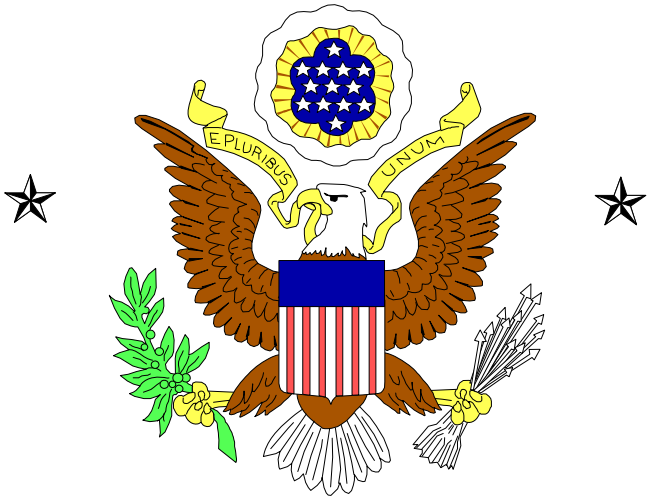
UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MINNESOTA

L O C A L R U L E S



Effective November 13, 2008

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2005 PATENT ADVISORY COMMITTEE'S PREFACE

Pursuant to 28 U.S.C. § 2077, the Court appointed an Advisory Committee to prepare a draft of the 2005 Amendments and to make recommendations to the Court with respect to local rules for patent cases in the District of Minnesota. The Advisory Committee consisted of the following members:

Mr. Jake M. Holdreith, Chair
Mr. Jeffer Ali
Ms. Alana T. Bergman
The Honorable Arthur J. Boylan
Ms. Sue Halverson
Mr. Peter M. Lancaster
Professor R. Carl Moy
Mr. James T. Nikolai
The Honorable James M. Rosenbaum
Mr. Richard D. Sletten
Ms. Becky R. Thorson

The Committee wishes to express its gratitude to all those who aided its efforts. Special thanks are due to a few individuals. Wendy S. Osterberg, the Chief Deputy Clerk, provided invaluable information and support, and she was ably assisted by Karen Mack and Mary McKay. Finally, we would like to recognize Rachel Clark Hughey and Annie Huang for their contributions to the formulation of these Rules.

These Rules are designed to ease, simplify, and reduce the cost of patent practice in the District of Minnesota. Patent cases are frequently complex. These Rules are designed to streamline the pre-trial and claim construction processes.

The bar bears the dual role as zealous advocates for its clients as well as its concomitant duties as officers of the Court. It is expected by the Court that counsel will emphasize and discuss both of these obligations with their clients.

The Court has the ability to use its traditional means of shifting costs or imposing sanctions for any practice which impedes the efforts under these amendments to further the goals established in Rule 1 of the Federal Rules of Civil Procedure.

The Committee prepared its draft and made its recommendations with the following objects in mind:

1. Reducing the cost and burden of patent litigation in Minnesota without sacrificing fairness.
2. Promoting consistency and certainty in how patent cases are handled in Minnesota.
3. Addressing issues that are recurring in most patent cases and that all

litigants and the Courts have some common interests in managing by rule, in particular disclosure, discovery, and claim construction issues.

4. Promoting the greatest and most accessible understanding of patent issues and technical issues by litigants, Courts, and juries.
5. Minimizing the discovery procedural disputes that often lead to the same outcome and could be resolved at less cost and burden, at least presumptively, by rule rather than by motion.
6. Discouraging expensive and/or burdensome litigation procedures that do not substantially contribute to the resolution of patent cases.

With these objects and priorities in mind, the Committee considered a number of rules and procedures that have been used in the District of Minnesota and in other districts in patent cases, including in particular the case management orders for patent cases that have been entered in patent cases by individual judges in the District of Minnesota with patent-specific provisions, as well as the local rules in the District of Delaware and the Northern District of California. From a large number of proposals, the Committee focused its draft and recommendations on the areas that, in the opinion of the Committee, are likely to arise in a majority of patent cases and which lend themselves to management by rules that should not advantage or disadvantage any particular litigants or groups, but should reduce time, burden, and expense when governed by rule rather than motion practice or stipulation.

Each Local Rule is followed by an effective date. The Local Rules with an effective date of 2005 were adopted at the recommendation of the 2005 Patent Advisory Committee.

1996 ADVISORY COMMITTEE'S PREFACE

After the 1991 Amendments to the Local Rules of the District of Minnesota, two important procedural events occurred that required a new look at the Local Rules. First, the Federal District Court for the District of Minnesota promulgated a Civil Justice Reform Act Implementation Plan ("CJRA Plan"), as required by the Civil Justice Reform Act of 1990, 28 U.S.C. §§ 471-82. The CJRA Plan, which was promulgated on August 23, 1993, supplemented and to some extent supplanted the then-existing Local Rules. Second, the Supreme Court promulgated a set of amendments to the Federal Rules of Civil Procedure ("National Rules"). These amendments to the National Rules became effective on December 1, 1993. They made important changes in discovery and pretrial procedure, while giving leeway to district courts to use Local Rules to "opt out" or modify many of the new procedures.

These 1995 amendments to the Local Rules are designed to provide a single authoritative compilation of the procedural rules of the District, so that practitioners will no longer need to refer both to the Local Rules and to the CJRA Plan. They also set forth the Court's decisions on whether to exercise local options permitted under the discovery and pretrial conference provisions of the 1993 amendments to the National Rules.

The provisions of the 1993 amendments to the National Rules that related to discovery and mandatory pretrial disclosure were controversial. A number of courts in other districts

modified or opted out of those provisions. The Federal District Court for the District of Minnesota decided to give the new National Rules a trial before promulgating Local Rules in reaction to them. After reviewing this experience and considering arguments for and against the new discovery and disclosure process, the 1996 Advisory Committee recommended acceptance of the principal provisions of the 1993 amendments to the National Rules. The Committee's recommended 1996 amendments to the Local Rules do, however, exempt certain categories of cases from some of the provisions of the National Rules, and modify other provisions to meet concerns expressed during the Committee process. The Committee's recommended rules also opt out of certain provisions of the National Rules relating to disclosure or discovery of information about expert testimony and set forth a different procedure for expert discovery.

Each Local Rule is followed by an effective date. Those Local Rules with an effective date of 1996 were adopted at the recommendation of the 1996 Advisory Committee. The Local Rules with an effective date of 1991 were adopted at the recommendation of the 1991 Advisory Committee, whose Advisory Committee Preface follows this one. In a few instances, the 1995 Advisory Committee made minor technical changes in the 1991 Local Rules (such as substituting "Magistrate Judge" for "Magistrate") without changing the 1991 notation following the rule. Where one subsection of a Local Rule was promulgated in 1991 and one subsection was promulgated in 1996, a date notation follows each subsection.

When it promulgated the 1991 Local Rules, the Court, at the recommendation of the 1991 Advisory Committee, re-adopted a number of rules that pre-dated 1991, while re-numbering them to facilitate reference to related National Rules. The 1991 Advisory Committee's Preface describes this process and enumerates the rules that pre-dated 1991.

Pursuant to 28 U.S.C. § 2077(b), the Court appointed an Advisory Committee to prepare a draft of the 1996 Amendments and to make recommendations to the Court. The Advisory Committee consisted of the following members:

Mr. Clifford M. Greene, Chair
Mr. Sidney Abramson[1]
Ms. Barbara Berens
Mr. Tyrone Bujold
Ms. Laurie Davison
The Honorable David S. Doty
Mr. Francis E. Dosal (ex officio)
The Honorable Raymond L. Erickson
Mr. Mark Hallberg
Professor Eric Janus
Mr. Joshua J. Kanassatega
Mr. Jeffrey Keyes
Mr. George Koeck
The Honorable Richard H. Kyle
Mr. Larry Minton
The Honorable Franklin L. Noel
Mr. Thomas J. Radio
Mr. Robert Small
Ms. Janice M. Symchych
Mr. Frank E. Villaume, III
Professor Roger C. Park, Reporter

The Committee wishes to express its gratitude to all those who aided its efforts. Special thanks are due to a few individuals. Frank Dosal, the Clerk of Court, provided invaluable

[1]Sidney Abramson was a member of the Advisory Committee until his death on August 27, 1994.

information and support in formulating both the 1991 and 1996 rules, and he was ably assisted by Sara Nielsen and Wendy Schreiber. Russell A. Blanck gave selflessly of his time and counsel. Finally, we would like to recognize Caron Pjanic for her exemplary care and effectiveness in processing and assembling the rules, without which the task of the Committee and its Reporter would have been much more difficult.

1991 ADVISORY COMMITTEE'S PREFACE

These Local Rules are promulgated pursuant to the enabling legislation in 28 U.S.C. § 2071 (1988), which gives district courts the authority to prescribe rules for the conduct of their business, providing such rules do not conflict with Acts of Congress or the rules of practice and procedure that the United States Supreme Court may promulgate for district courts under 28 U.S.C. § 2072 (1988). Federal Rule of Civil Procedure 83 (Rule 83) also authorizes district courts, by majority vote, to make rules that are consistent with the Federal Rules of Civil Procedure. Both § 2071 and Rule 83 provide for public notice and an opportunity to comment before the district courts finally adopt such rules. Compare 28 U.S.C. § 2071(e) (1988) (permitting public notice and comment after a district court adopts a rule, if the district court determines that the rule is needed immediately).

The United States District Court for the District of Minnesota appointed the Advisory Committee (the Committee) pursuant to 28 U.S.C. § 2077(b) (1988) (requiring an advisory committee for rules promulgated under § 2071). The members of the 1989-90 Advisory Committee were:

Mr. Clifford M. Greene, Chair
Mr. Sidney Abramson
The Honorable Donald D. Alsop
Mr. Elam Baer
Mr. Glenn Baskfield
The Honorable David S. Doty
Mr. John B. Gordon
Mr. Mark Hallberg
Mr. Eric Janus
Mr. Jeffrey Keyes
Mr. George Koeck
Mr. Douglas R. Peterson
Ms. Denise Reilly
The Honorable Robert G. Renner
Mr. Daniel M. Scott
Ms. Janice M. Symchych
Mr. Mark P. Wine

Mr. Francis E. Dosal, the Clerk of the United States District Court for the District of Minnesota, also participated as an ex officio member of the committee.

Professor Roger C. Park of the University of Minnesota Law School was the Reporter for the Advisory Committee. Barbara Podlucky Berens, J.D. (1990) from the University of Minnesota Law School, served as Research Assistant to the Advisory Committee.

In revising the Local Rules for the District of Minnesota, the Advisory Committee considered the treatise and other materials provided by the Local Rules Project, a study of local district rules conducted under the auspices of the Committee on Rules of Practice and Procedure of the United States Judicial Conference (the Project). The Committee adopted the uniform numbering system recommended by the Project. Local Rules Project, Comm. on Rules of Practice and Procedure, Judicial Conference of the U.S., Treatise, item 2 (1989). This uniform system follows the one already used for the Federal Rules of Civil Procedure. For example, the new local rule which requires a formal motion for extending a pretrial schedule is numbered Local Rule 16.3, corresponding to the federal rule concerning pretrial scheduling, Rule 16, Federal Rules of Civil Procedure. The Project emphasized that renumbering local rules performs a variety of valuable functions. Uniform numbering will help the bar to locate local rules and related case law more easily, thereby

assisting attorneys with multi-district practices. The system also facilitates incorporation of local rules into legal publications and computer research data bases. Id.

Following the uniform system, the Committee renumbered and adopted the following rules without significant additional change from the 1987 Local Rules for the District of Minnesota: 4.1 (formerly 18), 4.2 (formerly 10), 6.1 (formerly 2(C)), 7.1 (formerly 4), 16.1 (formerly 3 (A)), 16.2 (formerly 3 (C)), 17.1 (formerly 13), 39.1 (formerly 7), 39.2 (formerly 8), 40.1 (formerly 2(A-B)), 67.1 (formerly 12), 79.1 (formerly 11 (B)), 80.1 (formerly 14, with an addendum from Model Local Rule 80.1), 83.2 (formerly 9), 83.5 (formerly 1 (A-E)), 83.6 (formerly 1 (F)), 83.7 (formerly 1 (G)), 83.8, (formerly 1 (H)), 83.9 (formerly 17), 83.10 (based on a 1989 revised order regarding sentencing procedures), and 83.11 (formerly the Preface). The Committee renumbered and substantially revised the following 1987 Local Rules for the District of Minnesota: 5.5 (formerly 11), 7.2 (formerly 5), 9.3 (formerly 15), 26.1 (formerly a portion of 3(B)), and 33.1 (formerly a portion on 3(B)).

The Committee also adopted several Model Local Rules proposed by the Local Rules Project. Id. item 3. The Project recommended these rules after analyzing various areas of procedure to determine which rules should remain subject to local variation and which areas, primarily technical, would benefit from increased consistency and simplicity resulting from the adoption of model rules. Id. item 1, at 9-14; see also Subrin, The Underlying Assumptions of the Federal Rules of Civil Procedure: Federal Rules, Local Rules, and State Rules: Uniformity, Divergence, and Emerging Procedural Patterns, 137 U. Pa. L. Rev. 1999, 2019-21 (1989) (consultant to the reporter of the Local Rules Project discussing its methodology and recommendations). Based on the Project's suggestions, the Committee adopted the following Model Local Rules without significant change: 3.1, 5.1, 5.2, 9.1, 15.1, 23.1, 24.1, 37.2, 38.1, 67.3, and 71A.1. The Committee also adopted with modifications Model Local Rules 1.1, 1.3, and 37.1.

The Local Rules Project also identified possible inconsistencies between existing local rules of the Federal District Courts and the Federal Rules of Civil Procedure. Treatise, supra item 1, at 9-14; item 4. In recommending the retention or promulgation of particular local rules in light of the Project's suggestions about inconsistencies, the Advisory Committee adopted the view that the district courts have authority to supplement the Federal Rules of Civil Procedure with local rules establishing procedures and procedural limits not provided for in the national rules, as long as the local rules do not directly contradict the national rules. In cases in which particular local rules, such as the limit on the number of interrogatories, have served well in local practice, the Advisory Committee was reluctant to draw negative implications from the absence of specific limits in the national rules. Therefore, although the Advisory Committee took into account the views of the Local Rules Project that certain local rules were "possibly inconsistent" with the national rules, id. item 4, it often decided that no inconsistency existed and that the local rule should be retained. This view of the nature of local rule making is supported by the Supreme Court's decision in Colgrove v. Battin, 413 U.S. 149, 163-64 (1973). In Colgrove, the Court examined the validity of a local rule promulgated by the United States District Court for the District of Montana which permitted a six-member jury in civil trials. Id. at 149-50. The petitioner argued that the rule was invalid, relying in part upon implications the petitioner drew from Federal Rule of Civil Procedure 48, which provides that parties may stipulate to

a jury of less than twelve. Id. at 151. The petitioner reasoned that because the federal rule specifically permitted parties to stipulate to a jury of less than twelve, by negative implication, the local district rule could not impose a mandatory number of less than twelve. The Supreme Court rejected this argument and upheld the local rule. Id. at 163-64; cf. Keeton, The Function of Local Rules and the Tension with Uniformity, 50 U. Pitt. L. Rev. 853 (1989).

The Committee further adopted various rules proposed by Minnesota Judges and attorneys. Several significant changes were made in the local rules on the basis of these suggestions. Local Rule 16.3 requires a formal motion for extending a pretrial schedule set under Federal Rule of Civil Procedure 16. Local Rule 47.2 prohibits contact with jurors during their term of service. Local Rule 48.1 allows Judges to empanel juries of more than six in civil cases and to permit all empaneled jurors to deliberate Local Rule 54.3 permits Judges, in their discretion, to recognize a good-cause exception to the existing local rule (Local Rule 6) which requires attorneys to file applications for attorney's fees within thirty days after judgment. Finally, Local Rule 72.1 (formerly 16) establishes a briefing schedule for appeals from Magistrate Judges' orders.

The Committee believes that the revised Local Rules for the District of Minnesota incorporate various recommendations of Minnesota Judges and attorneys and remedy some of the concerns addressed by the Local Rules Project, while retaining existing rules which have served well in local practice.

LR 1.1 SCOPE OF THE RULES

(a) Title and Citation. These rules shall be known as the Local Rules of the United States District Court for the District of Minnesota. They may be cited as "D. Minn. LR __".

(b) Effective Date. These rules become effective on May 1, 2000.

(c) Scope of Rules. Except as otherwise provided or where the context so indicates, these rules shall apply in all proceedings in civil and criminal actions, but not including bankruptcy actions. Rules governing proceedings before Magistrate Judges are incorporated herein.

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

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

(f) Computation of Time. In computing any period of time prescribed or allowed by these rules, the provisions of Fed. R. Civ. P. 6(a) apply, except as hereinafter set forth.

When these rules provide that a due date is to be computed by counting backward in time from a scheduled act or event:

(1) in accordance with Fed. R. Civ. P. 6(a), if the due date falls on a day that is a Saturday, a Sunday, a legal holiday, or a day on which the clerk's office is inaccessible, then the due date is extended to the next day that is not such a day.

(2) in all other cases the occurrence of a Saturday, Sunday, holiday, or day of inaccessibility does not change the due date.

[Adopted effective February 1, 1991; amended November 1, 1996]

1991 Advisory Committee's Note to LR 1.1(f)

Fed. R. Civ. P. 6(a) provides a method for computing time that applies, by its express language, to computing due dates under the local rules of district courts as well as under the Federal Rules of Civil Procedure. LR 1.1(f) follows Fed. R. Civ. P. 6(a), and it provides a supplemental rule of computation for cases in which a due date is computed by counting backwards from a scheduled act or event.

Fed. R. Civ. P. 6(a) creates two types of automatic extension:

(1) When the due date falls on a non-business day or a day when the clerk's office is inaccessible because of weather conditions or the like, the due date is extended to the next ordinary day.

(2) When the period of time prescribed or allowed for an act is less than 11 days, and Saturdays, Sundays, or legal holidays occur between the event that starts the time period running and the due date, those Saturdays, Sundays, or legal holidays are excluded from the computation.

This Committee examined the operation of Fed. R. Civ. P. 6(a) in the context of Minnesota local rules, such as LR 7.1, that involve setting a due date by counting backward from a hearing date. Fed. R. Civ. P. 6(a) does not provide guidance for computing time under a counting backwards rule, and hence the question of computation falls within the local rule making authority.

The Committee decided that due dates created by counting backwards should be calculated by a calendar day method with no extension of time when Saturdays, Sundays, legal holidays, or inaccessibility days fall within the computation period. The only exception is made when the due date itself falls on a Saturday, Sunday, legal holiday, or inaccessibility day, in which case the due date is extended until the next day the clerk's office is open.

The following are examples of how to compute time under LR 1.1(f).

(1) Suppose that a rule provides that a motion must be filed within ten days after entry of judgment. Judgment is entered on Day 1. Five of the days between Day 1 and Day 11 are Saturdays, Sundays, and legal holidays. Since this example does not involve the counting backwards rule, Rule 6(a) applies and there is an automatic extension of time of five days.

(2) Suppose that a rule provides that a brief must be filed seven days before a hearing. The due date falls on a Sunday. This example does involve the counting backwards rule. Therefore, following the local rule, since the due date falls on a Sunday, the due date is extended until the next day that the clerk's office is open.

(3) Suppose that a rule provides that a brief must be filed seven days before a hearing. The due date falls on an ordinary business day. However, three of the seven days immediately before the due date are Saturdays, Sundays, or legal holidays. This example also involves the counting backwards rule. Thus, following Local Rule LR 1.1(f), which provides an extension of time only if the due date falls on a day when the clerk's office is closed, there is no automatic extension. The brief must be filed seven calendar days before the hearing.

LR 1.3 SANCTIONS

Failure to comply with a local rule may be sanctioned by any appropriate means needed to protect the parties and the interests of justice. These sanctions include excluding evidence, preventing a witness from testifying, striking of pleadings or papers, refusing oral argument, imposing attorney's fees, or any other appropriate sanction.

