and the employees of such outside attorney(s). If a party is not represented by an outside attorney, disclosure of the confidential document or information shall be limited to one (1) designated "in house" attorney, whose identity and job functions shall be disclosed to the producing party seven (7) days prior to any such disclosure, in order to permit any motion for protective order or other relief regarding such disclosure. The person(s) to whom disclosure of a confidential document or information is made under this Local Patent Rule shall keep it confidential and use it only for purposes of litigating the case, unless and until the Court issues a ruling to the contrary.

(b) If a party wishes to file with the Court any document or information that has been designated as confidential pursuant to subsection (a) and as to which the Court has not ruled, that party must comply with the provisions of Local Rules regarding filing a motion to seal the document. If the party proffering the document or information designated as confidential does not agree it is entitled to be sealed, then the party shall so state in its motion to seal and the party that made the "confidential" designation shall be entitled, in its responsive brief, to explain its position. The provisions of Local Rules regarding documents filed under seal shall thereafter determine the status and handling of the material with respect to such filing.

LR 102.3 CERTIFICATION OF INITIAL DISCLOSURE

All statements, disclosures, or charts filed or served in accordance with these Local Civil Rules must be dated and signed by counsel of record. Counsel's signature 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.

LR 102.4 ADMISSIBILITY OF DISCLOSURES

Statements, disclosures, or charts governed by these Local Civil Rules are admissible to the extent permitted by the Federal Rules of Evidence or Federal Rules of Civil Procedure. However, the statements or disclosures provided for in Local Civil Rules 104.1 and 104.2 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 Civil Rules must be taken.

LR 102.5 RELATIONSHIP TO THE FEDERAL RULES OF CIVIL PROCEDURE

Except as provided in this paragraph or as otherwise ordered by the Court, 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) by contending that the discovery request or disclosure requirement is premature in light of, or otherwise conflicts with, these Local Civil Rules. A party may object, however, to responding 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:

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

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

(c) Requests seeking to elicit from an accused infringer a comparison of the asserted claims and the prior art; and

(d) Requests seeking to elicit from an accused infringer the identification of any opinions of counsel, and related documents, that it intends to rely upon as a defense to an allegation of willful infringement.

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.

LR 103.1 DISCLOSURE OF ASSERTED CLAIMS AND PRELIMINARY INFRINGEMENT CONTENTIONS

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

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

(b) Separately for each such asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality ("Accused Instrumentality") of each opposing party of which the party is aware. This identification shall be as specific as possible. Each product, device, and apparatus must be identified by name or model number, if known. Each method or process 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;

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

(d) Whether each element of each asserted claim is claimed to be literally present or present under the doctrine of equivalents in the Accused Instrumentality;

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

(f) 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.

LR 103.2 DOCUMENT PRODUCTION ACCOMPANYING DISCLOSURE OF ASSERTED CLAIMS AND PRELIMINARY INFRINGEMENT CONTENTIONS

With the "Disclosure of Asserted Claims and Preliminary Infringement Contentions," the party claiming patent infringement must produce to each opposing party or make available for inspection and copying the following:

(a) Documents (e.g., contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, 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, 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;

(b) 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 the priority date identified pursuant to Local Patent Rule 103.1(e), whichever is earlier; and

(c) A copy of the file and prosecution history for each patent in suit.

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

LR 103.3 PRELIMINARY NON-INFRINGEMENT AND PATENT INVALIDITY CONTENTIONS

Not later than forty-five (45) days after service upon it of the "Disclosure of Asserted Claims and Preliminary Infringement Contentions," each party opposing a claim of patent infringement, shall serve on all parties its "Preliminary Non-Infringement and Invalidity Contentions."

(a) Non-Infringement Contentions shall contain a chart, responsive to the chart required by Local Patent Rule 103.1(c), 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.

(b) Invalidity Contentions must contain the following information:

(1) 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);

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

(3) 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 the sixth paragraph of 35 U.S.C. § 112, the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and

(4) Any grounds of invalidity based on any applicable provision of 35 U.S.C. § 112.

LR 103.4 DOCUMENT PRODUCTION ACCOMPANYING PRELIMINARY NON-INFRINGEMENT AND INVALIDITY CONTENTIONS

With the "Preliminary Non-Infringement and Invalidity Contentions," the party opposing a claim of patent infringement must produce or make available for inspection and copying:

(a) Source code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its LR 103.1(c) chart; and

(b) A copy of each item of prior art identified pursuant to LR 103.3(b)(1) that does not appear in the file history of the patent(s) at issue. To the extent any such item is not in English, an English translation of the portion(s) relied upon must be produced.