[Adopted effective February 1, 1991]

LR 3.1 CIVIL COVER SHEET

Every complaint or other document initiating a civil action shall be accompanied by a completed civil cover sheet, on a form available from the Clerk of Court. This requirement is solely for administrative purposes, and matters appearing only on the civil cover sheet have no legal effect in the action.

If the complaint or other document is filed without a completed civil cover sheet, the Clerk shall mark the document as to the date received and promptly give notice of the

omission to the party filing the document. When the civil cover sheet has been completed, the Clerk shall file the complaint or other document nunc pro tunc as of the date of the original receipt.

[Adopted effective February 1, 1991]

1991 Advisory Committee's Note to LR 3.1

On the use of the civil cover sheet for notification of a claim of unconstitutionality, see LR 24.1.

The Committee considered the question whether the rule that "matters appearing only on the civil cover sheet have no legal effect" might be too harsh in a situation in which a pro se litigant claims jury trial only on the civil cover sheet. It decided that the discretion of the trial Judge to grant a jury trial under Fed. R. Civ. P. 39 was sufficient to protect against unfairness.

LR 4.1 SERVICE

The United States Marshal's Service is relieved from any and all civil process serving responsibilities within this District on behalf of litigants, except as required by the Federal Rules of Civil Procedure or by a statute of the United States, or as ordered by the Court for good cause shown. A sheriff or deputy sheriff of any Minnesota county while acting within their jurisdiction, who consents, is hereby specially appointed to serve, execute or enforce all civil process that is subject to the provisions of Rule 4.1 of the Federal Rules of Civil Procedure.

[Adopted effective November 1, 1996; amended May 1, 2000]

1996 Advisory Committee's Note to LR 4.1

LR 4.1 has been amended to conform to the Federal Rules of Civil Procedure and to eliminate portions that merely repeated those National Rules. LR 4.1 does not modify the National Rules, except to emphasize that a party must show good cause to obtain a Court order requiring that the United States Marshal's Service serve process.

Federal Rule of Civil Procedure 4(c) allows a summons and complaint to be served by any nonparty who is at least 18 years of age, and relieves the United States Marshal's Service of any duty to serve the summons and complaint. The Court is required, however, to appoint a Marshal, Deputy Marshal, or other person to serve a summons and complaint when the plaintiff is "authorized to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 or is authorized to proceed as a seaman under 28 U.S.C. § 1916."

Fed. R. Civ. P. 4(c) also provides that the Court has discretion to appoint a Deputy Marshal or other person to effect service of process. An example of a situation in which a litigant could reasonably seek special appointment of a Deputy Marshal to make service is one in which an enforcement presence is required, such as a temporary restraining order, injunction, attachment, arrest, or order relating to a judicial sale.

For procedure on execution, see Fed. R. Civ. P. 69, which requires that state procedures on execution be followed unless a statute of the United States provides otherwise. Nothing in this rule is intended to modify the obligation of the U.S. Marshals Service to execute process issued under the authority of the District Court.

LR 4.2 FEES

(a) Collection in Advance. Statutory fees in connection with the institution or prosecution of any cause in this Court shall be collected in advance by the Clerk of Court and deposited and accounted for in accordance with directives of the Administrative Office of the United States Courts, except when, by order of the Court in a specific case, filing and proceeding in forma pauperis is permitted pursuant to 28 U.S.C. § 1915 or other applicable law.

Where a plaintiff seeks waiver of filing fees under in forma pauperis provisions, the plaintiff shall present the complaint and the motion for permission to proceed in forma pauperis to the Clerk. The Clerk shall file the complaint as if the filing fee had been paid, and shall submit the in forma pauperis motion to a Magistrate Judge or Judge. If permission to proceed in forma pauperis is later denied, the complaint shall be stricken.

(b) Citation for Non-Payment. If any costs or fees are due the Marshal or Clerk and remain unpaid after demand therefor, the Clerk or Marshal shall report such to the Court, and the Court may issue its citation directed to counsel for the party involved, or to the party in the absence of counsel, to show cause why such costs or fees should not then and there be paid.

(c) Refusal to File by Clerk. The Clerk may refuse to docket or file any suit or proceeding, writ or other process, or any paper or papers in any suit or proceeding until the fees of the Clerk are paid, except for in forma pauperis cases.

(d) Retaining Possession until Fees Are Paid. When the Marshal or any other officer of this Court has, or may have, in their possession any writ or other process, or other paper or papers upon or in relation to which the officer has made a service, or done any service for a party in any suit or proceeding, the officer shall be authorized to retain possession of such writ, process, paper or papers until all fees are paid.

[Adopted effective February 1, 1991]

LR 5.1 ELECTRONIC CASE FILING

Pursuant to Fed. R. Civ. P. 5(e), electronic case filing is authorized in the District of Minnesota, and shall be adopted and implemented by Order of the Court. Electronic case filing shall be governed by the standards and procedures set forth in the most recently approved version of the “Electronic Case Filing Procedures For The District Of Minnesota,” adopted by Order of the Court. The Electronic Case Filing Procedures shall apply to all civil and criminal cases filed in this District. All documents shall be filed electronically, except as otherwise provided by (i) Local Rule, (ii) specific court order, or (iii) the Electronic Case Filing Procedures for the District of Minnesota. The most recent version of the Electronic Case Filing Procedures shall be available on the Court’s web site and from the Clerk of Court. Nothing in the Electronic Case Filing Procedures for the District of Minnesota alters the rules governing the computation of deadlines for filing and serving documents that are

set forth at Fed. R. Civ. P. 6(a) and Local Rule 1.1(f).

[Adopted effective February 1, 1991; amended November 1, 1996; amended January 3, 2000; amended May 17, 2004 - formerly titled GENERAL FORMAT OF PAPERS PRESENTED FOR FILING]

LR 5.2 GENERAL FORMAT OF DOCUMENTS TO BE FILED – ELECTRONICALLY OR OTHERWISE

All documents submitted for filing, electronically or otherwise, shall be plainly typewritten, printed, or prepared by a clearly legible duplication process, and double-spaced, except for quoted material and footnotes. All documents filed after the initial pleading shall contain the case number and the name and/or initials of the District Judge and Magistrate Judge assigned to the case. This information shall be placed on the front page above the title of the pleading. Each page shall be numbered consecutively at the bottom.

The first two sentences of this rule do not apply to: (1) exhibits submitted for filing; and, (2) documents filed prior to removal from the state courts in removed actions.

All documents presented for filing shall include the attorney registration number of counsel filing the document.

[Adopted effective January 3, 2000; amended May 17, 2004]

LR 5.3 DEADLINE FOR FILING ANSWERS

1. All answers and other papers required by Fed. R. Civ. P. 5(d) to be filed shall be filed within 10 days after service thereof; such period is deemed a reasonable time within the meaning of Fed. R. Civ. P. 5(d).

See LR 1.3 for sanctions for failure to comply with this rule.

[Adopted effective February 1, 1991; amended numbering May 17, 2004]

LR 5.4 SERVICE OF DOCUMENTS THROUGH THE COURT'S ELECTRONIC TRANSMISSION FACILITIES

The service requirements of Fed. R. Civ. P. 5(a) can be satisfied by using the Court's electronic transmission facilities in the manner prescribed by the most recently adopted version of the Electronic Case Filing Procedures for the District of Minnesota.

2004 Advisory Committee Note to LR 5.4

The 2001 Amendments to the Federal Rules of Civil Procedure permitted district courts to authorize service by electronic means "through the court's transmission facilities." Fed.R.Civ.P. 5(b)(2)(D). Accordingly, new Local Rule 5.4 explicitly authorizes service by electronic means via the court's electronic filing facilities.

The 2001 Amendments also provided that the additional three days established in Rule 6(e) for service by mail applies to service by electronic means. Fed.R.Civ.P. 6(e).

Counsel are encouraged to consult the electronic service provisions of the Federal Rules of Civil Procedures,as amended in 2001. LR 5.4 does not modify the Federal Rules in any way.
Counsel are encouraged, further, to consult the most recently adopted version of the Electronic Filing Procedures for the District of Minnesota for further clarification on administrative procedures for filing and serving by electronic means.

[Adopted effective May 17, 2004]

LR 5.5 Redaction of Transcripts

(a) Review of Transcript for Personal Data Identifiers. After a transcript of any Court proceeding has been filed under LR 80.1(a), the attorneys of record, including attorneys serving as "standby" counsel appointed to assist a pro se defendant in his or her defense in a criminal case, and unrepresented parties shall determine whether redaction of personal data identifiers in the transcript is necessary to comply with Fed. R. Crim. P. 49.1 or Fed. R. Civ. P. 5.2. Attorneys of record or unrepresented parties are responsible to request redaction of personal data identifiers in the following portions of the transcript, unless otherwise ordered by the Court:

(1) Statements by the party or made on the party's behalf;

(2) The testimony of any witness called by the party;

(3) Sentencing proceedings; and

(4) Any other portion of the transcript as ordered by the Court.

(b) Notice of Intent to Request Redaction. If any portion of the transcript reviewed in accordance with subsection (a) of this rule is required to be redacted to comply with Fed. R. Crim. P. 49.1 or Fed. R. Civ. P. 5.2, a Notice of Intent to Request Redaction shall be filed within seven (7) calendar days from the date the transcript was filed.

The Court will assume redaction of personal data identifiers from the transcript is not necessary if a Notice of Intent to Request Redaction is not filed.

(c) Statement of Redaction. If a Notice of Intent to Request Redaction is filed, the party shall file a Statement of Redaction within 21 calendar days from the date the transcript was filed. The Statement of Redaction shall consist of the following information:

(1) Type of personal data identifier to be redacted, e.g., “social security number”;

(2) Page number and line number of transcript on which the personal data identifier to be redacted is located; and

(3) How the transcript should read after redaction, e.g, “social security number to read as XXX-XX-1234.”

The Statement of Redaction shall not disclose the personal data identifier to be redacted.

(d) Redacted Transcript. After the Statement of Redaction is filed, the court reporter has 31 calendar days from the date the original transcript was filed to file the redacted transcript. The court reporter shall not charge any fees for redaction services.

(e) Extensions of Transcript Redaction Deadlines. Any extensions of the redaction deadlines may be granted only by Court order. If an attorney of record or a party fails to timely file a Statement of Redaction after a timely Notice of Intent to Request Redaction was filed, the attorney or party shall:

(1) File a motion with the Court to request redaction; or

(2) Withdraw the Notice of Intent to Request Redaction.

The Court may issue an order to show cause as to why the attorney or party has not met the requirements of this rule.

[Adopted effective May 12, 2008; amended August 11, 2008]

LR 6.1 CONTINUANCE OF A CASE

A motion for the continuance of a case will be granted only for good cause shown. Requests for a continuance of a trial setting must be made by written motion, on which the Judge or Magistrate Judge may rule with or without a hearing. Continuances because of the absence of medical or other expert witnesses will be granted only on a showing of extreme good cause, and counsel will be expected to anticipate such possibility and be prepared to present such testimony either by deposition or by stipulation between the parties that the expert witness's written report and conclusions may be received in evidence.

[Adopted effective February 1, 1991]

LR 7.1 CIVIL MOTION PRACTICE

(a) Nondispositive Motions. Unless otherwise ordered by the District Judge or Magistrate Judge, all nondispositive motions, including but not limited to discovery,

third-party practice, intervention or amendment of pleading, shall be heard by the Magistrate Judge to whom the matter is assigned. Hearings may be scheduled by contacting the calendar clerk of the appropriate Magistrate Judge.

(1) *Moving Party; Supporting Documents; Time Limits.* No motion shall be heard by a Magistrate Judge unless the moving party files pursuant to LR 5.2 and serves the following documents at least 14 days prior to hearing:

(A) Notice of Motion
(B) Motion
(C) Proposed Order
(D) Affidavits and Exhibits
(E) Memorandum of Law

Affidavits and exhibits shall not be attached to the memorandum of law, but shall be filed separately. Exhibits filed without a corresponding affidavit must contain a separate title page.

(2) *Responding Party; Supporting Documents; Time Limits.* Any party responding to the motion shall file pursuant to LR 5.2 and serve the following documents at least 7 days prior to the hearing:

(A) Memorandum of Law
(B) Affidavits and Exhibits

Affidavits and exhibits shall not be attached to the memorandum of law, but shall be filed separately. Exhibits filed without a corresponding affidavit must contain a separate title page.

(b) Dispositive Motions. Unless otherwise ordered by the district judge, dispositive motions in any civil case shall be heard by the judge to whom the case is assigned. Hearings may be scheduled by contacting the calendar clerk of the appropriate judge. Motions for injunctive relief, judgment on the pleadings, summary judgment, to dismiss, and to certify a class action are considered dispositive motions for the purpose of this rule. This rule does not govern post-trial or post-judgment motions.

(1) *Moving Party; Supporting Documents; Time Limits.* No motion shall be heard by a district judge unless the moving party files and serves the following documents in accordance with Local Rule 5.1 et seq., the Electronic Case Filing Procedures, and Fed. R. Civ. P. 5(b) at least 45 days prior to the hearing:

(A) Motion
(B) Notice of Motion
(C) Memorandum of Law
(D) Affidavits and Exhibits
(E) Proposed Order*

(2) *Responding Party; Supporting Documents; Time Limits.* Any party responding to the motion shall file and serve the following documents in

accordance with Local Rule 5.1 et seq., the Electronic Case Filing Procedures, and Fed. R. Civ. P. 5(b) at least 20 days prior to the hearing:

(A) Memorandum of Law
(B) Affidavits and Exhibits

(3) *Reply Memorandum.* The moving party may submit a reply memorandum of law by filing and serving such memorandum in accordance with Local Rule 5.1 et seq., the Electronic Case Filing Procedures, and Fed. R. Civ. P. 5(b) at least 12 days prior to the hearing.

*Refer to the Electronic Case Filing Procedures and the Orders section for information on providing the court with proposed orders.

(c) Length of Memoranda of Law; Certification of Compliance. No party shall file a memorandum of law exceeding 12,000 words, or, if it uses a monospaced face, 1,100 lines of text, except by permission of the Court. If a reply memorandum of law is filed, the cumulative total of the original memorandum and the reply memorandum shall not exceed 12,000 words, or, if it uses a monospaced face, 1,100 lines of text, except by permission of the Court. All text, including headings, footnotes, and quotations, count toward the word and line limitation. The caption designation required by LR 5.2, the signature text, and any certificates of counsel do not count toward the limitation.

A memorandum of law submitted under LR 7.1(a) or 7.1(b) must include a certificate by the attorney, or an unrepresented party, that the memorandum complies with the length limitation of this rule and with the type size limitation of LR 7.1(e). The certificate must state either the number of words or the number of lines of monospaced type in the memorandum. If a reply memorandum of law is filed, the certificate included with the reply memorandum shall designate the cumulative total of words or lines of the two memoranda. The person preparing the certificate may rely on the word or line count of the word processing program used to prepare the memorandum only if the preparer certifies that the word or line count of the word processing program has been applied specifically to include all text, including headings, footnotes, and quotations. The certificate of compliance must also include the name and version of the word processing software used to prepare the memorandum.

(d) Failure to Comply. In the event a party fails to timely deliver and serve a memorandum of law, the Court may strike the hearing from its motion calendar, continue the hearing, refuse to permit oral argument by the party not filing the required statement, consider the matter submitted without oral argument, allow reasonable attorney's fees, or proceed in such other manner as the Court deems appropriate.

(e) Type Size. Memoranda of law filed by a represented party shall be typewritten and double-spaced. Quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. All text, including footnotes, must appear in at least font size 13 based on the designation of the word processing program used to prepare the memorandum. Pages shall be 8 ½ by 11 inches in size, and no text may appear beyond the page area of 6 ½ by 9 inches, except that page numbers may be placed in the margins.

Memoranda of law filed by a party pro se shall be typewritten and double-spaced or, if handwritten, shall be printed legibly.

(f) Unsolicited Memoranda of Law. Except with permission of the Court, no memoranda of law will be allowed except as provided in these rules.

(g) Motion to Reconsider. Motions to reconsider are prohibited except by express permission of the Court, which will be granted only upon a showing of compelling circumstances. Requests to make such a motion, and responses to such requests, shall be made by letter to the Court of no more than two pages in length, a copy of which must be sent to opposing counsel.

[Adopted effective February 1, 1991; amended November 1, 1996; amended January 3, 2000; amended January 1, 2004; amended May 17, 2004; amended May 16, 2005]

1991 Advisory Committee's Note to LR 7.1

See LR 1.1(f) for the method of computing time.

See LR 37.2 for the form of discovery motions.

1996 Advisory Committee's Note to LR 7.1

LR 7.1(b) was amended to specify the motions considered to be dispositive motions under this rule. The motions considered dispositive motions under this rule are the matters that, under 28 U.S.C. § 636(b)(1)(A) and (B), may be heard by a Magistrate Judge only for the purpose of making proposed findings of fact and recommendations for the disposition.

1996 Advisory Committee's Note to LR 7.1(b)(2)

The new Local Rules significantly change procedures governing motion practice. They are patterned after procedures adopted by several judges on an experimental basis.

These reforms reflect the spirit of the 1993 Amendments to the Federal Rules of Civil Procedure. In particular, they enable counsel to structure motion deadlines to accommodate the differing demands of diverse cases. These rules also minimize Court involvement in the process until dispositive motions have been fully briefed and are ready for hearing. The exchange of briefs may narrow or resolve pending controversies without judicial intervention. By so doing, the rules prevent the expenditure of judicial resources on the controversies which may have become moot at the time of the hearing.

The new rules prescribe deadlines that govern motion practice if counsel cannot agree on a briefing schedule. The new rules also enlarge the briefing periods for briefs responding to motions and for reply briefs. This revision is intended to reduce any unfair advantage favoring the moving party (who may have been preparing the motion for a much longer period than the opponent is afforded for reply). The enlarged deadline for service of Reply Briefs reflects the Committee's consensus that former deadlines often imposed time constraints which undermined the quality of the Reply. These briefing deadlines involve "calendar days", not "business days".

1999 Advisory Committee's Note to LR 7.1(b)(2)

Supporting Affidavits. Rule 7.1(b)(2) specifically contemplates that the factual basis for a dispositive motion will be established with affidavits and exhibits served and filed in conjunction with the initial motion and the responding party's memorandum of law. Although the rule makes provision for a Reply Memorandum, it neither permits nor prohibits the moving party from filing affidavits or other factual material therewith. The rule

contemplates that the discovery record will allow the initial summary judgment submission to anticipate and address the responding party's factual claims. Reply affidavits are appropriate only when necessary to address factual claims of the responding party that were not reasonably anticipated. It is improper to withhold information - either from discovery or from initial moving papers - in order to gain an advantage.

2004 Advisory Committee's Note to LR 7.1(b)

Rule 7.1(b) was amended effective January 1, 2004, to set forth the District Judges' requirements for dispositive motions. This amendment replaced the "fully briefed motion" practice that previously had been in effect.

LR 7.2 PROCEDURES IN SOCIAL SECURITY CASES

(a) Filing an Answer.

(1) Within 60 days of the service upon the United States of a pleading under 42 U.S.C. § 405(g), the Commissioner of Social Security shall deliver to the Clerk of Court an answer and a certified copy of the transcript of the record.

(2) A motion to extend the time in which to answer shall be brought prior to the expiration of the 60 day period.

(b) Motions - Time Limits.

(1) Within 60 days of the filing and service of the answer and transcript, plaintiff shall file with the Clerk of Court and serve on defendant a motion for summary judgment and a memorandum of law in support. Within 45 days from the date of service of plaintiff's motion, defendant shall file with the Clerk of Court and serve on plaintiff a motion for summary judgment and a memorandum of law in support. Plaintiff may submit a reply memorandum. The reply memorandum shall be filed with the Clerk of Court and served on defendant within 10 days from the date of service of defendant's motion.