LR 103.5 DISCLOSURE REQUIREMENT IN PATENT CASES SEEKING A DECLARATORY JUDGMENT

(a) 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, LR 103.1 and 103.2 shall not apply if the declaratory judgment only raises issues of invalidity, and will only apply if and when 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 fourteen (14) days after the defendant serves its answer, or fourteen (14) days after the Initial Scheduling Conference, whichever is later, the party seeking a declaratory judgment must serve upon each opposing party its Preliminary Invalidity Contentions that conform to LR 103.3 and produce or make available for inspection and copying the documents described in LR 103.4. The parties shall meet and confer within fourteen (14) days of the service of the Preliminary Invalidity Contentions for the purpose of determining the date on which the plaintiff will file its Final Invalidity Contentions which shall be no later than fifty (50) days after service by the Court of its Claim Construction Ruling.

(b) Applications of Rules When No Specified Triggering Event. If the filings or actions in a case do not trigger the application of these Local Civil 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 such rules to the case.

(c) Inapplicability of Rule. This LR 103.5 and the time periods set forth above 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.

LR 103.6 FINAL CONTENTIONS

Each party's "Preliminary Infringement Contentions" and "Preliminary Non-Infringement and Invalidity Contentions" shall be deemed to be that party's final contentions, except as set forth below.

(a) If a party claiming patent infringement believes in good faith that (1) the Court's Claim Construction Ruling or (2) the documents produced pursuant to LR 103.4 so requires, not later than thirty (30) days after service by the Court of its Claim Construction Ruling, that party may serve "Final Infringement Contentions" without leave of court that amend its "Preliminary Infringement Contentions" with respect to the information required by Local Civil Rule 103.1(c) and (d).

(b) Discovery has revealed information requiring modification of the contentions.

(c) Not later than fifty (50) days after service by the Court of its Claim Construction Ruling, each party opposing a claim of patent infringement may

serve “Final Non-Infringement and Invalidity Contentions” without leave of court that amend its “Preliminary Non-Infringement and Invalidity Contentions” with respect to the information required by LR 103.3 if:

(1) a party claiming patent infringement has served “Final Infringement Contentions” pursuant to LR 103.6(a), or

(2) the party opposing a claim of patent infringement believes in good faith that the Court's Claim Construction Ruling so requires the amendment.

LR 103.7 AMENDMENT TO CONTENTIONS

Amendment or modification of the Preliminary or Final Infringement Contentions or the Preliminary or Final Non-Infringement and Invalidity Contentions, may be made only as expressly permitted by Local Civil Rule 103.6, or within thirty (30) days of the discovery of new information relevant to the issues of infringement, noninfringement, or invalidity. Otherwise, amendment or modification shall be made only by order of the Court, which shall be entered only upon a showing of good cause.

LR 103.8 WILLFULNESS OF INFRINGEMENT AND DISCOVERING OF OPINIONS OF COUNSEL ON NON-INFRINGEMENT

(a) The substance of any advice of counsel tendered in defense to a charge of willful infringement, and any other information which might be deemed to be within the scope of a waiver attendant to disclosure of such advice, shall not be discoverable until the earlier of:

(1) seven (7) days after a ruling on summary judgment expressly identifying a triable issue of fact to which willfulness would be relevant; or

(2) sixty (60) days prior to the close of fact discovery under the Scheduling Order.

(b) On the day such willfulness information becomes discoverable, the party relying on such advice shall produce the following:

(1) a copy of all written opinions to be relied on by the party opposing the claim of infringement;

(2) a copy of all materials or information related to the opinion that were provided to the attorney in the course of preparation of each such opinion;

(3) a copy of all written attorney work product related to each such opinion that (i) was developed in the course of preparation of the opinion and (ii) was disclosed to the client;

(4) identification of the date, sender and recipient (but not necessarily the substance) of all written and oral communications between the party opposing the

claim of infringement and the attorney or law firm rendering any opinions to be relied on, which communications discuss the same subject matter as such opinion;

(5) any other opinion(s) that discuss the same subject matter as such opinion and that were provided to the party opposing the claim of infringement by any other attorney or law firm, whether or not the party relied on such additional opinions; and

(6) identification of the date, sender and recipient (but not necessarily the substance) of all written and oral communications between the party opposing the claim of infringement and the attorney or law firm rendering such opinions that were not relied on, which communications discuss the same subject matter as such opinion.

(c) After such willfulness information becomes discoverable, a party claiming willful infringement shall be entitled (subject to any limitations, including limitations on numbers of depositions, otherwise imposed by the Scheduling Order) to take the deposition of any attorneys rendering the advice relied on and any persons who received such advice, including but not limited to any person who claims to have relied on such advice.

(d) A party opposing a claim of patent infringement who does not comply with the requirements of this LR 103.8 shall not be permitted to rely on an opinion of counsel as part of a defense to willful infringement absent a stipulation of all affected parties or by order of the Court, which shall be entered only upon a showing of good cause.

LR 104.1 EXCHANGE OF PROPOSED TERMS AND CLAIM ELEMENTS FOR CONSTRUCTION

(a) Not later than twenty-one (21) days after service of the "Preliminary Non-Infringement and Invalidity Contentions" pursuant to LR 103.3, each party shall simultaneously exchange a list of claim terms, phrases, or clauses which that party contends should be construed by the Court, and identify any claim element which that party contends should be governed by the sixth paragraph of 35 U.S.C. § 112.

(b) The parties shall thereafter meet and confer for the purposes of finalizing this list, narrowing or resolving differences, and facilitating the ultimate preparation of a Joint Claim Construction Statement in accordance with LR 104.3.

LR 104.2 EXCHANGE OF PRELIMINARY CLAIM CONSTRUCTIONS AND EXTRINSIC EVIDENCE

(a) Not later than twenty-one (21) days after the exchange of "Proposed Terms and Claim Elements for Construction" pursuant to LR 104.1, the parties shall simultaneously exchange a preliminary proposed construction of each claim term, phrase, or clause which the parties collectively have identified for claim construction purposes. Each such "Preliminary Claim Construction" shall also, for each element which any party contends is governed by the sixth paragraph of 35 U.S.C. § 112, identify the structure(s), act(s), or material(s) corresponding to that element.

(b) At the same time the parties exchange their respective "Preliminary Claim Constructions," they shall each also provide a preliminary identification of extrinsic evidence, including without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses they contend support their respective claim constructions. The parties 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, percipient or expert, the parties shall also provide a brief description of the substance of that witness' proposed testimony.

(c) The parties shall thereafter meet and confer for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction Statement in accordance with LR 104.3.

LR 104.3 JOINT CLAIM CONSTRUCTION STATEMENT

Not later than sixty (60) days after service of the "Preliminary Non-Infringement and Invalidity Contentions," the parties shall complete and file a Joint Claim Construction Statement, which shall contain the following information:

(a) The construction of those claim terms, phrases, or clauses on which the parties agree.

(b) Each party's proposed construction of each disputed claim term, phrase, or clause, together with an identification of all references from the specification or prosecution history that support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction of the claim or to oppose any other party's proposed construction of the claim, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses.

(c) The anticipated length of time necessary for the Claim Construction Hearing.

(d) Whether any party proposes to call one or more witnesses, including experts, at the Claim Construction Hearing, the identity of each such witness, and

for each expert, a summary of each opinion to be offered in sufficient detail to permit a meaningful deposition of that expert.

No other FED. R. CIV. P. 26 report or disclosure shall be required for testimony directed solely towards claim construction.

LR 104.4 COMPLETION OF CLAIM CONSTRUCTION DISCOVERY

Not later than thirty (30) days after service and filing of the Joint Claim Construction Statement, the parties shall complete all discovery relating to claim construction, including any depositions with respect to claim construction of any witnesses, including experts, identified in the Joint Claim Construction Statement.

LR 104.5 CLAIM CONSTRUCTION BRIEFS

(a) Not later than forty-five (45) days after serving and filing the Joint Claim Construction Statement, each party shall serve and file an opening brief and any evidence supporting its claim construction.

(b) Not later than twenty-one (21) days after service upon it of an opening brief, the opposing party shall serve and file its responsive brief and supporting evidence.

(c) 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.

LR 104.6 CLAIM CONSTRUCTION HEARING

The Court may at its discretion conduct a Claim Construction Hearing to the extent the Court believes a hearing is necessary for construction of the claims at issue.

LR 105.1 DISCLOSURE OF EXPERTS AND EXPERT OPINIONS

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

(b) No later than thirty (30) days after (1) the normal close of discovery pursuant to the Scheduling Order, or (2) the close of discovery after claim construction, whichever

is later, each party shall make its initial expert witness disclosures required by FED. R. CIV. P. 26 on the issues on which each bears the burden of proof;

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

(d) No later than fourteen (14) days after the second round of disclosures, each party shall make any rebuttal expert witness disclosures permitted by FED. R. CIV. P.26.

LR 105.2 DEPOSITIONS OF EXPERTS

Depositions of expert witnesses disclosed under this Rule shall commence within seven (7) days of the deadline service of rebuttal reports and shall be completed within thirty (30) days after commencement of the deposition period.