(2) All motions shall be decided without oral argument unless otherwise ordered by the Court.

(3) Pursuant to Fed.R.Civ.P. 72(b) and the provisions of 28 U.S.C. § 636(b)(1)(B), within 10 days after being served with a copy of a Magistrate Judge's report and recommendation, any party seeking to object to the same shall file with the Clerk of Court and serve on the opposing party written objections to the proposed findings and recommendations. Any party objecting to a magistrate judge's proposed findings and recommendation shall file a brief within 10 days after being served with a copy of the recommended disposition. A party may respond to the objecting party's brief within 10 days after being served. All briefs filed under this rule shall be limited to 10 pages.

(c) Review After Remand When Courts Retain Jurisdiction.

(1) Within 60 days of the final decision of the Commissioner of Social Security upon remand, if the final decision upon remand is adverse to the plaintiff, the Commissioner shall file with the Clerk of Court and serve a supplemental transcript.

(2) If the plaintiff intends to seek review of the Commissioner's action following remand, within 60 days of the service of the supplemental transcript on plaintiff, plaintiff shall file with the Clerk of Court and serve on defendant a motion for summary judgment and a memorandum of law in support. Within 45 days from the date of service of plaintiff's motion, defendant shall file with the Clerk of Court and serve on plaintiff a motion for summary judgment and a memorandum of law in support.

(d) Attorney's Fees.

(1) Petitions for fees under the Equal Access to Justice Act shall be filed within 30 days of final judgment as defined by 28 U.S.C. § 2412.

(2) Petitions for fees under the Social Security Act shall be filed within 30 days of notice to plaintiff's attorney of the Commissioner's award certificate.

(3) Petitions for attorney's fees under Internal Revenue Code 26 U.S.C.§ 7430 shall be filed within 30 days of final judgment.

(4) Petitions shall be itemized, shall be served on the defendant, and filed. Attorneys are directed to 20 C.F.R. § 404.1725 when preparing their petitions.

[Adopted effective November 1, 1996; amended January 3, 2000; amended May 17, 2004; amended October 18, 2007]

1996 Advisory Committee's Note to LR 7.2

LR 7.2(b)(3) was amended to properly refer to "Magistrate Judge" rather than "Magistrate".

LR 7.2(c) was amended so that it applies only to cases remanded under sentence six of 42 U.S.C. § 405(g) where the Court has retained jurisdiction. See Note accompanying LR 7.2(d).

LR 7.2(d)(1): Although this paragraph was not amended, practitioners should be aware that the date which triggers the time for filing a motion or petition for attorney's fees varies in Social Security cases remanded by the Court to the Secretary depending on which sentence of 42 U.S.C. § 405(g) authorized the remand.

In Melkonyan v. Sullivan, 501 U.S. 89 (1991), the Supreme Court discussed the time for filing a petition for attorney's fees under the Equal Access to Justice Act (EAJA) in Social Security appeals. The Supreme Court recognized that under 42 U.S.C. § 405(g), a federal district court has the authority to remand a Social Security appeal under two separate and distinct circumstances.

The Court may, under the fourth sentence of § 405(g), "enter . . . a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing." If the Court remands the cause for a rehearing under this sentence, it is referred to as a "sentence four" remand.

The Court may, under the sixth sentence of § 405(g), "on motion for the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the Secretary, and it may at any time order additional evidence to be taken by the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence

into the record in a prior proceeding." These remands are called "sentence six" remands.

When a claim is remanded by the Court under sentence four, the remand is a final decision and the judge's order shall state that a judgment should be entered. The Court does not retain jurisdiction to review the proceedings on remand. In Shalala v. Schaefer, 509 U.S. 292 (1993), the Supreme Court held that a claimant becomes a prevailing party by obtaining a sentence-four judgment. The time within which to petition for attorney's fees under the EAJA begins on the date of entry of the final judgment in conjunction with the remand order. If the decision on remand is adverse to the claimant, the claimant must file and serve a new summons and complaint.

When a claim is remanded under sentence six, the Court properly retains jurisdiction until after the administrative proceedings on remand. After the final decision of the Secretary upon remand, the Court must take some further action. If the decision is favorable to the claimant, the Court should issue a final judgment in the claimant's favor. The time within which to petition for attorney's fees under EAJA begins on the date of the entry of the final judgment. If the final decision of the Secretary upon remand is adverse to the claimant, then the procedure set forth in LR 7.2(c)(1) and (2) should be followed.

2007 Advisory Committee's Note to LR 7.2

The rule was amended by replacing all references to "Secretary of Health and Human Services: to "Commissioner of Social Security" as referenced in the statute upon which the local rule is based.

LR 7.3 TELEPHONIC HEARINGS

(a) The Court, in its discretion, may allow hearing by telephonic conference for any pretrial matter. A request for a telephonic hearing shall be made in writing with the denomination of TELEPHONIC HEARING REQUESTED, below the caption on the notice, report, or other paper filed by the party requesting the telephonic hearing. The logistics of the telephonic hearing shall be arranged by the requesting party and the specifics shall be communicated to all parties in advance of the hearing.

(b) If the parties, or any one of them, wishes to have a transcribed record made of the telephonic hearing, the caption shall so indicate. The Court, in its discretion, shall determine the manner in which the record shall be made.

(c) A telephonic hearing may be held, in the discretion of the Judge or Magistrate Judge without the written notice requirements in (a), when deposition issues are both capable of and require immediate resolution in order to avoid manifest injustice. Requests for such hearing should be made only in exigent circumstances, and the Court may impose the sanctions allowed under Federal Rules of Civil Procedure 37 where a party or its attorney takes a position wholly unsupported by the Federal Rules of Civil Procedure, these Local Rules, or other rules of law.

[Adopted effective November 1, 1996]

1996 Advisory Committee's Note to LR 7.3

In 1993, the Civil Justice Reform Act Advisory Group recommended the use of cost-efficient measures to reduce the expense of civil pretrial proceedings, including increased use of telephonic appearances. The rule on telephonic hearings is based on strong competing interests, and the effort to appropriately balance those interests. On the one hand, the rule reflects the interest in controlling the costs and burdens associated with multiple court appearances, and the economies associated with hearings that do not require personal appearances.

On the other hand, the Court's time is a valuable resource which is carefully scheduled. It is in the interests of justice that previously scheduled matters not be disrupted by spontaneous hearing requests, and that parties and counsel previously scheduled to be in Court be allowed the Court's undivided attention. For that reason, the rule provides for spontaneous telephonic hearings only in exigent circumstances when manifest unfairness would otherwise occur. Each judicial officer retains the discretion whether to entertain spontaneous telephonic hearings on a case-by-case basis.

LR 9.1 SOCIAL SECURITY NUMBER IN SOCIAL SECURITY CASES

Any person seeking judicial review of a decision of the Secretary of Health and Human Services under Section 405(g) of the Social Security Act (42 U.S.C. § 405(g)) shall provide, on a separate paper attached to the complaint served on the Secretary of Health and Human Services, the social security number of the worker on whose wage record the application for benefits was filed. The person shall also state, in the complaint, that the social security number has been attached to the copy of the complaint served on the Secretary of Health and Human Services. Failure to provide a social security number to the Secretary of Health and Human Services will not be grounds for dismissal of the complaint.

[Adopted effective February 1, 1991]

1991 Advisory Committee's Note to LR 9.1

See LR 7.2 for motion practice in Social Security cases.

LR 9.3 STANDARD FORMS FOR HABEAS CORPUS PETITIONS AND MOTIONS

Petitions for a Writ of Habeas Corpus, whether brought by a state or federal prisoner, motions filed pursuant to 28 U.S.C. § 2255, and complaints brought by prisoners under 42 U.S.C. § 1983 or any other Civil Rights statute shall be submitted for filing in a form which is substantially in compliance with forms available from the Clerk of Court.

[Adopted effective February 1, 1991]

1991 Advisory Committee's Note to LR 9.3

This rule modifies former D. Minn. Local Rule 15 (1987). The requirement that the pleadings be "in writing, signed and verified" was deleted on grounds that it was duplicative of the requirements of 28 U.S.C. § 2254 and, to some extent, Fed.R.Civ.P. 11. The rule only requires "substantial compliance" with forms supplied by the Clerk of Court in recognition of the fact that the Supreme Court and Congress have generally avoided strict compliance with forms submitted by pro se petitioners.

LR 15.1 FORM OF A MOTION TO AMEND AND ITS SUPPORTING DOCUMENTATION

A party who moves to amend a pleading shall file such motion and shall attach a copy of the amended pleading to the motion. If the Court grants the motion to amend, the moving party shall file the amended pleading with the Clerk of Court. Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must, except by leave of Court, reproduce the entire pleading as amended, and may not incorporate any prior pleading by reference.

[Adopted effective February 1, 1991; amended January 3, 2000; amended May 17, 2004]

LR 16.1 CONTROL OF PRETRIAL PROCEDURE BY INDIVIDUAL JUDGES

(a) Each Judge and Magistrate Judge may prescribe such pretrial procedures, consistent with the Federal Rules of Civil Procedure and with these rules, as the Judge or Magistrate Judge may determine appropriate.

(b) The time for any conference authorized by LR 16.2-16.6 shall be determined by the Judge or Magistrate Judge who orders the conference. Reasonable notice shall be given to all parties to the action of the time for the conference.

(c) At any conference authorized by LR 16.2-16.6 the Judge or Magistrate Judge may order the attorneys, the parties, representatives of the parties, and representatives of insurance companies whose coverage may be applicable to appear.

(d) To comply with Section 651 and 652 of Title 28 United States Code, (the Alternative Dispute Resolution Act of 1998) and to encourage and promote the use of alternative dispute resolution in this district, in each civil case, not exempted by Local Rule 26.1(f)(3), the litigants shall consider the use of Alternative Dispute Resolution. At the meeting required by Rule 26(f) of the Federal Rules of Civil Procedure, and Local Rule 26.1(f) the parties shall discuss whether Alternative Dispute Resolution will
be helpful to the resolution of the case, and report their recommendation to the court regarding Alternative Dispute Resolution in their Rule 26(f) Report. See Form 3 at Section(I)(3).

(e) Pursuant to Section 651 of Title 28 United States Code, (the Alternative Dispute Resolution Act of 1998), the Chief Magistrate Judge is hereby designated the Alternative Dispute Resolution administrator for the District of Minnesota.

[Adopted effective February 1, 1991; amended November 1, 1996; amended January 3, 2000]

1996 Advisory Committee's Note to LR 16.1

The Civil Justice Reform Act Implementation Plan (CJRA Plan) adopted by the District Court observes that early and ongoing judicial control of the pre-trial process promotes efficient case management. Local Rules 16.1 through 16.8 are designed to implement many of the provisions of the CJRA Plan. These Local Rules codify many of the Court's past practices by defining with some particularity some of the more useful ways in which the Court has employed the Rule 16 conference to manage cases. The Rules are also designed to provide some uniformity among the judicial officers of the Court without sacrificing the flexibility Fed. R. Civ. P. 16 is intended to encourage.

LR 16.1 authorizes each Judge to manage his or her own docket by the adoption of any pre-trial procedures which are consistent with the Federal Rules of Civil Procedure and these Local Rules. The Rule also requires that reasonable notice of the time for the conference be given to all parties and makes clear that the Court has the power to order the attendance at any conference those whose attendance is necessary to accomplish the business of the conference.

1999 Advisory Committee's Note to LR 16.1

The Alternative Dispute Resolution Act of 1998 requires that each district implement an ADR program to encourage and promote the use of Alternative Dispute Resolution in the District. The Act further requires that the Court designate an ADR Administrator which may a judicial officer or court employee who is knowledgeable in alternative dispute resolution practices and processes to implement administer, oversee and evaluate the court's alternative dispute resolution program. Title 28 United State Code, Sections 651; 652) Local Rule 16.1(d)and (e) are designed to comply with the mandate of the Act in these respects.

LR 16.2 PRETRIAL CONFERENCES

(a) In every case, not exempted by LR 26.1(d), the Court shall schedule an initial pretrial conference, pursuant to Fed.R.Civ.P. 16, for the purpose of adopting a pretrial schedule. The initial pretrial conference shall be held within 90 days after the first responsive pleading is filed or, in the case of actions removed or transferred from another Court, within 90 days after the Notice of Removal is filed. No later than 14 days before the scheduled initial pretrial conference, the parties shall meet as required by Fed.R.Civ.P. 26(f) and LR 26.1(f). If the case is not settled at the Rule 26(f) meeting, the parties shall, within 10 days of the meeting, file with the Court the joint report of the meeting. The report shall be made in the form prescribed in Form 3, "Rule 26(f) Report", or in the cases in which any party asserts any claim involving a patent, in the form prescribed in Form 4, "Rule 26(f) Report (Patent Cases)".

(b) Only the attorneys and unrepresented parties need attend the initial pretrial conference pursuant to this Rule 16.2.

(c) A pretrial schedule shall be issued in every case, and shall include:

(1) A date by which other parties may be joined and the pleadings may be amended;

(2) A date by which all discovery shall be completed and all non-dispositive pre-trial motions shall be filed and served;

(3) A date by which the identity of any expert witnesses and their reports shall be disclosed. An expert is any witness who will testify under Federal Rule of Evidence 702. Failure to identify expert witnesses in a timely manner may be cause to prohibit the testimony of such witnesses at trial.

(4) A date by which all dispositive motions shall be filed and the hearing thereon completed;

(5) A date by which the case will be ready for trial;

(6) A limitation on the number of depositions each party may take;

(7) A limitation on the number of interrogatories each party may serve;

(8) A limitation on the number of expert witnesses each party may call at trial;

(9) A limitation on the number of expert witnesses each party may depose;

(10) A statement of whether the trial is a jury trial or a bench trial and an estimate of how long the trial will last.

[Adopted effective November 1, 1996, Amended February 9, 2006]

1996 Advisory Committee's Note to LR 16.2

LR 16.2 incorporates the requirement of the CJRA Plan that an early scheduling conference be held as soon as practicable. The Rule defines this as an Initial Pre-Trial Conference and requires that one be scheduled in every case, except those in categories that the Court, by Local Rule 16.8, has determined to be inappropriate for such a conference. The Rule 26(f) Report form 3 and the recitation of what a pre-trial schedule shall contain is designed to create some uniformity among the judicial officers of the Court with respect to the content of pre-trial schedules.

LR 16.2 contemplates that the pre-trial schedule will set a single date by which all discovery shall be completed and by which all non-dispositive pre-trial motions shall be filed and served. The Advisory Committee considered and rejected a suggestion that the Rule 16 pre-trial schedule set different dates for the termination of discovery and for the hearing of non-dispositive motions, in order to create a period, following the close of discovery, for hearing non-dispositive motions. The Committee rejected the suggestion because it would be inconsistent with LR 37.1, which requires that motions involving discovery disputes shall be served and filed prior to the discovery termination date established pursuant to Rule 16. This provision of LR 37.1 was designed to address the practical problem of how to timely resolve discovery disputes which arise near the close of the discovery period.

Under LR 37.1, by counting backward from the discovery deadline, counsel can plan to serve their discovery requests in such a way that, in the event the response is inadequate, they will still have time to make a motion before the termination of discovery. Because the motion, to be timely, needs only to be filed and served, the inability to get a hearing date before the close of discovery will not prejudice any party.

2005 Advisory Committee's Note to LR 16.2 and Form 4 and 5

Form 4 addresses recurring issues in patent cases. Form 4 is intended to reduce motion practice and to encourage parties to narrow and focus issues for resolution by the Court, including claim construction issues. Although various provisions in Form 4 are phrased in terms of the "plaintiff" and the "defendant", in cases of counterclaims of patent infringement or for declaratory judgment, each party asserting a patent is expected to provide the information required for "plaintiff", and each party asserting a defense to patent infringement is expected to provide the information required for "defendant".

Paragraph (c) allows discovery related to a charge of willful infringement and to defenses of invalidity and unenforceability, such as the defense of inequitable conduct, without pleading of those defenses, in order to encourage parties to explore whether there is a substantial basis for such pleading before pleading them. The Court of Appeals for the Federal Circuit has commented that "the habit of charging inequitable conduct in almost every major patent case has become an absolute plague." Burlington Indus. v. Dayco Corp., 849 F.2d 1418, 1422 (Fed. Cir. 1988). The Committee considered a proposal to require leave of the Court for pleading inequitable conduct or willfulness, similar to Minn. Stat. § 549.191 (2003), but concluded that the power of the Court to dismiss such allegations under Rules 12 and 56 of the Federal Rules of Civil Procedure provides an existing tool for management of insufficient charges of inequitable conduct or willfulness.

Paragraph (e)(7) encourages the parties to agree in advance as to the discoverability of drafts of expert reports and provides that in the absence of agreement, such drafts are not discoverable. Under the Federal Rule of Civil Procedure 26, the Court has power to limit use of any discovery method by local rule if the Court determines that the burden or expense of proposed discovery outweighs its benefit. Discovery of drafts of expert reports rarely provides substantial benefits. This paragraph is intended to end motion practice as to the discoverability of drafts of expert reports.

Paragraphs (f) and (g) provide a sequence of exchanges intended to focus issues for claim construction by the Court. The parties are expected to determine the most appropriate intervals for the exchanges given the particular circumstances of a case. In general, the Court has ordered intervals of 30 to 60 days between each

step in the series of exchanges. In particular cases, a different schedule may be appropriate, for example if a party intends to bring an early motion that does not depend on claim construction, such as a motion to dismiss for lack of subject matter jurisdiction.

Paragraph (h) provides for a delay of the waiver of attorney-client privilege when an opinion of counsel is offered as part of a defense to a charge of willful infringement and a provision allowing the parties to make proposals addressing other phasing or sequencing issues in discovery. The Committee considered and rejected recommending any presumptions for phased discovery or establishing schedules for phased discovery because of the variety of circumstances presented in patent cases. For example, in certain cases, prejudice could result from discovery of willfulness issues relating to attorney-client materials. On the other hand, willfulness discovery could be relevant to issues of infringement and/or equitable defenses to infringement. Depending upon the case, phasing of discovery could save discovery expense or cause an expensive duplication of discovery efforts.

Paragraph (h)(1) is intended to address discovery controversies that frequently arise when there is a claim of willful infringement and a denial based upon reliance on advice of counsel. Motion practice often follows requests for discovery, including motions to compel discovery or motions to stay discovery and bifurcate trial. Paragraph (h)(1) encourages the parties to agree on the time table for discovery regarding the waiver of any applicable attorney-client privilege on topics relevant to willfulness or articulate proposals regarding such discovery in advance of the initial pretrial conference. The parties are not required to propose that the Court phase discovery regarding the waiver of any applicable attorney-client privilege on topics relevant to willfulness. This provision provides a format for the parties to meet and confer on this subject and either present joint or individual proposals to be considered by the Court.

The general provision set forth in paragraph (h)(2) is intended to encourage the parties to identify other areas of agreement or dispute regarding discovery phasing early so these matters can be addressed at the initial pretrial conference. Optional responses to paragraph (h)(2) include no proposals, joint proposals, or individual proposals regarding the phasing or sequencing of discovery. The inclusion of paragraph (h)(2) should not be interpreted to mean phased discovery is favored in patent cases. Whether discovery on topics that are the subject of discovery are phased depends upon the Court's discretion in adopting a pretrial schedule. Whether phased discovery is proposed or adopted also does not create a presumption regarding the bifurcation of any issues for trial.

Paragraph (h)(3) addresses protective orders and proposes, but does not require, Form 5 as a template for such orders. The Committee concluded that repeated negotiation of such orders wastes the parties' resources and delays the beginning of discovery. The parties are accordingly required to raise issues relating to any protective order, including issues relating to what persons may have access to documents designated for protection under the order, at the initial pretrial conference, and the Court is to endeavor to resolve such issues in connection with the conference.

Form 5 is meant to focus attention on the issues that are typically contested in negotiating protective orders rather than resolve those issues. This Form is thus presented as one that might serve as a template for protective orders even though in any individual case, parties may by agreement or by motion depart from the template.

Paragraph (n) provides for the use of a tutorial describing the technology and matters in issue for the benefit of the Court. A technology tutorial is not mandatory. Rather, the parties are free to decide whether a technology tutorial would be helpful to educate the Court regarding the technology at issue. A mandatory technology tutorial would unnecessarily increase the cost of and needlessly complicate patent suits involving relatively simple, easily understandable technologies.

If the parties believe that it would be helpful to the Court to have a tutorial, it is not required that the tutorial be in the form of a video tape. Should the parties determine that a format other than video tape be more appropriate, such as a DVD or a computerized presentation, they may suggest the format at the initial pretrial conference. For any such format selected, the parties must confirm the Court's technical ability to access the information contained in the tutorial. The parties may further choose to present the tutorials in person.

The purpose of the technology tutorial is to educate the Court. As such, the scheduling of the tutorial should preferably be early in the litigation, and most preferably before the exchange of claim construction briefs.

However, the scheduling of the tutorial may vary based on the complexity of the case and the amount at stake in the litigation. In some cases, the parties may suggest that the tutorial be due mid-discovery to allow its use in connection with any possible summary judgment motions or claim construction hearing. In cases that are likely to settle early on, the parties may suggest the deadline for the tutorial be set late in the litigation in hopes of avoiding its cost altogether.

Whether or not the parties agree to use a technology tutorial, the Court may request that the parties have their experts appear to explain the technology. However, expert legal testimony (as opposed to technical testimony) on such substantive issues as invalidity (by anticipation, obviousness, on-sale bar, etc.) and claim construction and infringement are not intended to be part of the tutorial.

Paragraph (o) provides for the use of the patent procedure tutorial. The purpose of the patent procedure tutorial is to educate the jury about the patent process. The Federal Judicial Center distributes this 18-minute video, entitled "An Introduction to the Patent System". This video provides jurors with an overview of patent rights in the United States, patent office procedure, and the contents of a patent.

A decision by one or all the parties not to show a patent procedure tutorial as set forth in Paragraph (o) does not preclude a Court from showing the patent procedure tutorial on its own initiative.

LR 16.3 EXTENSION OF A DISCOVERY SCHEDULE

(a) Once the pretrial discovery schedule is adopted, it shall not be extended or modified except upon written motion and for good cause shown.

(b) A Judge or Magistrate Judge may rule upon a motion to extend or modify a pretrial discovery schedule with or without a hearing. Every such motion shall be accompanied by a statement describing:

(1) What discovery remains to be completed;

(2) What discovery has been completed;

(3) Why all discovery has not been completed; and

(4) How long it will take to complete discovery.

(c) Except in extraordinary circumstances, the motion for extension shall be served and the hearing, if any, shall be scheduled prior to the expiration of the original pre-trial schedule deadlines.

[Adopted effective February 1, 1991; amended November 1, 1996]

1996 Advisory Committee's Note to LR 16.3

LR 16.3 is intended to discourage modifying pre-trial schedules unless good cause has been shown. This Rule, which was enacted before the CJRA Implementation Plan was adopted, is consistent with the Plan's suggestion that judicial officers be authorized to impose and enforce discovery deadlines that promote adequate but prompt case preparation.

LR 16.4 CASE MANAGEMENT CONFERENCE

(a) In those cases which require the adoption of specific case management techniques beyond those set forth in the pre-trial schedule adopted pursuant to LR 16.2, a Judge or Magistrate Judge may schedule a Case Management Conference.

(b) A Case Management Conference may be requested at any time by any party, or by the stipulation of all of the parties, or it may be scheduled upon the Court's own initiative. However the request is initiated, a Case Management Conference will be held only if, in the judgment of the Judge or Magistrate Judge, the complexity of the case or other factors warrant it.

(c) In advance of a Case Management Conference, the Judge or Magistrate Judge may require the parties to prepare a plan to efficiently manage the costs of litigation. Case management techniques may include but are not limited to:

(1) Imposing limitations on the number, length and/or scope of depositions;

(2) Minimizing travel expenses and the expenditure of attorney time through the use of telephonic and video conferencing devices for recording deposition testimony;

(3) The use of a document depository for the common storage and retrieval of documents through imaging and data processing techniques;

(4) The use of multiple-track discovery to expedite complex matters where appropriate;

(5) Minimizing discovery costs by stipulating to facts;

(6) The imposition and enforcement of discovery deadlines that promote adequate but prompt case preparation;

(7) The imposition of such other requirements or restrictions as may be deemed appropriate to secure the just, speedy and inexpensive determination of the action.

(d) At the conclusion of the Case Management Conference, the Court may adopt a Case Management Order.

[Adopted effective November 1, 1996]

1996 Advisory Committee's Note to LR 16.4

LR 16.4 attempts to provide judicial officers with the flexibility needed to manage large complex cases which can consume a disproportionate amount of judicial resources. The Rule encourages the parties and the Court to adopt creative case management techniques. The techniques suggested by the Rule are those expressly mentioned in the CJRA Plan, but are illustrative only. The Rule does not intend by the enumeration of certain techniques to in any way discourage or disparage the use of other cost containment techniques. The Rule enables any party to request a Case Management Conference. Whether to convene such a conference,

however, is left to the discretion of the judicial officers.

LR 16.5 ALTERNATIVE DISPUTE RESOLUTION

(a) Authorization of Alternative Dispute Resolution and Requirement of Mediated Settlement Conference.

(1) Pursuant to Section 651(b) of Title 28 United States Code, (the Alternative Dispute Resolution Act of 1998), the Court hereby authorizes the use of alternative dispute resolution processes in all civil actions including adversary proceedings in bankruptcy.

(2) Within 45 days prior to trial, each civil case not exempted by LR 26.1(b)(1) through (3) shall be set for a Mediated Settlement Conference before a Magistrate Judge. Upon the request of any party, or upon its own motion, the Court, in its discretion, may require additional Settlement Conferences during the pre-trial period. Trial counsel for each party as well as a party representative having full settlement authority shall attend each Settlement Conference ordered by the Court. If insurance coverage may be applicable, a representative of the insurer, having full settlement authority, shall attend.

(3) The Full-Time Magistrate Judges of the District Court shall constitute the panel of neutrals the court hereby makes available for use by the parties, as contemplated by Section 653 of Title 28 United States Code (the Alternative Dispute Resolution Act of 1998). The provisions of Title 28 United States Code Section 455 shall govern the disqualification of Magistrate Judges from serving as a neutral.

(b) Other Dispute Resolution Methods.

(1) In the discretion of the Court, the parties, trial counsel, and other persons deemed necessary to attend may be ordered to participate in other non-binding dispute resolution methods before a Judge or Magistrate Judge, including but not limited to, summary jury trials, non-binding arbitration and mediation.

(2) In the discretion of any Judge or Magistrate Judge, the parties, trial counsel, and other persons deemed necessary to attend may be ordered to engage in any one or a combination of non-binding alternate dispute resolution methods to be conducted by someone other than a Judge or Magistrate Judge. In such cases, the parties may be ordered to bear the reasonable costs and expenses incurred by the ADR process as allocated by the Court, provided that the Court shall not allocate any costs or expenses of the ADR process to a party who is proceeding in forma pauperis pursuant to 28 U.S.C. § 1915.

(c) Confidentiality of Dispute Resolution Communications

(1) Definition: “confidential dispute resolution communication” means any communication made to a neutral during any Alternative Dispute Resolution process which is expressly identified to the neutral as being confidential

information which the party does not want communicated to any other person outside of the Alternative Dispute Resolution process.

(2) No confidential dispute resolution communication shall be disclosed outside the alternative dispute resolution process by any party, party representative, insurance adjuster, lawyer, or neutral without the consent of the party making the confidential dispute resolution communication.

[Adopted effective November 1, 1996; amended January 3, 2000]

1996 Advisory Committee's Note to LR 16.5

In 1986, the Federal Practice Committee in the District of Minnesota recommended that the Court not adopt a formal ADR program. In 1993, the Civil Justice Reform Act Advisory Group also recommended that the Court not impose mandatory ADR. The Advisory Committee, like the CJRA Group, supports the use of selective ADR mechanisms on a case by case basis as determined by the individual Judge or Magistrate Judge. This Rule recognizes the Court's authority to require the parties to pay reasonable costs associated with ADR, but expressly exempts from this requirement parties who are proceeding in forma pauperis.

Regarding settlement conferences, see 28 U.S.C. 473(b)(5), which provides "a requirement that, upon notice by the Court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference."

1999 Advisory Committee's Note to LR 16.5

The Alternative Dispute Resolution Act of 1998 requires that every district authorize the use of Alternative Dispute Resolution processes in all civil actions, (Title 28 United States Code, Section 651(b))and to provide litigants in all civil cases with at least one alternative dispute resolution process (Title 28 United States Code, Section 652(a)). By this Local Rule 16.5(a)(1) the Court complies with the requirement of the Act that it authorize the use of Alternative Dispute Resolution processes. To comply with the requirement of Section 652(a) of Title 28 United States Code, (the Alternative Dispute Resolution Act of 1998), that the court provide litigants in all civil cases with at least one alternative dispute resolution process, Local Rule 16.5(a)(2) requires that a settlement conference be held in every civil case, not exempted by the Rule. The Judges of the District Court have concluded that a mediated settlement conference presided over by a magistrate judge is the one alternative dispute resolution process it will provide to litigants in all civil cases.

Parties are of course free to agree upon the use of other alternative dispute resolution processes, and Local Rule 16.5(b) authorizes the court to order any other alternative dispute resolution process which it deems necessary. Because the voluntary selection by the parties of alternative dispute resolution processes as well as court-ordered alternative dispute resolution processes depart from the "panel of neutrals" made available by LR 16.5(a)(3), the Court is not establishing by this Rule the "amount of compensation" (See 28 U.S.C. § 658) to be received by such persons, allowing that compensation to be freely negotiated, as in longstanding practice, by the parties.

The Alternative Dispute Resolution Act of 1998 also requires that the Court adopt appropriate processes for making neutrals available for use by the parties, and authorizes the use of Magistrate Judges for this purpose. (See Title 28 United States Code, Section 653) By this Rule, the Court expressly designates the full time Magistrate Judges of the District to be the panel of neutrals contemplated by the Act, and expressly makes them available to the parties for the purpose of conducting mediated settlement conferences in every civil case not otherwise exempted by local rule. The Act further requires that the court adopt rules for the disqualification of neutrals. To comply with this provision of the Act, the Court expressly incorporates by reference the provisions of Title 28 United States Code, Section 455.

The Act further requires that the court adopt rules to provide for the confidentiality of the alternative dispute resolution process and to prohibit disclosure of confidential dispute resolution communications. See Tile 28 United States Code Section 652(d). By Local Rule 16.5(c) the Court complies with this requirement of the Act.

LR 16.6 FINAL PRETRIAL CONFERENCE

(a) In every case not specified by LR 26.1(b)(1), the Court shall hold a final pretrial conference. The final pretrial conference required by this Rule may be combined with the settlement conference required by LR 16.5(a). In any event the conference must be held no earlier than 45 days before trial.

(b) At the final pretrial conference, the parties and the Court shall discuss:

(1) Stipulated and uncontroverted facts;

(2) List of issues to be tried;

(3) Disclosure of all witnesses;

(4) Listing and exchange of copies of all exhibits;

(5) Motions in limine, pretrial rulings, and, where possible, objections to evidence;

(6) Disposition of all outstanding motions;

(7) Elimination of unnecessary or redundant proof, including limitations on expert witnesses;

(8) Itemized statement of all damages by all parties;

(9) Bifurcation of the trial;

(10) Limits on the length of trial;

(11) Jury selection issues; and

(12) Any issue that in the Judge's opinion may facilitate and expedite the trial; for example, the feasibility of presenting trial testimony by way of deposition or by a summary written statement;

(c) If the case involves one or more claims relating to patents, and is to be tried to a jury, the parties shall confer with the objective of agreeing to a particular set of model jury instructions to be used as a template for each party's proposed jury instructions; and

(d) Following the final pretrial conference, the Court shall issue a final pretrial order, which shall set forth dates by which motions in limine shall be filed, date by which the disclosures of Fed. R. Civ. P. 26(a)(3) shall be made and dates by which the documents identified in LR 39.1 shall be filed and exchanged between counsel.

[Adopted effective November 1, 1996, Amended February 9, 2006]

1996 Advisory Committee's Note to LR 16.6

LR 16.6's requirement of a final pretrial conference is intended to facilitate the efficient trial of the case while minimizing the element of surprise. The Rule is also designed to provide some uniformity among the members of the Court with respect to the content of the final pretrial order.

2005 Advisory Committee's Note to LR 16.6(c)

The Committee recognizes that there are several model jury instructions that could be used as a template for proposed jury instructions. Specifically, model jury instructions issued by the United States Courts of Appeals for Fifth, Ninth, and Eleventh Circuits, the United States District Courts for the District of Delaware and the Northern District of California, the American Intellectual Property Law Association, and the Federal Circuit Bar Association might be appropriate.

LR 16.7 OTHER PRETRIAL CONFERENCES

In addition to the pretrial conferences required to be held pursuant to the foregoing Local Rules, a Judge or a Magistrate Judge may, upon motion of any party, or by stipulation of the parties, or upon the Court's own initiative, schedule a pretrial conference to consider any of the subjects specified in Fed. R. Civ. P. 16.

[Adopted effective November 1, 1996]

1996 Advisory Committee's Note to LR 16.7

LR 16.7 is designed to give Judges and Magistrate Judges maximum flexibility to schedule pretrial conferences at any time to consider any of the subjects contemplated by Fed. R. Civ. P. 16.

LR 17.1 SETTLEMENT OF ACTION OR CLAIM BROUGHT BY GUARDIAN OR TRUSTEE

In diversity actions brought on behalf of minors or wards or by a trustee appointed to maintain an action for death by wrongful act, the Court will follow the State of Minnesota's procedure applicable to such cases in approving settlements and allowing attorney's fees and expenses.

[Adopted effective February 1, 1991]

LR 23.1 DESIGNATION OF "CLASS ACTION" IN THE CAPTION

In any case sought to be maintained as a class action, the complaint, or other pleading asserting a class action, shall include next to its caption, the legend "Class Action".

[Adopted effective February 1, 1991]

LR 24.1 PROCEDURE FOR NOTIFICATION OF ANY CLAIM OF UNCONSTITUTIONALITY

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

(b) Failure to comply with this rule will not be grounds for waiving the constitutional issue or for waiving any other rights the party may have. Any notice provided under this rule, or lack of notice, will not serve as a substitute for, or as a waiver of, any pleading requirement set forth in the Federal Rules of Civil Procedure or in otherwise applicable statutes.

[Adopted effective February 1, 1991]

LR 26.1 DISCOVERY

(a) Required Disclosures [No Local Rule - see 2001 Advisory Committee Note]

(b) Discovery Scope and Limits [No Local Rule - see 2001 Advisory Committee Note]

(c) Protective Orders. [No Local Rule]

(d) Commencement of Discovery [No Local Rule - see 2001 Advisory Committee Note]

(e) Supplemental of Discovery [No Local Rule]

(f) Meeting of Parties; Early Meeting Request; Discovery Planning Report [Portions of Local Rule 26f have been deleted - see 2001 Advisory Committee Note]

(1) Any party may request a Fed. R. Civ. P. 26(f) meeting of the parties prior to the date on which Fed. R. Civ. P. 26(f) would otherwise require the meeting to be held. All other parties shall attend such a requested meeting provided:

(A) such request is made in writing at least 10 days in advance of the requested date for the meeting; and

(B) such request is made not less than 30 days after each defendant has answered, pled or otherwise responded to the action, but if significant delay is expected to occur before certain parties may be served such a request may go forward as to those parties who have been served. The Rule 26(f) meeting must take place at least 21 days before the initial pretrial conference is held. Failure by a party to attend a Rule 26(f) meeting of parties pursuant to this rule shall subject such party to such sanctions under Rule 37(a)(4) as the Court may deem appropriate. A reasonable request by a party for rescheduling of such a meeting is not a refusal to meet provided the party offers to meet with the other

parties on a date within 10 days of the date initially requested for the meeting.

(2) At the conference held pursuant to Fed. R. Civ. P. 26(f), in addition to the matters specified therein, the parties shall discuss and include in their written plan and report to the Court a recommendation regarding whether Alternative Dispute Resolution would be helpful to the resolution of the case.(see Form 3 at(I)(3)). The parties' Rule 26(f) report shall also include a proposed deadline for making discovery-related motions(see Form 3 at (d)(1)(A)).

[Adopted effective November 1, 1996; amended January 3, 2000; amended August 31, 2001]

2001 Advisory Committee's Note to LR 26.1

(1) The 1993 Amendments to the Federal Rules of Civil Procedure permitted district courts to exempt classes of cases from the "initial disclosure" rules. The 2000 Amendments to the Federal Rules of Civil Procedure remove the authorization for local-rule exemption. The Committee Notes to the 2000 Federal Rules of Civil Procedure Amendments state that the purpose of the amendments are to "establish a nationally uniform practice" for initial disclosures and to "restore national uniformity to disclosure practice." Accordingly, the local rule exemptions to initial disclosures are removed.

(2) The 1993 Amendments to the Federal Rules of Civil Procedure stated, "By order or by local rule, the court may alter the limits in these rules on the number of depositions and interrogatories and may also limit the length of depositions under Rule 30 and the number of requests under Rule 36." The 1996 Local Rules Amendments interpreted that language to permit limitations on discovery for certain categories of cases. The 2000 Federal Rules of Civil Procedure Amendments remove the authorization for local-rule limitations on discovery (except for limitations on Rule 36 Admissions). The Local Rules Advisory Committee interprets this amendment as removing the authorization for the categorical limitations on discovery by local rule. In addition, the 2000 Amendments appear to remove the authority to exempt certain cases by local rule (e.g., class actions) from the Federal Rules of Civil Procedure limits on interrogatories and depositions.

(3) Given the deletion of the remainder of 26.1(b), the Advisory Committee determined that there was no need for this cross-reference.

(4) The 1996 Local Rules permitted discovery in certain classes of cases to begin before the 26(f) meeting. This rule was authorized by FED.R.CIV.P. 26(d) which provided, "Except when authorized under these rules or by local rule, order, or agreement of the parties, a party may not seek discovery from any source before the parties have met and conferred as required by subdivision (f)." The 2000 Amendments to the Federal Rules of Civil Procedure remove the authority for local-rule modification of the general rule that discovery must be delayed until after the 26(f) meeting.

(5) The 2000 Amendments to the Federal Rules of Civil Procedure removed the authority for local rule exemptions from the 26(f) meeting requirement. Thus, those exemptions have been removed from the local rule. The 2000 Federal Rules of Civil Procedure Amendments lengthened the lead-time between 26(f) meeting and pretrial conference from 14 to 21 days. This change is reflected in the local rule. Nothing in the 2000 Amendments limits the district court's authority to clarify the means of scheduling a 26(f) conference or specify the content of the report to the court. Accordingly, these provisions of the local rule are unchanged.

LR 26.2 FORM OF CERTAIN DISCOVERY DOCUMENTS

Parties answering interrogatories under Fed. R. Civ. P. 33, requests for admissions under

Fed. R. Civ. P. 36, or requests for documents or other things under Fed. R. Civ. P. 34, shall repeat the interrogatories or requests being answered immediately preceding the answers.

[Adopted effective February 1, 1991; amended November 1, 1996]

LR 26.3 DISCLOSURE AND DISCOVERY OF EXPERT TESTIMONY

(a) As part of their Rule 26(f) conference, the parties shall discuss the disclosure and discovery related to any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence. In their report to the Court required by LR 16.2(a) the parties shall jointly propose a plan for the disclosure of the identity, and the disclosure or discovery of the substance of the testimony to be offered by such testifying experts.

(b) If the parties are unable to agree upon a plan for the disclosure and discovery of testifying experts and the substance of their testimony, they shall set forth in the joint report their respective proposals. The Court may make an order governing the process by which the identity of experts shall be disclosed and the substance of their testimony disclosed or discovered.

(c) Unless otherwise stipulated by the parties or ordered by the Court, disclosures and discovery regarding testifying experts are governed by Federal Rules of Civil Procedure 26(a)(2) and (b)(4).

[Adopted effective November 1, 1996]

1996 Advisory Committee's Note to LR 26.3

The new national rules relating to expert discovery were vigorously debated among the committee members. Those who supported new Federal Rule of Civil Procedure 26(a)(2) suggested that the timely exchange of detailed reports, as required by the new rule, would discourage parties from "bluffing" about their claims or defenses until the eleventh hour. The requirement that detailed expert reports be timely exchanged would encourage more prompt settlements of lawsuits. Supporters of the new national rules also observed that new Rule 26(b)(4), which permits depositions of experts without a Court order, simply conforms the rule to actual practice in Minnesota, where expert depositions have become fairly routine.

Opponents of the new rules expressed concern that they would significantly and needlessly increase the cost of discovery for a substantial proportion of lawsuits venued in federal court by requiring both a detailed report and a subsequent expert depositions. Opponents also argued that the new rule makes it more difficult to find persons willing to serve as experts, because many are reluctant to invest the time needed to prepare a report that conforms to the requirements of the new rule. Opponents argued that the old practice of giving summary descriptions of expert opinions in interrogatory answers drafted by lawyers functioned well (and continues to function well in state court) and therefore should not be modified.

The committee attempted to accommodate the concerns of both the proponents and opponents of the new national rules. The parties may agree to, and the Court may order, any form of expert disclosure and discovery, including but not limited to discovery in the manner it was conducted prior to the 1993 Amendments, discovery as specified in the National Rules as they now stand, or any other set of procedures that will advance the goals of the Federal Rules of Civil Procedure. These Local Rules create no preference or presumption for any particular form of expert disclosure and discovery. LR 26.3(a) as now drafted recognizes the power of the parties to fashion a disclosure and discovery plan designed to meet the needs of the individual case. For example, if the expense associated with the preparation of detailed reports would

unduly increase the cost of the case, the parties can agree to or the Court may order, a less expensive approach to expert discovery. Moreover, expert depositions are not "required" if the parties choose not to take them or the Court determines that they should be allowed only upon a showing of good cause. This approach is also consistent with the 1993 Advisory Committee Notes to the National Rules, which expressly recognize the ability of the parties to waive the requirement of a written report or to impose the requirement on additional persons who will provide opinion testimony under Fed. R. Evid. 702. If the parties are unable to agree upon an approach to expert discovery, as with other aspects of the discovery plan, **LR 26.3(b)** contemplates that the parties will set forth their respective proposals in the Rule 26(f) report. The Court will then decide which process will be employed to govern the discovery of the experts' opinions. In the absence of any stipulation, or case specific Court order, **LR 26.3(c)** provides that new Federal Rule of Civil Procedure 26(a)(2) and 26(b)(4) will govern.

LR 26.4 FILING OF DISCOVERY DOCUMENTS [No Local Rule - see 2001 Advisory Committee Note]

2001 Advisory Committee's Note to LR 26.4

Fed.R.Civ.P. 5(d) was amended in 2000, changing the default rule for the filing of discovery and disclosure documents. Prior to the amendment, discovery documents were required to be filed, unless the court ordered otherwise. Under the amendment, initial and expert disclosure documents and enumerated discovery documents are not to be filed until they are used in the proceeding, or the Court orders that they be filed. The 1991 and 1996 amendments to the local rule anticipated the 2000 Amendments in the national rule by restricting the filing of disclosure and discovery documents. In view of the restrictions in the national rule, the local rule is now superfluous, and has been eliminated.

LR 37.1 MOTIONS PRESENTING DISCOVERY DISPUTES

Except for motions made under LR 16.3, no motion for modification of discovery or disclosure requirements will be entertained unless it is accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the matter without Court action.

Motions to extend or modify the pretrial discovery schedule are governed by LR 16.3.

Requests for telephonic hearings are governed by LR 7.3.

Any motions presenting discovery disputes shall be served and filed prior to the discovery termination date established pursuant to LR 16.

[Adopted effective November 1, 1996]

1996 Advisory Committee's Note to LR 37.1

The language of LR 37.1 supplements provisions of the National Rules that require certification of good faith efforts to resolve discovery disputes. See, e.g., Fed. R. Civ. P. 26(c) and Fed. R. Civ. P. 37(a)(2)(A), 37(a)(2)(B), 37(a)(4)(A), and 37(d).

LR 37.2 FORM OF DISCOVERY MOTIONS

Any discovery motion filed pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure shall include, in the motion itself or in an attached memorandum, (a) a specification of the discovery in dispute, and (b) a verbatim recitation of each

interrogatory, request, answer, response, and objection which is the subject of the motion or a copy of the actual discovery document which is the subject of the motion. In the case of motions involving interrogatories, document requests or requests for admissions, the moving party's memorandum shall set forth only the particular interrogatories, document requests or requests for admissions which are the subject of the motion, the response thereto, and a concise recitation of why the response or objection is improper.

[Adopted effective February 1, 1991]

LR 38.1 NOTATION OF "JURY DEMAND" IN THE PLEADING

If a party demands a jury trial by indorsing it on a pleading, as permitted by Fed. R. Civ. P. 38(b), a notation shall be placed on the front page of the pleading, immediately following the title of the pleading, stating "Demand For Jury Trial" or an equivalent statement. This notation will serve as a sufficient demand under
Rule 38(b). Failure to use this manner of noting the demand will not result in a waiver under Rule 38(d).

[Adopted effective February 1, 1991]

LR 39.1 PREPARATION FOR TRIAL IN CIVIL CASES

(a) Setting the Trial Date. The Judge to whom the case is assigned shall notify counsel in cases set on the Judge's calendar at least 21 days in advance of the date the first case on the civil calendar is to be called. Cases on such calendar may be called on a peremptory basis. The case may be heard by any judge. For information on calendar matters, counsel shall contact the calendar clerk of the Judge who is to try the case.

(b) Documents to be Submitted for Trial. Unless otherwise ordered, counsel shall file and serve the following documents at least 10 days before the first case on the civil calendar is to be called for trial:

(1) Documents Required for All Trials

(A) Trial Brief.

(B) Exhibit List. A list of exhibits shall be prepared on a form to be obtained from the Clerk of Court. All exhibits shall be marked for identification with Arabic numbers and shall include the case number.

Example: Pltf. or Deft. #1

Civ. 3-84-2

(Multiple parties list name, e.g. Pltf. Smith #l)

These exhibits shall be made available for examination and copying at least 14 days prior to the date the first case on the civil calendar may be called for trial.

(C) Witness List. The list shall include a short statement of the substance of the expected testimony of each witness.

(D) List of Deposition Testimony. The list shall designate those specific parts of deposition to be offered at trial. Any party who wishes to object to deposition testimony shall submit a list of objections at least 5 days before the first case on the civil calendar is to be called for trial.

(E) Motions in Limine.

(2) Additional Documents for Jury Trials. In all jury trials, counsel shall file and serve the following documents in addition to the documents listed in LR 39.1(b)(1):

(A) Proposed Voir Dire Questions

(B) Proposed Jury Instructions

(i) In general. Each proposed instruction shall be numbered and on a separate page and shall contain citation to legal authority.

(ii) Patent cases. In trials that involve one or more claims relating to patents, in which the parties have agreed to a particular set of model jury instructions as set out in LR 16.6(c), the parties shall additionally file and serve those of their instructions that pertain to the claims relating to patents in the form of specific additions to and/or deletions from those model jury instructions.

(C) Proposed Special Verdict Forms

(3) Additional Documents for Non-Jury Trials. In all non-jury trials, counsel shall file and serve proposed findings of fact and conclusions of law in addition to the documents listed in LR 39.1(b)(1).

(c) Failure to Comply. See LR 1.3 for sanctions for failure to comply with this rule.

[Adopted effective February 1, 1991; amended November 1, 1996; amended May 17, 2004, amended February 9, 2006]

2005 Advisory Committee's Note to LR 39.1(b)(2)(B)(ii)

In general. Paragraph (b)(2)(B)(ii) sets outs a suggested practice in which the jury instructions of both parties relating to the scope, validity, enforcement, or unenforceability of patents is based on a single, common set of standard jury instructions. The handling of jury instructions has proven to require significant resources from both the parties and the Court. The instructions can be lengthy and detailed. In addition, the traditional process, by which the parties construct their proposed instructions in isolation from each other, presents inherent inefficiencies. It tends to cause the parties to suggest differing instructions even where they do not disagree over substance. In addition, it makes it difficult to identify the substantive points that the parties

actually dispute. The problems are especially acute in cases relating to patents.

The suggestion in paragraph (b)(2)(B)(ii) addresses these problems by encouraging the parties to present their proposed suggestions as additions to or deletions from a common set of standard instructions. Under this practice, the instructions proposed by the parties will agree unless at least one party takes the affirmative step of proposing a modification of the standard language. Presumably this will occur only where the party considers the matter to be worth addressing. As a result, aspects of the instructions over which the parties do not disagree, and which the parties consider routine, will be proposed in unmodified form in such a manner as to make the lack of dispute clear. Accordingly, the areas of true disagreement will be plainly visible. In this way, the paragraph should reduce the time and cost, for both the parties and the Court, of attending to jury instructions.

Various other districts have promulgated local rules that require or encourage the parties' proposed instructions to be related to a common set of standard instructions. The suggestion in paragraph (b)(2)(B)(ii) is similar to the more lenient of these rules.

Two-stage procedure; default standard instructions. Paragraph (b)(2)(B)(ii) operates in connection with paragraph (c) of Local Rule 16.6. Under the two paragraphs, the parties are to consult regarding the selection of a particular set of pattern jury instructions as part of the final pretrial conference. The Rule contemplates that the parties will, in most cases, be able to agree on a particular set of pattern jury instructions. In the event that they are unable to agree, however, the parties should expect that the Court may, on its own initiative, impose a set of common instructions on them.

Scope of requirement; included cases vs. included instructions. The suggestion in paragraph (b)(2)(B)(ii), and the related requirement to confer under paragraph (c) of Local Rule 16.6, are intended to apply to cases relatively broadly. Cases that are included under the Rule are any that involve a claim or defense relating to patents. This includes, but is not limited to, cases that include claims for patent infringement and/or declarations for patent non-infringement or invalidity. It also includes cases in which the claims may not "arise under" the law of patents strictly, but in which the claim or defense draws upon or involves a patent more tangentially. Examples of this latter type of case include, for example, claims for breach of contract, where the contract terms at issue refer to patents or patentable subject matter, or claims for violation of antitrust law where the accused conduct involves the use of a patent or patent rights.

At the same time, the suggestion in paragraph (b)(2)(B)(ii) actually to submit instructions in terms of additions and/or deletions from a standard text is narrower. It applies only to those instructions, in an included case, that relate to the scope, validity, enforcement, or unenforceability of a patent. This is less than all the issues that may exist in an included case, and it is contemplated that, under the usual circumstances, only some of the instructions in an included case will be of the type that the Rule suggests be presented as additions and/or deletions. Instructions not included in the suggestion can be presented in any acceptable manner.

Freedom to propose particular instructions; consistency with Fed. R. Civ. P. 51. Under the practice suggested in paragraph (b)(2)(B)(ii), all parties retain the freedom to propose whatever instructions they choose. The practice does not restrict the substance of what the parties must propose; rather, it addresses only the form. The paragraph contemplates that parties who disagree with a particular standard instruction have the freedom to alter it if necessary to lay out the text of the instruction that they wish to propose. In this way, paragraph (b)(2)(B)(ii) is fully consistent with the parties' general freedom to present jury instructions, as set out for example in Fed. R. Civ. P. 51.

LR 39.2 CONDUCT OF TRIALS

(a) Conduct of Counsel During Trial.

(1) Counsel, when addressing the Court, shall rise, and all statements and communications by counsel to the Court shall be clearly and audibly made from the counsel's table or the lectern. Counsel shall not approach the Judge's bench, while Court is in session, for private communications unless granted permission or requested to do so by the Judge.

(2) The examination of witnesses shall be conducted from the lectern, except when necessary to approach the witness or the reporter's table for the purpose of presenting or examining exhibits.

(3) On the trial of an issue of fact or the presentation of a motion or other matter, only one attorney for each party shall examine or cross-examine any witness or present argument to the Court unless otherwise ordered or specifically permitted by the Court.

(b) Examination of Jurors.

(1) Unless otherwise ordered by the Court, the voir dire examination of trial jurors shall be conducted by the Court. Counsel may submit questions which they desire the Court to ask the jurors either prior to the trial or in the manner provided in a pretrial order. In both criminal and civil cases, a full panel, normally 28 in number in a criminal case, shall first be called, sworn, and qualified before any peremptory challenges are exercised by any party.

(2) Peremptory challenges in a civil case shall be exercised by the defendant and plaintiff alternately striking one each until each side has exhausted or waived its peremptory challenges. In third-party civil actions, peremptory challenges shall be exercised by the defendant, the third-party defendant, and the plaintiff striking one each until each party has exhausted or waived its peremptory challenges.

(3) Peremptory challenges in a normal criminal case with 28 jurors in the box shall be exercised in the following order: three by defendant, two by the government; three by defendant, two by the government; two by defendant, one by the government; and two by defendant, one by the government.

(c) Opening Statements and Final Arguments.

(1) In a civil case, after a jury has been selected, the party having the affirmative of the issue may open the case by stating generally what that party expects to prove or may waive such opening statement and be prepared to proceed with the production of evidence. Whether or not the party having the affirmative of the issue makes an opening statement or waives the same, the opposing party or parties, if an opening statement is desired, shall make the same forthwith and before the production of any evidence or shall be deemed to have waived the same, unless leave of court be obtained to proceed otherwise. In criminal cases, after a jury has been selected, the defendant may make an opening statement prior to the receipt of any evidence or may reserve such, if so desired, until the completion of the

prosecution's case.

(2) In final arguments, counsel shall not be allowed to exceed one hour unless the Court on request grants additional time. In civil cases the party having the affirmative of the issue shall have the closing final argument and the other party shall proceed first with no rebuttal. In criminal cases, the government shall make its final argument first, then the defendant shall argue next, with an opportunity to the government for brief rebuttal.

[Adopted effective February 1, 1991]

LR 40.1 INDIVIDUAL CALENDAR SYSTEM

(a) Assignment of Cases. Each case or matter, upon being filed with the Clerk, shall be assigned to a specific Judge by a method of random allocation as determined from time to time by order of the Court. Each Judge, unless otherwise ordered by the Judge, shall thereafter hear all matters and preside at all times on said case until the same is finally determined.

When a litigant requests temporary or preliminary relief in the form of an order to show cause, a temporary restraining order, or otherwise, litigant's counsel shall file the case or matter with the Clerk, obtain an assignment of a Judge, and present the request, motion, or petition to the assigned Judge or, if the Judge is absent, to any other Judge the assigned Judge may have designated to serve during the absence.

(b) Scheduling of Trials and Motions. Each Judge shall call a calendar of jury cases for trial at such time as the Judge may determine, arranging as nearly as possible jury trials at the same time as do the other Judges so as most efficiently to employ a juror pool. Each Judge shall arrange a trial calendar of non-jury cases and suitable times for hearing of all motions and other non-jury matters.

(c) Continuance of a Case. See LR 6.1

[Adopted effective February 1, 1991]

1991 Advisory Committee's Note to LR 40.1

LR 40.1 is the same as 1987 Local Rule 2, except that, to conform with the uniform numbering system, part (C) of 1987 Local Rule 2, dealing with continuance of cases, was re-numbered as LR 6.1.

This rule is not intended to modify the procedures for recusal or the reassignment of related cases. The random allocation order is on file with the Clerk of Court and is available to counsel.

LR 47.2 CONTACTS WITH JURORS

Except by leave of Court, no party, or any investigator, attorney, or other person acting for a party, shall interview, examine, or question any grand or trial juror while such juror is

still subject to call or recall during the juror's term of service. Nothing in this rule prohibits federal law enforcement authorities from contacting jurors in extraordinary circumstances without Court approval pursuant to a jury tampering or other related criminal investigation. In such an extraordinary circumstance, the government shall notify the Court as soon as possible.

[Adopted effective February 1, 1991]

LR 54.3 TIME LIMIT FOR MOTION FOR AWARD OF ATTORNEY'S FEES

(a) Applications for fees under the Equal Access to Justice Act shall be filed within 30 days of final judgment as defined by 28 U.S.C. § 2412.

(b) In all other cases in which attorney's fees are sought, the party seeking an award of fees shall:

(1) Within 30 days of entry of judgment in the case, file and serve an itemized motion for the award of fees; or,

(2) Within 15 days after the entry of judgment in the case, serve on all counsel of record and deliver to the Clerk of Court a Notice of Intent to Claim an Award of Attorney's Fees. The Notice shall specify the statutory or other authority for the award of fees and shall identify the names of all counsel who rendered the legal services upon which the claim is based. The Notice may propose a schedule for the presentation of motions for attorney's fees. Thereafter, the Court, or the Clerk of Court acting at the Court's direction, shall issue an order setting a schedule for the submission and consideration of the motion for attorney's fees and all supporting documentation.

(3) For good cause shown, the Court may excuse failure to comply with LR 54.3(b).

[Adopted effective February 1, 1991; amended November 1, 1996; amended January 3, 2000; amended May 17, 2004]

1991 Advisory Committee's Note to LR 54.3

In general, applications for attorney's fees should be submitted promptly after a determination of the case on the merits. Prompt submission aids the trial Judge, whose memory of the work of the lawyers is fresh, and facilitates appellate consideration of the whole controversy. As a general procedure, then, the rule requires attorney's fees motions to be submitted within 30 days of the entry of judgment.

The Equal Access to Justice Act, 28 U.S.C. § 2412, requires (and permits) applications for fees to be made "within thirty days of final judgment in the action". "Final judgment" is defined as "a judgment that is final and not appealable, and includes an order of settlement". It is clear that the EAJA contemplates that fee applications will be made either after appeal, or after the time for appeal has run. The rule adopts the statutory time and definitions for EAJA petitions.

Some circumstances (in addition to those relating to the EAJA) may call for a different schedule for the submission of fee motions. For example, if post-judgment motions may significantly affect the results of the case (and thus the extent of the award), it may be more fair or more efficient to postpone submission and consideration of the fee motions until after those motions are decided. Additionally, in rare instances, delaying

the fee consideration until after an appeal is determined may promote justice and efficiency. Subparagraph (b)(2) provides a procedure by which a party seeking fees can ask the Court to establish an alternate schedule. The Notice of Intention to Claim an Award of Attorney's Fees tolls the time for submitting a fee motion, pending the establishment of the schedule by the district court. The drafters contemplate that the Court will, in its schedule, provide adequate time for the preparation and submission of the detailed fee petition.

Finally, Section (b)(3) provides that the Court may excuse failure to abide by the provisions of the rule, for good cause shown. This section does not apply to EAJA petitions, which are governed by the statutory time limit.

LR 58 - FIXED-SUM PAYMENT IN PETTY OFFENSE MATTERS

(a) Authority To Accept Fixed-Sum Payment (In General). Pursuant to Fed. R. Crim. P. Rule 58(d)(1), ("Paying a Fixed Sum in Lieu of Appearance"), and in accordance with the provisions of this Rule, all United States Magistrate Judges and the Clerk of Court within this District are hereby designated and authorized to accept fixed-sum payments in lieu of the Defendant's appearance in petty offense cases (see 18 U.S.C. § 19), whether originating under federal statute or regulation or applicable state statute by virtue of the Assimilated Crimes Act, 18 U.S.C. § 13.

(b) Cases In Which Fixed-Sum Payment May Be Accepted (Fixed-Sum Payment Schedule). The Court's full-time Magistrate Judges shall prepare and maintain a schedule of petty offenses for which a fixed-sum payment may be accepted in lieu of the Defendant's personal appearance in petty offense cases, which shall specify the amount of the fixed-sum payment required for each listed offense. The fixed-sum payment schedule may include, without being limited to, offenses charged by the following federal agencies:

* The Bureau of Land Management
* The United States Air Force
* The United States Army Corps of Engineers
* The National Park Service
* The United States Department of Veterans Affairs
* The United States Fish and Wildlife Service
* The United States Forest Service
* The United States General Services Administration (Federal Protection Services)

The fixed-sum payment schedule shall be filed in the Clerk's offices throughout this District and upon filing shall become effective. A fixed-sum payment, in lieu of a Defendant's personal appearance, is permissible only for alleged offenses that are specifically listed in the fixed-sum payment schedule. The fixed-sum payment schedule may be amended from time to time by the Magistrate Judges by filing with the Clerk's offices.

(c) Effect Of Payment. A Defendant who pays a fixed-sum payment for a petty offense pursuant to this Rule waives the right to contest the charged offense.

(d) Non-appearance. If a Defendant does not pay a fixed-sum payment pursuant to this Rule, and if the Defendant also fails to make a required personal appearance for

a charged petty offense, then the Magistrate Judge, at his or her discretion, may take any of the following actions:

(i) the Magistrate Judge may impose any punishment, including fine, imprisonment or probation, within the limits established by law upon conviction or after trial;

(ii) the Magistrate Judge may direct that a new summons be issued, ordering the Defendant to appear on a new date;

(iii) the Magistrate Judge may order that a warrant be issued for the Defendant's arrest.

(e) Aggravated Offenses. If, within the discretion of the law enforcement officer, a petty offense is of an aggravated nature, the law enforcement officer may require the Defendant to personally appear in court, and any punishment including fine, imprisonment or probation, may be imposed within the limits established by law upon conviction or after trial.

(f) Personal Appearance Required. Nothing contained in this Rule shall prohibit law enforcement officers from arresting a person for the commission of any offense, including those for which fixed-sum payment might otherwise be paid, and requiring the person charged to appear before a United States Magistrate Judge or, upon arrest, taking the person, without unnecessary delay, before a United States Magistrate Judge.

LR 67.1 MONEY PAID INTO COURT

Unless otherwise ordered by the Court, all monies coming into the registry of this Court shall be deposited in an interest bearing account in a depository approved by the Treasurer of the United States, subject to withdrawal by checks drawn by the Clerk of Court pursuant to orders of the Court. The Clerk of Court shall deduct from the income earned on the investment a registry fee, as set by the Director of the Administrative Office of the United States Courts. The fee will be deducted when funds are withdrawn and distributed. For further registry fee information, refer to the Guide to Judiciary Policy and Procedures Chapter VII, Financial Management, Part I, Registry Funds.

[Adopted effective February 1, 1991; amended October 29, 2003]

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

Any person seeking withdrawal of money that was deposited in the Court pursuant to Fed. R. Civ. P. 67 and which was subsequently deposited into an interest-bearing account or instrument as required by Fed. R. Civ. P. 67, shall provide, on a separate paper attached to the motion seeking withdrawal of the funds, the social security number or tax identification number of the ultimate recipient of the funds. This separate paper shall be forwarded by the Court directly to the institution holding the money.

[Adopted effective February 1, 1991]

LR 71.1 CONDEMNATION CASES

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

[Adopted effective February 1, 1991]

LR 72.1 MAGISTRATE JUDGE DUTIES

(a) In every case to which they are assigned, each United States Magistrate Judge appointed by this court is hereby designated to perform the following duties authorized by Title 28 United States Code, Section 636:

i. Conduct scheduling conferences and enter a pretrial schedule;

ii. Hear and determine any pretrial matter pending before the court, except: A motion for injunctive relief; for judgment on the pleadings; for summary judgment; to dismiss or to permit maintenance of a class action; to dismiss for failure to state a claim upon which relief can be granted; or to involuntarily dismiss an action;

iii. Conduct hearings, including evidentiary hearings, and submit to the District Judge assigned to the case, proposed findings of fact and recommendations for the disposition of:

(1) dispositive pretrial motions in criminal cases, including but not limited to motions to dismiss or quash an indictment or information made by a defendant, and motions to suppress evidence;

(2) applications for relief under Title 28 United States Code, Sections 2241 and 2254;

(3) prisoner petitions challenging conditions of confinement; and

(4) motions for summary judgment in Social Security appeals filed pursuant to Title 42 United States Code, Section 405;

iv. Conduct arraignments in criminal cases;

v. Conduct settlement conferences in civil cases; and

vi. Conduct trials of persons accused of, and sentence persons convicted of petty offenses, and with the consent of the defendant, other misdemeanors committed within this District, as allowed by Title 18 U.S.C. §3401(a).

(b) Upon specific designation by the District Judge to whom the case is assigned, each United States Magistrate Judge appointed by this Court may perform any of the duties authorized by Title 28 United States Code, Section 636(b). In discharging any such duties the Magistrate Judge shall conform to the Local Rules of this Court and the instructions of the District Judge to whom the case is assigned.

(c) Consent Jurisdiction

i. Upon the consent of the parties, each full-time United States Magistrate Judge appointed by this Court is specially designated to conduct any or all proceedings in a jury or non-jury civil matter and order the entry of judgment in the case.

ii. The Clerk of Court shall, at the time the action is filed, notify the parties of the availability of a Magistrate Judge to exercise such jurisdiction. Thereafter, either the District Judge or the Magistrate Judge may again advise the parties of the availability of the Magistrate Judge, but in so doing, shall advise the parties that they are free to withhold consent without adverse substantive consequences.

LR 72.2 REVIEW OF MAGISTRATE JUDGE RULINGS

(a) Nondispositive Matters.--

A Magistrate Judge to whom a pretrial matter not dispositive of a claim or defense of a party is referred shall promptly conduct such proceedings as are required and when appropriate enter into the record a written order setting forth the disposition of the matter. Within 10 days after being served with a copy of the Magistrate Judge's order, unless a different time is prescribed by the Magistrate Judge or a District Judge, a party may serve and file objections to the order; a party may not thereafter assign as error a defect in the Magistrate Judge's order to which objection was not timely made.

A party may respond to another party's objections within 10 days after being served with a copy thereof. Any objections or responses to objections filed under this rule shall not exceed 3,500 words counted in accordance with Rule 7.1 and must comply with all other requirements contained in Rule 7.1(c) and (e).

The District Judge to whom the case is assigned shall consider such objections and shall modify or set aside any portion of the Magistrate Judge's order found to be clearly erroneous or contrary to law. The District Judge may also reconsider any matter *sua sponte*.

(b) Dispositive Matters

A Magistrate Judge assigned without consent of the parties to hear a pretrial matter dispositive of a claim or defense of a party or a prisoner petition challenging the conditions of confinement shall promptly conduct such proceedings as are required. A record shall be made of all evidentiary proceedings before the Magistrate Judge, and a record may be made of such other proceedings as the Magistrate Judge deems necessary. The Magistrate Judge shall file with the Clerk of Court a recommendation for disposition of the matter, including proposed findings of fact when appropriate.

A party objecting to the recommended disposition of the matter shall promptly arrange for the transcription of the record, or portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the District Judge otherwise directs. Within 10 days after being served with a copy of the recommended disposition, unless a different time is prescribed by the Magistrate Judge or a District Judge, a party may serve and file specific, written objections to the proposed findings and recommendations. A party may respond to another party's objections within 10 days after being served with a copy thereof. Any objections or responses to objections filed under this rule shall not exceed 3,500 words counted in accordance with Rule 7.1 and must comply with all other requirements contained in Rule 7.1(c) and (e).

The District Judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the Magistrate Judge's disposition to which specific written objection has been made in accordance with this rule. The District Judge, however, need not normally conduct a new hearing and may consider the record developed before the Magistrate Judge and make a determination on the basis of that record. The District Judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the Magistrate Judge with instructions.

(c) Consent of the Parties

In proceedings where the Magistrate Judge has been designated to exercise civil jurisdiction pursuant to the consent of the parties, in accordance with Title 28, U.S.C. Section 636(c), appeal from a judgment entered upon direction of a Magistrate Judge will be to the appropriate Court of Appeals as it would from a judgment entered upon direction of the District Judge.

1991 Advisory Committee's Note to LR 72.1(b)(2) and LR 72.1(c)(2)

The Advisory Committee does not intend to require or encourage the filing of briefs accompanying objections to decisions by the Magistrate Judges. Ordinarily, the briefs submitted to the Magistrate Judge are sufficient for the district Judge to decide on objections. However, this rule gives the objecting party the option of filing a brief when the objecting party believes that special circumstances justify doing so.

The time period for appeal under LR 72.1(b) runs from the "entry of the Magistrate Judge's order". The time period for objecting under LR 72.1(c) runs from "being served with" a copy of the findings, recommendations, or report of the Magistrate Judge. This difference in language appears in Fed. R. Civ. P. 72(a) and Fed. R. Civ. P. 72(b), so the committee reluctantly preserved this distinction in the local rules.

This rule applies to objections to decision of Magistrate Judges under Fed. R. Civ. P. 72. It does not affect practice in appeals from trials by consent under Fed. R. Civ. P. 73-75. See Fed. R. Civ. P. 75(c), which

provides time lines for filing briefs in proceedings on appeal from Magistrate Judges to district Judges under Fed. R. Civ. P. 73(d).

2005 Advisory Committee's Note to LR 72.1 and LR 72.2

This Rule was substantially restructured in 2005 to accommodate various changes made over the years to the Magistrate Judge Act, Title 28 United States Code, Section 636 and to Federal Rules of Civil Procedure 72 and 73.

The Rule contemplates that the duties described in Local Rule 72.1. a. will be automatically exercised by the Magistrate Judge in every case to which he or she is assigned without any further direction or reference by the District Court Judge.

In any individual case, pursuant to Local Rule 72.1 b, the District Judge to whom the case is assigned may also designate a Magistrate Judge to perform any of the other duties described in the Magistrate Judge Act. The Court and the Committee intend that these duties include the full range of duties permitted by the Act, Title 28 United States Code, Section 636, and may include but are not limited to: Serving as a special master; taking a jury verdict in the absence of the District Judge; conducting hearings and submitting to the District Judge assigned to the case proposed findings of fact and recommendations for the disposition of dispositive pretrial motions in civil cases; receiving grand jury returns pursuant to Fed. R. Crim. P. 6(f); issuing writs or other process necessary to obtain the presence of parties or witnesses or evidence needed for Court proceedings; and performing any other additional duties as are not inconsistent with the Constitution and laws of the United States @ Title 28 United States Code, Section 636(b)(3).

[Adopted effective February 1, 1991; amended May 17, 2004, amended May 16, 2005]

LR 79.1 CUSTODY AND DISPOSITION OF RECORDS, EXHIBITS AND DOCUMENTS UNDER SEAL

(a) Custody of the Clerk. All exhibits, including models and diagrams introduced in evidence, upon the hearing of any cause or motion, shall be delivered to the Clerk, who shall keep the same in custody, except as otherwise ordered by the Court. All exhibits received in evidence that are in the nature of narcotic drugs, legal or counterfeit money, firearms, or contraband of any kind may be entrusted to the custody of the arresting or investigative agency of the government pending disposition of the case and for any appeal period thereafter.

(b) Withdrawal of Original Records and Papers. Except as provided in subsections (c),(d) and (e) hereof, no original pleading, paper, record, model, or exhibit shall be taken from the custody of the Clerk or other officer of this Court except (1) upon order of the Clerk of this Court, and (2) upon leaving a proper receipt with the Clerk or officer.

(c) Documents Subject to a Protective or Confidentiality Order. Original Documents filed subject to a protective or confidentiality order shall be separately stored and maintained by the Clerk and shall not be disclosed or otherwise made available to any person except as provided by the terms and conditions of the relevant order.

(d) Removal of Models, Diagrams, Exhibits and Documents under Seal. All models, diagrams, exhibits and documents subject to a protective or confidentiality order remaining in the custody of the Clerk shall be taken away by the parties within four months after the case is finally decided unless an appeal is taken. In all cases in

which an appeal is taken, they shall be taken away within 30 days after the filing and recording of the mandate of the Appellate Court finally disposing of the cause. On motion of any party, or on the request of any nonparty, or on the Court's own initiative, the court may order that any model, diagram, exhibit or document shall be retained by the Clerk for such longer period of time as may be determined by the court, notwithstanding any of the foregoing requirements of this paragraph (d).

(e) Other Disposition by the Clerk. When models, diagrams, exhibits and documents subject to a protective or confidentiality order in the custody of the Clerk are not taken away within the time specified in the preceding paragraph of this rule, it shall be the duty of the Clerk to notify counsel in the case of the requirements of this rule. Any articles, including documents subject to a protective or confidentiality order, which are not removed within 30 days after such notice is given shall be destroyed by the Clerk, unless otherwise ordered by the Court.

[Adopted effective February 1, 1991; amended November 1, 1996; amended May 1, 2000]

1996 Advisory Committee's Note to LR 79.1

To facilitate reference, the portion of the 1991 version of LR 79.1 that relates to filing of discovery documents has been moved to LR 26.4.

LR 80.1 COURT REPORTERS' TRANSCRIPTS

(a) Filing of all Transcripts Made.

(1) When any official court reporter employed by the judiciary has completed the preparation of any transcript of any Court proceeding, the reporter shall promptly file electronically a certified copy thereof, in accordance with 28 U.S.C. § 753(b), unless otherwise ordered by the Court.

(2) When any official court reporter, other than a court reporter employed by the judiciary, has completed the preparation of any transcript of any Court proceeding, the reporter shall promptly file with the office of the Clerk of Court a certified copy thereof in accordance with 28 U.S.C. § 753(b); the Clerk shall electronically file the copy of the official transcript provided by the court reporter, unless otherwise ordered by the Court.

(b) Restriction After Transcript Filed.

(1) Access to a transcript provided to the Court by a court reporter will be restricted in accordance with this.

(A) Transcripts of sealed proceedings or filed in sealed cases shall not be made available to the public, electronically or otherwise, unless otherwise ordered by the Court.

(B) Transcripts of criminal voir dire proceedings shall not be made available to the public, electronically or otherwise, unless otherwise

ordered by the Court.

(C) Remote electronic access to transcripts of civil voir dire proceedings shall remain restricted to the users identified in subsection (b)(2) of this rule indefinitely, unless otherwise ordered by the Court.

(D) Access to all other transcripts will be restricted for a period of 90 days after the transcript is filed by the court reporter or the Clerk of Court.

(2) Unless otherwise ordered by the Court, during the 90-day restriction period the following will have access to the transcript in CM/ECF:

(A) Court staff;

(B) Public terminal users in the Clerk's Office, for inspection only;

(C) Attorneys of record or parties who have purchased the transcript from the court reporter; and

(D) Other persons as directed by the Court, e.g., appellate attorneys.

(3) PACER fees will apply at all times when the transcript is remotely accessed electronically except when the transcript is accessed by Court staff or at the public terminals in the Clerk's Office.

(4) A copy of any transcript, except transcripts that are not publicly available, may be purchased from the court reporter at the rate established by the Judicial Conference at any time.

(c) Transcript Available After 90-Day Restriction Period.

(1) Unless remote electronic access to the transcript is otherwise restricted by this rule, after the 90-day restriction period has ended and all pending motions related to the transcript are resolved, the original transcript or the redacted transcript if redaction occurred will be available for inspection and copying at the Clerk's Office and for downloading from the Court's CM/ECF system through the judiciary's PACER system, unless otherwise ordered by the Court.

(2) If redaction occurred, the Clerk will maintain the original un-redacted electronic version of the transcript as a restricted document in accordance with subsection (b)(2) of this rule, except that the restricted document will be available to view and copy in the Clerk's Office, unless otherwise ordered by the Court.

(d) Transcript Fees.

The court reporter shall not be required to undertake the making of a typed transcript for parties other than the Court without payment, nor to furnish such

transcript prior to the full payment therefor, except as otherwise ordered by the Court for in forma pauperis cases.

A current schedule of transcript fees, as established by the Judicial Conference, is on file in the Clerk's Office and is available from the official court reporters.

[Adopted effective February 1, 1991; amended April 6, 2004; amended May 12, 2008; amended August 11, 2008]

2008 Advisory Committee's Note to LR 80.1

LR 80.1 does not apply to deposition transcripts.

LR 83.2 FREE PRESS - FAIR TRIAL PROVISIONS

(a) Duty of Counsel. It is the duty of a lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by any means of public communication, in connection with pending or imminent litigation with which the lawyer or law firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(1) Investigation Stages. A lawyer participating in or associated with a grand jury or other pending investigation of any criminal matter shall refrain from making any extra-judicial statement which a reasonable person would expect to be disseminated by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or to otherwise aid in the investigation.

(2) Pretrial Stages. From the time of an arrest, the issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or the disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of extra-judicial statements which a reasonable person would expect to be disseminated by any means of public communication, relating to that matter and concerning:

(A) The prior criminal record (including arrests, indictments or other charges of crime) or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the

accused's name, age, residence, occupation, and family status, and, if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in the apprehension of the accused or to warn the public of any dangers the accused may present;

(B) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(C) The performance of any examinations or tests, or the accused's refusal or failure to submit to an examination or test;

(D) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;
(E) The possibility of a plea of guilty to the offense charged or a lesser offense; and

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

The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting office or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission, or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charge.

(3) During Trial. During the trial of any criminal matter including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extra-judicial statement or interview relating to the trial or to the parties or issues in the trial, which a reasonable person would expect to be disseminated by any means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that the lawyer may quote from or refer

without comment to public records of the Court in the case.

(4) Other Proceedings. Nothing in this rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders; to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies; or to preclude any lawyer from replying to charges of misconduct that are publicly made against him or her.

(b) Duty of Courthouse Supporting Personnel. All courthouse supporting personnel -- including, among others, marshals, deputy marshals, court clerks, bailiffs, and court reporters and employees or subcontractors retained by court-appointed official reporters -- are prohibited from disclosing to any person, without authorization by the Court, information relating to a pending grand jury proceeding or criminal case that is not a part of the public records of the Court. The divulgence of information concerning grand jury proceedings, arguments and hearings held in chambers or otherwise outside the presence of the public is also forbidden.

(c) Special Order of the Court. In a widely publicized or sensational case, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extra-judicial statements by parties and witnesses which are likely to interfere with the rights of the accused to a fair trial by an impartial jury; the seating and conduct in the courtroom of spectators and news media representatives; the management and sequestration of jurors and witnesses; and any other matters which the Court may deem appropriate for inclusion in such an order. Such special order may be addressed to some or all of the following subjects:

(1) A proscription of extra-judicial statements by participants in the trial, including lawyers, parties, witnesses, jurors, and court officials which might divulge prejudicial matter not of public record in the case;

(2) Specific directives regarding the clearing of entrances to and hallways in the courthouse and respecting the management of the jury and witnesses during the course of the trial so as to avoid their mingling with or being in the proximity of reporters, photographers, parties, lawyers, and others, both in entering and leaving the courtroom and courthouse and during the recesses in the trial;

(3) Specific direction that the jurors refrain from reading, listening to, or watching news reports concerning the case, and that they similarly refrain

from discussing the case with anyone during the trial and from communicating with others in any manner during their deliberations;

(4) Sequestration of the jury on motion of either party or the Court, without disclosure of the identity of the movant;

(5) Direction that the names and addresses of jurors or prospective jurors not be publicly released except as required by statute, and that no photograph be taken or sketch made of any juror within the environs of the Court;

(6) Insulation of witnesses from news interviews during the trial period; and

(7) Specific provisions regarding the seating of spectators and representatives of news media, including:

(A) An order that no member of the public or news media representative be at any time permitted within the bar railing; and

(B) The allocation of seats to news media representatives in cases where there is an excess of requests, taking into account any pooling arrangements that may have been agreed to among the news media personnel.

The above list of subjects is not intended to be exhaustive, but is merely illustrative of subject matters which might appropriately be dealt with in such an order. However, special orders which would prohibit representatives of the news media from broadcasting or publishing any information in their possession relating to a criminal case are inappropriate and nothing in this rule authorizes such an order.

(d) Closure of Pretrial Proceedings. Unless otherwise provided by law, all preliminary criminal proceedings, including preliminary examinations and hearings on pretrial motions, shall be available for attendance and observation by the public; provided that, upon motion made or agreed to by the defense, the Court, in the exercise of its discretion, may order a pretrial proceeding be closed to the public in whole or in part, on the grounds:

(1) That there is a reasonable likelihood that the dissemination of information disclosed at such proceeding would impair the defendant's right to a fair trial; and

(2) That reasonable alternatives to closure will not adequately protect

defendant's right to a fair trial.

If the Court so orders, it shall state for the record its specific findings concerning the need for closure.

(e) Photographic and Recording Equipment. No cameras, whether film, video, or any other photographic means, shall be permitted in the courthouse, except that a Judge of this Court may authorize still or video photography of a ceremonial procedure in the courthouse.

Sound recording devices, including telephonic devices, such as pagers and other receiving, transmitting or enhancement devices, may be brought into the courthouse, but must be inoperative and unobtrusive at all times they are in a courtroom or in any adjacent area where their operation could be disruptive to any judicial business or proceeding.

The U.S. Marshal or designee court security officers are authorized to exclude from any courtroom, prohibit from the courthouse, or confiscate any devices the officer has reason to believe violates this rule.

All electronic devices shall be subject to visual and/or electronic inspection by the U.S. Marshal or designee court security officers at any time, and such inspection may include a required demonstration by the person in possession that it is functional.

[Adopted effective February 1, 1991; amended November 1, 1996]

LR 83.5 BAR ADMISSION

(a) Roll of Attorneys. The bar of this Court consists of those attorneys admitted to practice before this Court who have taken the oath prescribed by the rules and have paid to the Clerk such fees as the District Court or the Judicial Conference may prescribe from time to time. No person, unless duly admitted to practice in this Court, shall be permitted to appear and participate in the trial of any action or the hearing of any motion except in his or her own behalf or by special permission of the Court or as provided in subdivisions (c), (d), or (e) of this rule.

Attorneys admitted to the bar of the United States District Court must promptly notify the Clerk of Court in writing of any change in their name, mailing address, law firm affiliation, and telephone number.

(b) Eligibility. Attorneys who have been admitted to practice before the Supreme

Court of this state are eligible for admission to the bar of this Court.

(c) Procedure for Admission. Each applicant for admission to the bar of this Court shall file with the Clerk of this Court a written petition setting forth residence and office addresses, all Courts in which the attorney has been admitted to practice, legal training and experience at the bar, and a certification that the applicant has read and is familiar with the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Local Rules of this Court. The petition shall be accompanied by the certificates of two members of the bar of this Court stating where and when they were admitted to practice in this Court, how long and under what circumstances they have known the petitioner, and what they know of petitioner's character and experience at the bar. The Clerk shall examine the petition and certificate, and, if in compliance with this rule, the petition for admission shall be presented to a Judge of this Court. When a petition is presented, one of the members of the bar of this Court shall move the admission of the petitioner. If admitted, the petitioner shall in open Court take an oath to support the Constitution and laws of the United States, to discharge faithfully the duties of a lawyer, to behave uprightly and according to law and the recognized standards of ethics of the profession, and to comply with the rules of professional conduct as adopted by this Court. The petitioner shall pay to the Clerk such fee as the District Court or the Judicial Conference may prescribe from time to time.

(d) Nonresident Attorneys. Any attorney residing outside of this state and admitted to practice before and then in good standing in another United States District Court, but not admitted to practice in the Supreme Court of this state, may, upon oral or written motion of a member of the bar of this Court, be permitted by this Court to appear and participate as an attorney in the trial of any action or the hearing on any motion, petition or other proceeding then pending before this Court, but only if the attorney associates with an active member in good standing of the bar of this Court who shall participate in the preparation and trial of the case or presentation of the matter involved and on whom service of all papers may be made. The attorney with whom a non-member of the bar associates shall be a Minnesota resident unless the Court upon motion approves an association with a non-resident. Motions for pro hac vice admission must be accompanied by a signed affidavit by the member in good standing of the bar of this Court and the attorney to be admitted pro hac vice on the Motion for Admission Pro Hac Vice from supplied by the Clerk of this Court and payment of the pro hac vice admission fee as may be set from time to time by the court.

(e) Government Attorneys. Attorneys admitted to practice in a United States District Court, but not qualified under this rule to practice in the District of Minnesota, may, nevertheless, if they are representing the United States of

America or any officer or agency thereof, practice before this Court in any action or proceeding in this Court in which the United States or any officer or agency thereof is a party.

[Adopted effective February 1, 1991; amended December 5, 2008]

LR 83.6 ATTORNEY DISCIPLINE

(a) Attorneys Convicted of Crimes.

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

(2) The term "serious crime" shall include any felony or any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

(3) A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.

(4) Upon the filing of a certified copy of a judgment of conviction of any attorney for a serious crime, the Court shall in addition to suspending that attorney in accordance with the provisions of this rule, also refer the matter to counsel for the institution of a disciplinary proceeding before the Court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the

conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

(5) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime," the Court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the Court; provided, however, that the Court may in its discretion make no reference with respect to convictions for minor offenses.

(6) An attorney suspended under the provisions of this rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

(b) Discipline Imposed by Other Courts.

(1) Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth, or possession of the United States; promptly inform the Clerk of this Court of such action. Unless otherwise ordered by this Court, any such attorney who has been temporarily or permanently prohibited from practicing law by order of any other court, whether by suspension, revocation, or disbarment, shall automatically forfeit his or her right to practice law before this Court during the same period that such attorney has been prohibited from practicing law by such other court. The Clerk of Court shall send a written notice to the attorney, together with a copy of this section of the Local Rules, informing the attorney of the forfeiture of his or her right to practice law before this court; but, any failure or delay with regard to the sending of such notice shall not affect the automatic forfeiture provisions of this section.

(2) If an attorney who has been prohibited from practicing law by order of some other court believes that he or she should not be required to forfeit his or her right to practice law before this Court, then such attorney may petition this Court seeking relief from the automatic forfeiture provision of subsection (b)(1). Any such petition shall be made in writing and shall be delivered to the Chief Judge of this Court. Such petition shall fully set forth

the reason(s) that the relief requested should be granted. The petition shall also include a copy of the complete record of the disciplinary proceedings from the court that disciplined the attorney -- to the extent that such materials are reasonably available to the petitioning attorney.

(3) Within five (5) days after the Chief Judge receives a petition seeking relief from the automatic forfeiture provision of subsection (b)(1), the matter shall be set for hearing before one or more Judges of this Court, unless the petitioning attorney consents to having the hearing conducted at some mutually convenient later date. Within three (3) days after such hearing has been completed, the Court shall rule on the petition by granting or denying the relief sought, or by entering any other order that may be deemed appropriate. If the Court should fail to take any required action within the time periods prescribed by this subsection, for any reason not attributable to the petitioning attorney, then the petitioning attorney shall retain his or her right to practice law before this Court until the Court does take such required action.

Upon receiving a petition seeking relief from the automatic forfeiture provision of subsection (b)(1), the Chief Judge may, for good cause shown, temporarily suspend the automatic forfeiture provision and allow the petitioning attorney to continue to practice law before this Court pending the Court's final ruling on the petition. In the absence of such temporary relief, the automatic forfeiture provision of subsection (b)(1) shall remain in effect pending the Court's final ruling on the petition.

(4) A petition seeking relief from the automatic forfeiture provisions of subsection (b)(1), shall not be granted unless the petitioning attorney has demonstrated, or this Court finds, that on the face of the record upon which the discipline by another court is predicated it clearly appears:

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

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

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

(D) 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.

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

(6) This Court may at any stage appoint counsel to prosecute the disciplinary proceedings.

(c) Disbarment on Consent or Resignation in Other Courts.

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

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

(d) Standards for Professional Conduct.

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

(2) Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the

rules of professional conduct adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Minnesota Rules of Professional Conduct adopted by the Supreme Court of Minnesota as amended from time to time by that Court are adopted by this Court except as otherwise provided by specific rules of this Court.

(e) Disciplinary Proceedings.

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

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

(3) To initiate formal disciplinary proceedings, counsel shall obtain an order of this Court upon a showing of probable cause requiring the respondent-attorney to show cause within 30 days after service of that order upon that attorney, personally or by mail, why the attorney should not be disciplined. The order to show cause shall include the form certification of all Courts before which the respondent-attorney is admitted to practice, as specified in Form 1 appended to these Rules.

(4) Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation, this Court shall set the matter for hearing within 60 days before one or more Judges of this Court, provided, however, that if the disciplinary proceeding is predicated upon the complaint of a Judge of this Court, the hearing shall be conducted before a panel of at least two Judges of this Court appointed by the Chief Judge, or, if there are less

than three Judges eligible to serve or the Chief Judge is the complainant, by the Chief Judge of the Court of Appeals for this circuit. The respondent-attorney shall execute the certification of all Courts before which that respondent-attorney is admitted to practice, on the form specified, and file the certification with his or her answer.

(f) Disbarment on Consent While Under Disciplinary Investigation or Prosecution.

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

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

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

(C) the attorney acknowledges that the material facts so alleged are true; and

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

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

(3) 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 proceedings except upon order of this Court.

(g) Reinstatement.

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

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

(3) Hearing on Application. Petitions for reinstatement by a disbarred or suspended attorney under this rule shall be filed with the Chief Judge of this Court. Upon receipt of the petition, the Chief Judge shall promptly refer the petition to counsel and shall assign the matter for hearing within 60 days before one or more Judges of this Court, provided, however, that if the disciplinary proceeding was predicated upon the complaint of a Judge of this Court, the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge, or if there are less than three Judges eligible to serve, or the Chief Judge was the complainant, by the Chief Judge of the Court of Appeals of this circuit. The Judge or Judges assigned to the matter shall, within 30 days after referral, schedule a hearing at which the petitioner shall have the burden of demonstrating clear and convincing evidence of the moral qualifications, competency, and learning in the law required for admission to practice law before this Court, and that resumption of the practice of law will not be detrimental to the integrity and standing of the bar, or to the administration of justice, or subversive to the public interest.

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

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

(6) Conditions of Reinstatement. If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate the attorney, provided that the judgment may make reinstatement conditional upon the

payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further, that if the petitioner has been suspended or disbarred for five years or more, reinstatement may be conditioned, in the discretion of the Judge or Judges before whom the matter is heard, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

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

(h) Attorneys Specially Admitted. Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (pro hac vice), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

(I) Service of Papers and Other Notices. Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at the address shown in the most recent registration. Service of any other papers or notices required by this rule shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at the address shown on the registration statement or to counsel or the respondent's attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding.

(j) Appointment of Counsel. Whenever counsel is to be appointed pursuant to this rule to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this Court may instead refer the matter to the Minnesota Lawyers Professional Responsibility Board for appropriate investigation, prosecution or other proceedings. If the Board for any reason declines appointment, or if such referral is clearly inappropriate, this Court shall appoint as counsel one or more members of the bar of this Court to investigate allegations of misconduct or to prosecute disciplinary proceedings provided, however, that the respondent-attorney may move to disqualify an attorney so appointed who is or has been engaged as an adversary of

the respondent-attorney. This provision, however, does not apply to counsel of the Minnesota Lawyers Professional Responsibility Board. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

(k) Duties of the Clerk.

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

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

(3) Whenever it appears that any person convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other Court, the Clerk of this Court shall, within 10 days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other Court, a certificate of the conviction or a certified exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.

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

(l) Jurisdiction. Nothing contained in this rule 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.

[Adopted effective February 1, 1991; amended December 18, 1997.]

1991 Advisory Committee's Note to LR 83.6

The following preface preceded the text of former D.Minn. Local Rule 1(F) (1987), which was the predecessor of LR 83.6. The Advisory Committee adopts it as its Note to LR 83.6:

Statement of Need for Adopting a Rule
of Disciplinary Enforcement

Membership in good standing in the bar of a Court of the United States constitutes a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court.

It is the duty of every attorney admitted to practice before a Court of the United States to conform at all times with the standards imposed upon members of the bar as conditions for the privilege to practice law.

It is the duty of the Court to supervise the conduct of the members of its bar in order to assure the public that those standards are scrupulously adhered to. The proper discharge of that duty requires that the Court have the assistance of counsel to investigate and prosecute where there are appropriate allegations that those standards have been violated. To assure competent and knowledgeable counsel, and to avoid unnecessary duplication of systems and personnel, this rule provides for the appointment of the state disciplinary agency whenever appointment of counsel is required hereunder and such appointment is appropriate.

In order to be admitted to practice in the United States District Court for the District of Minnesota, an attorney must demonstrate membership in good standing before the Minnesota Supreme Court. Consequently, for the purposes of admitting attorneys to practice before this Court, it may and does rely upon the standards for admission of the State Supreme Court. Insofar as discipline of admitted attorneys is concerned, however, the Supreme Court of the United States has held that revocation of a license to practice by state or other Courts may not automatically be relied upon by the Courts of the United States. Theard v. United States, 354 U.S. 278 (1957). In Theard, the Supreme Court held that while discipline imposed by a state "brings title deeds of high respect," it is not conclusively binding on the federal courts, which, in substance, must satisfy themselves that the attorney's underlying conduct warranted the discipline imposed. Id. at 282. For that reason, if there is to be effective discipline within the federal system, effective and appropriate procedures must be developed. This rule is proposed to achieve that purpose as well as to achieve uniformity of procedure by the various federal courts.

LR 83.7 WITHDRAWAL OF COUNSEL

(a) In General. An attorney whose appearance is noted in a cause on file in this Court may be permitted to withdraw from representation as counsel of record only by order of Court, or as otherwise provided herein.

(b)Withdrawal with Substitution. Leave of court is not required where a Notice of Withdrawal is accompanied by a Substitution of Counsel, provided that said substitution takes place 90 or more days in advance of trial for civil matters, or 30

or more days in advance of trial for criminal cases, provided the substitution contains a certificate by substituted counsel, and provided that the substitution shall not delay the trial or other progress of the case. The Notice of Withdrawal and Substitution shall set forth the name and address of the substituted and withdrawing counsel. Withdrawal under this section shall be effective upon filing a Notice of Withdrawal and Substitution with the Clerk of Court. The Notice shall be served on all counsel of record and the Judge to whom the case is assigned simultaneously with the District Court filing.

(c) Withdrawal without Substitution. Withdrawal without substitution may be granted only by a motion made before the Court, for good cause shown. Notice of the motion shall be provided to the client, and the motion shall be scheduled in accordance with LR 7.1.

[Adopted effective February 1, 1991]

LR 83.8 STUDENT PRACTICE RULE

(a) Any eligible law student in a law school in this district accredited by the American Bar Association may, under conditions stated below, interview, advise, negotiate, and appear before any Magistrate Judge or District Court Judge in this district.

(b) For a student to be eligible to practice under this rule, the following requirements must be met:

(1) The conduct of the case must be under the supervision of a member of the bar of this district, and the supervisor must be present with and prepared to assist the student at any Court appearances and must assume full professional responsibility for the student's work;

(2) The student must be in the final two years of law school;

(3) The student must be enrolled for credit in a law school clinical program; and

(4) The student may not accept personal compensation from a client or other source, although the law school clinical program in which the student is enrolled may accept compensation other than from a client, such as Criminal Justice Act payments.

(c) Before a student shall be eligible to appear in Court pursuant to this rule, the dean of the accredited law school that the student attends shall file with the Clerk of this Court a list of names of the enrolled students who have been selected by the faculty to participate in the program. This filing shall constitute a certification that, in the opinion of the dean and the faculty, the students on the list have adequate knowledge of the applicable procedural rules and substantive law, and that the activities of the students will be adequately supervised as required by this rule. Upon written approval by the Chief Judge of this district, to be filed with the Clerk of this Court, the students on the lists submitted by the law school deans shall be authorized to practice pursuant to this rule. The written approval of the Chief Judge shall remain in effect for a period of 12 months from the date of filing, unless withdrawn earlier or unless, upon application by the dean of the law school, the Chief Judge shall extend the privilege.

[Adopted effective February 1, 1991]

LR 83.10 SENTENCING PROCEDURES IN CRIMINAL CASES SUBJECT TO THE SENTENCING REFORM ACT OF 1984

The following procedures are hereby established to govern sentencing proceedings for all criminal proceedings subject to the Sentencing Reform Act of 1984, 18 U.S.C. § 3551, et seq.:

(a) Plea Agreement and Sentencing Stipulations. At the time of a plea or the offer of a plea agreement, counsel for the defendant and counsel for the government will submit a written plea agreement and statement of facts. This written submission shall include the maximum potential penalties for the charged offenses, all terms of the plea agreement, and, to the extent possible, stipulations of fact which address the essential elements of the offense and the relevant sentencing guidelines. Prior to entry of the plea, counsel for the defendant and counsel for the government shall make every effort to resolve all material disputes in order to minimize the necessity of an evidentiary hearing at the time of sentencing. The parties' resolution of material disputes must remain subject to Court review and acceptance.

(b) The Presentence Report. The probation office shall exercise due diligence in conducting the presentence investigation and preparing the presentence report. On request, defendant’s counsel is entitled to notice and reasonable opportunity to attend any interview of the defendant by the probation officer, in the course of the presentence investigation. Upon completion of the presentence report, the report shall be disclosed to the parties within 3 days. The presentence report shall be deemed to have been disclosed when 1) a copy of the report is physically obtained

by counsel from the probation office, 2) one day after the report's availability is orally communicated, or 3) when the report or notice of the report's availability is mailed.

(c) Objections to Presentence Report. Within 14 days of disclosure of the presentence report to the parties, counsel for the defendant and counsel for the government shall deliver to the probation office and opposing counsel either:

(1) written correspondence identifying all objections and all proposed amendments a party may have to the presentence report, including any objections to material information or sentencing guideline ranges referenced in the presentence report and the basis for any applicable departures; or

(2) written correspondence adopting the findings of the presentence report.

Untimely submissions by counsel may not be accepted by the probation office absent approval of the presiding Judge.

(d) Investigation and Resolution of Disputes. If a party reasonably disputes sentencing factors or facts material to sentencing or seeks the inclusion of additional factors or facts material to sentencing in the presentence report, it is the obligation of the complaining party to seek informal resolution of such factors or facts through opposing counsel and the U.S. Probation Office within 7 days after submission of the written correspondence referenced in paragraph (c)(1) and prior to filing the pleadings referenced in paragraphs (e) through (g), infra. This presentence conference is mandatory except when sentencing factors or facts are not in dispute. Informal resolution of disputes should be reached to the extent practicable through informal procedures including telephone conferences. The probation officer shall make any revisions to the presentence report deemed proper, and, in the event that any objections made by counsel remain unresolved, counsel are obligated to file the position pleading referenced in paragraph (e) and the probation officer shall prepare an addendum setting forth those objections and any comment thereon.

(e) Remaining Objections. When sentencing factors or facts material to sentencing cannot be resolved via the presentence conference, counsel for the defendant and counsel for the government shall each file a pleading entitled "Position of the Parties with Respect to Sentencing Factors" in accordance with Guideline §§ 6A1.2 or in accordance with subsequent rules and policies published by the United States Sentencing Commission. This position pleading shall set forth the issues which remain in dispute, the parties' positions with respect to all disputed issues, the extent to which the Court can rely on the presentence report to resolve any objections, and all issues of fact to be tried and determined at the sentencing hearing. The act of filing this pleading will serve as certification that the party has conferred with opposing counsel and with the U.S. Probation Office in a good faith effort to resolve

the disputed matter or matters. This pleading shall be filed with the Clerk of Court, with one copy served upon the probation office and one copy served upon opposing counsel.

(f) Request for Evidentiary Hearing. The parties must indicate in their position pleadings whether an evidentiary hearing is required to resolve any of the issues in dispute. If either party believes a hearing is necessary, the party bearing the burden of proof must file a separate Motion Re: Evidentiary Hearing contemporaneous with submission of the position pleading. The motion shall set forth to the extent practicable, the unresolved issues, whether an evidentiary hearing is necessary, and if so, an estimate of the time required for the hearing, and a list of witnesses and exhibits. Within 7 days of service of a Motion for Re: Evidentiary Hearing, opposing counsel must advise the Court whether or nor witnesses and/or exhibits will be offered to rebut the movant's position.

(g) Pleading Deadline. The pleadings referenced in paragraphs (e) and (f) must be served prior to the expiration of the period for the informal resolution of disputed facts or factors; that is, within 21 days of disclosure of the presentence report to the parties. The time set forth for submission of the "Position of the Parties With Respect to Sentencing Factors" and/or the Motion Re: Evidentiary Hearing may be modified by the presiding Judge/Magistrate Judge for good cause shown.

(h) Addendum to Presentence Report. Upon completion of an addendum reflecting the parties' sentencing positions, the probation office shall transmit to the presiding Judge the addendum and the revised presentence report, including guideline computations. When the presentence investigation report is submitted to the Court, the probation office shall also submit a confidential sentencing recommendation. This sentencing recommendation shall not be further disclosed without a specific directive by the Court. The probation office shall also transmit the addendum and any revisions to the presentence report to the parties.

(I) Resolution of Disputes. If sentencing facts or factors are the subject of reasonable dispute, the Court will afford an opportunity for parties to present relevant information after which the Court shall resolve disputes in accordance with Rule 32(a)(1) of the Federal Rules of Criminal Procedure.

(j) Court Authority. Nothing in this order shall restrict the Court's authority to accept or reject plea agreements or to accept or reject stipulations of fact.

(k) Non-Disclosure. Nothing in this order shall require the disclosure of any portions of the presentence report that are not discoverable under Fed. R. Crim. P. 32.

[Adopted effective February 1, 1991; amended November 1, 1996; amended May 17, 2004]

1991 Advisory Committee's Note to LR 83.10

LR 83.10 supersedes the Court's Revised Order Re Sentencing Procedures Under the Sentencing Reform Act of 1984, dated October 30, 1989.

The purpose of LR 83.10 is to provide adequate time for preparation of the presentence report by the United States Probation Office, for disclosure of the presentence report to the parties, for the filing of presentence submissions by the parties, and to otherwise facilitate administration of the sentencing guidelines.

The following table illustrates the time lines described in LR 83.10:

Simple Case		**Complex Case**	
Day 0:	PSI Served	Day 0:	PSI Served
Day 14:	Letters Exchanged	Day 14:	Letters Exchanged
Day 14+:	Addendum Filed No Pleadings	Days 14-21:	Informal Resolution
		Day 21:	Position Pleadings Motion for Evid. Hearing
		Day 21+:	Addendum Filed

LR 83.11 DIVISIONS, OFFICES OF THE CLERK, CALENDARS

(a) Divisions. The State of Minnesota constitutes one judicial district, divided into six divisions. Cases in this District are assigned to particular divisions and particular judges pursuant to the Order for Assignment of Cases that has been adopted by the Judges of the District Court. The Order for Assignment of Cases may be modified from time to time as the District Court Judges see fit.

(b) Offices of the Clerk. The Clerk of Court maintains offices in St. Paul, Minneapolis, and Duluth. The St. Paul, Minneapolis, and Duluth offices are open from 8:00 a.m. to 5:00 p.m. All offices are open Monday through Friday, with the following exceptions: New Year's Day; Martin Luther King, Jr.'s Birthday; President's Day; Memorial Day; Independence Day; Labor Day; Columbus Day; Veterans Day; Thanksgiving Day; and Christmas Day.

The files for matters pending before the Court are maintained in the office in the division to which the case is assigned. However, papers relative to any case may be filed in any office.

(c) Calendars. The Court operates on an individual calendar system. Judges in active service are assigned and assume responsibility for their proportionate share of the total cases filed in the district. Inquiries as to motions, probable trial date, or other matters having to do with a particular case may be addressed to the deputy clerk serving as calendar clerk for the Judge to whom the case has been assigned.

[Adopted effective February 1, 1991; amended November 1, 1996; amended October 29, 2003]

2003 Advisory Committee's Note to LR 83.11

The first paragraph of LR 83.11 (a) was amended in 2003 to conform to the current Court procedure of assigning cases to divisions and judges pursuant to the Order that may be revised from time to time.

1991 Advisory Committee's Note To LR 83.11

The division system of the United States District Court for the District of Minnesota is a product of the Courts' modification of the division system established by statute to fit the practicalities of present judicial activity within the district.

By statute, Minnesota is divided into six divisions. 28 U.S.C. § 103. The statute provides that terms of Court shall be held in Winona, Mankato, St. Paul, Minneapolis, Duluth, and Fergus Falls. A District Court retains the discretion to pretermit any regular session of Court for insufficient business or other good cause. 28 U.S.C. § 140.

The Court on two occasions has utilized its pretermission authority to effectively eliminate trials or hearings in three divisions. By an Order dated December 2, 1960, the Court pretermitted the terms of Court in the First and Second Divisions. In an order dated January 31, 1990, the Court pretermitted the terms of Court in the Sixth Division. The Judges of the Court maintain chambers in the Third Division and Fourth Division. Cases emanating from counties of the First, Second, Third, Fourth and Sixth Divisions are assigned to either the Third or fourth Division based upon the location of the chambers of the Judge to whom the case is assigned. Cases emanating from the Fifth Division are assigned to the Fifth Division regardless of the location of the chambers of the Judge to whom the case is assigned.

The remaining significance of the division system in Minnesota is two-fold. First, petit juries are selected by division. That is, cases assigned to the Third Division have their jury drawn from individuals residing in counties that make up the Third Division. The same is true in the Fourth and Fifth Divisions. Second, although the Judges of the Court maintain offices in the Third and Fourth Divisions, terms of Court are held in the Fifth Division for matters assigned to the Fifth Division.

LR 83.12 COMPLAINTS AGAINST A JUDGE OR MAGISTRATE JUDGE

Complaints against a Judge or Magistrate Judge based on allegations of misconduct or disability may be filed with the Clerk of the Court of Appeals for the Eighth Circuit as provided by 28 U.S.C. § 372(c) and by Rule 2 of the Rules of the Judicial Council of the Eighth Circuit Governing Complaints of Judicial Misconduct and Disability. Persons considering a complaint should refer to Rule 1 of the Rules of the Judicial Council of the

Eighth Circuit Governing Complaints of Judicial Misconduct and Disability for a description of acceptable grounds for complaint.

[Adopted effective November 1, 1996]

1996 Advisory Committee's Note to LR 83.12

LR 83.12 was added in the 1996 amendments upon consideration by the Committee of the request of Judge William J. Bauer, Chairman of the Committee to Review Circuit Council Conduct and Disability Orders of the Judicial Conference of the United States, that federal district courts include in their Local Rules a reference to the procedure established by 28 U.S.C. § 372(c) and to the Circuit Court rules governing the process. The Judicial Council of the Eighth Circuit agreed with this proposal at its meeting of December 6, 1994. See letter from the Honorable William J. Bauer to the Honorable Richard S. Arnold, October 14, 1994; letter from the Honorable Richard S. Arnold to the Honorable William J. Bauer, December 7, 1994.

LR 83.13 COURT APPOINTEES

(a) Scope of Rule. The provisions of this rule shall be applicable to any person who is appointed by a judge to serve as an aide or resource to the court in a particular matter or collection of matters, including but not limited to special masters, receivers, referees, trustees, commissioners, court appointed experts, investigators, mediators and arbitrators, (referred to herein as “appointees”).

(b) Disclosure of Conflicts. Whenever any appointee becomes aware of any circumstances that may constitute, or appear to constitute, a conflict of interest, the appointee shall immediately inform the appointing judge of all facts relevant to such circumstances. For purposes of this rule, a “conflict of interest” includes any set of circumstances that affects, or appears to affect, the appointee’s ability to act impartially in the matter for which he or she was appointed. The appointing judge shall determine what, if any, action should be taken with respect to any conflict of interest information reported by an appointee.

(c) Complaints Against Court Appointees. Any complaint about the conduct of an appointee shall be made in writing to the appointing judge describing the specific alleged misconduct by the appointee. Any such complaint should include a detailed description of the facts and circumstances giving rise to the complaint, and should expressly identify the legal or ethical basis, (statute, rule, regulation, canon, or other authority) for the complaint. The appointee and all parties shall have the opportunity to respond to the complaint. Nothing herein shall prevent a judge from independently reviewing the conduct of his or her court appointee at any time and taking such action with respect to the appointee as the judge may deem appropriate.

(d) Resolution of Complaints. The appointing judge shall review any complaint against an appointee and shall determine whether there actually has been any misconduct by the appointee, and, if so, what, if any, action should be taken in

response to such misconduct. The appointing judge may also take such action as he or she deems appropriate to protect and preserve the rights and interests of any party who may have been affected by any misconduct by an appointee.

[Adopted effective January 3, 2000]

1999 Advisory Committee's Note to LR 83.13

The Committee concluded that allegations of misconduct by court appointees will most often arise out of either actual or apparent conflicts of interest. For this reason, the rule expressly requires appointees to disclose any such conflicts to the appointing judge. The Committee further concluded that it would not be feasible or necessary to develop a comprehensive code of ethical conduct for all court appointees. Such appointees will be expected to follow the broad moral and ethical principles that guide the conduct of lawyers and judicial officers.

The Committee recognizes that judges must retain the authority to manage and control their cases. The automatic assignment of an "outside judge" to consider complaints against a court appointee could adversely affect that authority. If a party or the appointing judge believes that some other judge should consider a complaint against an appointee, the general rules regarding recusal would be applicable.

This rule confirms the appointing judge's authority to act on a complaint of misconduct by an appointee. The rule expressly recognizes the judge's authority to (a) preserve the integrity of the court by taking appropriate disciplinary action against the appointee, and (b) protect litigants whose interests may have been adversely affected by the misconduct of an appointee. A judge's response to misconduct by an appointee may include, without being limited to, termination of the appointment, imposition of sanctions, application of the power of contempt, recommending to other judges that the appointee should be barred from future appointments in this District, initiation of attorney disciplinary proceedings in this District pursuant to L.R. 83.6(e), referring the matter to the Minnesota Office of Lawyers Professional Responsibility, or referring the matter to the United States Attorney or the Minnesota Attorney General to consider criminal charges. Complaints regarding fee issues (in cases involving special masters) should be raised and addressed under Fed.R.Civ.P. 53. Any party who is dissatisfied with a judge's action on a complaint against an appointee would retain the same right to appeal that exists for any other action taken by a district court judge.

FORM 1

DECLARATION OF ADMISSIONS TO PRACTICE

In Re Disciplinary No.

I, , am the attorney who has been served with an order to show cause why disciplinary action should not be taken in the above captioned matter.

I am a member of the bar of this Court.

I have been admitted to practice before the following state and federal court, in the year, and under the license record numbers shown below:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on
(Date) (Signature)

(Full name - typed or printed)

(Address of Record)

This declaration must be signed, and delivered to the Court with the attorney's answer to the order to show cause or any waiver of an answer. Failure to return this declaration may subject an attorney to further disciplinary action. Under 28 U.S.C. § 1746, this declaration under penalty of perjury has the same force and effect as a sworn declaration made under oath.

FORM 2

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
_____ DIVISION
Criminal No.

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) **PRESENTENCE REPORT NOTICE**
)
_____,)
)
Defendant.

The presentence report in the above-captioned case is hereby forwarded to counsel for all parties. Pursuant to D. Minn. LR 83.10 concerning Sentencing Procedures Under the Sentencing Reform Act of 1984, the parties and their counsel are also hereby notified of the following deadlines:

1. Written correspondence identifying objections and proposed amendments to the presentence report are due on or before _____; and

2. Position pleadings, if required, are due on or before _____.

Dated: _____

United States Probation Officer

FORM 3

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
_____ DIVISION
CIVIL FILE NO. _____

Name of Plaintiff,

Plaintiff,

v. **RULE 26(f) REPORT**

Name of Defendant,

Defendant.

_____

The parties/counsel identified below participated in the meeting required by Fed.R.Civ.P. 26(f), on _____, 20____, and prepared the following report.

The pretrial conference in this matter is scheduled for _____, 20____, at before the United States Magistrate Judge in Room , Federal Courts Building, _____, Minnesota. The parties request/do not request that the pretrial be held by telephone.

(a) Description of Case

(1) Concise Factual Summary of Plaintiff's Claims;

(2) Concise Factual Summary of Defendant's claims/defenses;

(3) Statement of Jurisdiction (including statutory citations);

(4) Summary of Factual Stipulations or Agreements;

(5) Statement of whether jury trial has been timely demanded by any party.

(b) Pleadings

(1) Statement of whether all process has been served, all pleadings filed and any plan for any party to amend pleadings or add additional parties to the action;

(2) Proposed date by which all hearings on motions to amend and/or add parties to the action shall be heard;

Date: _____

(c) Discovery Limitations

(1) The parties agree and recommend that the Court limit the use and numbers of discovery procedures as follows:

(A) interrogatories;
(B) _____ document requests;
(C) _____ factual depositions;
(D) requests for admissions;
(E) _____ Rule 35 medical examinations;
(F) other.

(d) Discovery Schedule/Deadlines

(1) The parties recommend that the Court establish the following discovery deadlines:

(A) _____ deadline for completion of non-expert discovery, including service and response to interrogatories, document requests, requests for admission and scheduling of factual depositions;

(ii)deadline for completion of all Rule 35 medical examinations;

(2)If either party believes a Protective Order is necessary, the parties shall jointly submit a proposed Protective Order. The parties are encouraged, though not required to use Form 6 as a template for the proposed Protective Order, they shall present with this report any issues of disagreement. The Court shall endeavor to resolve any issues relating to the Protective Order in connection with the pretrial conference.

(e) Experts

The parties anticipate that they will/will not require expert witnesses at time of trial.

(1) The plaintiff anticipates calling _____ (number) experts in the fields of:

(2) The defendant anticipates calling _____ (number) experts in the fields of:

(3) The parties pursuant to Local Rule 26.3(a), recommend the disclosure and discovery option as follows:

(4) The parties recommend that the Court establish the following deadlines for disclosure of experts and experts' opinions consistent with Rule 26(a)(2) as modified by Local Rule 26.3:

(A) Deadlines for all parties' identification of expert witnesses (initial and rebuttal). (Fed. R. Civ. P. 26(a)(2)(A).)

(B) Deadlines for completion of disclosure or discovery of the substance of expert witness opinions.

(C) Deadlines for completion of expert witness depositions, if any.

(f) Motion Schedule

(1) The parties recommend that motions be filed and served on or before the following date:

(A) _____ non-dispositive motions;

(B) _____ dispositive motions.

(g) Trial-Ready Date

(1) The parties agree that the case will be ready for trial on or after _____;

(2) A final pretrial conference should be held on or before _____.

(h) Insurance Carriers/Indemnitors

List all insurance carriers/indemnitors, including limits of coverage of each defendant or statement that the defendant is self-insured.

(I) Settlement

(1) The parties will discuss settlement before _____, the date of the initial pretrial conference, by the plaintiff making a written demand for settlement and each defendant making a written response/offer to the plaintiff's demand.

(2) The parties believe that a settlement conference is appropriate and should be scheduled by the Court before _____.

(3) The parties have discussed whether alternative dispute resolution (ADR) will be helpful to the resolution of this case and recommend the following to the Court:

(j) Trial by Magistrate Judge

(1) The parties have/have not agreed to consent to jurisdiction by the Magistrate Judge pursuant to Title 28, United States Code, Section 636(c). (If the parties agree, the consent should be filed with the Rule 26(f) Report.)

DATE: _____ _____

Plaintiff's Counsel
License #
Address
Phone #

DATE: _____ _____

Defendant's Counsel
License #
Address
Phone #

FORM 4. RULE 26(f) REPORT (PATENT CASES)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Name of Plaintiff

CIVIL FILE NO. _____

Plaintiff,

v.

RULE 26(f) REPORT
(PATENT CASES)

Name of Defendant

Defendant.

The parties/counsel identified below participated in the meeting required by Fed. R. Civ. P. 26(f) and the Local Rules, on _____, and prepared the following recommended pretrial scheduling order.

The pretrial conference in this matter is scheduled for _____, before the United States Magistrate Judge _____ in Room _____, Federal Courts Building, _____, Minnesota. The parties [request/do not request] that the pretrial be held by telephone.

(a) Description of Case

(1) Concise factual summary of Plaintiff's claims, including the patent number(s), date(s) of patent(s), and patentee(s);

(2) Concise factual summary of Defendant's claims/defenses;

(3) Statement of jurisdiction (including statutory citations);

(4) Summary of factual stipulations or agreements;

(5) Statement of whether jury trial has been timely demanded by any party.

(b) Pleadings

(1) Statement of whether all process has been served, all pleadings filed and any plan for any party to amend pleadings or add additional parties to the action;

(2) Proposed date by which all hearings on motions to amend and/or add parties to the action shall be heard;

Date: _____

(c) Discovery and Pleading of Additional Claims and Defenses

(1) Discovery is permitted with respect to claims of willful infringement and defenses of patent invalidity or unenforceability not pleaded by a party, where the evidence needed to support these claims or defenses is in whole or in part in the hands of another party.

(2) Once a party has given the necessary discovery, the opposing party may seek leave of Court to add claims or defenses for which it alleges, consistent with Fed. R. Civ. P. 11, that it has support, and such support shall be explained in the motion seeking leave. Leave shall be liberally given where prima facie support is present, provided that the party seeks leave as soon as reasonably possible following the opposing party providing the necessary discovery.

(d) Fact Discovery

The parties recommend that the Court establish the following fact discovery deadlines and limitations:

(1) All pre-discovery disclosures required by Fed. R. Civ. P. 26(a)(1) shall be completed on or before _____.

(2) Fact discovery shall be commenced in time to be completed by _____.

(3) The parties agree and recommend that the Court limit the use and numbers of discovery procedures as follows:

(A) _____ interrogatories;

(B) _____ document requests;

(C) _____ factual depositions;

(D) _____ requests for admissions;

(E) _____ other.

(e) Expert Discovery

The parties anticipate that they will/will not require expert witnesses at time of trial.

(1) The plaintiff anticipates calling _____ experts in the fields of:

(2) The defendant anticipates calling _____ experts in the fields of:

(3) By the close of fact discovery, the parties shall identify to the opposing party the experts who will provide a report that deals with the issues on which that party has the burden of persuasion.

Alternate recommended date: _____

(4) Within 30 days after the close of fact discovery the parties shall exchange initial expert reports, which reports shall be in accordance with Fed. R. Civ. P. 26(a)(2)(B) ("Initial Expert Reports"). The Initial Expert Reports from each party shall deal with the issues on which that party has the burden of persuasion.

Alternate recommended date: _____

(5) Within 30 days after the Initial Expert Reports are exchanged Rebuttal Expert Reports shall be exchanged. Rebuttal Expert Reports shall also be in accordance with Fed. R. Civ. P. 26(a)(2)(B).

Alternate recommended date: _____

(6) Anything shown or told to a testifying expert relating to the issues on which he/she opines, or to the basis or grounds in support of or countering the opinion, is subject to discovery by the opposing party.

(7) The parties shall agree that: (A) drafts of expert reports [will/will not] be retained and produced; and (B) inquiry [is/is not] permitted into whom, if anyone, other than the expert participated in the drafting of his/her report. The Court will not entertain motions on these two issues. In the absence of such an agreement, drafts of expert reports need not be produced, but inquiry into who participated in the drafting and what their respective contributions were is permitted.

(8) All expert discovery shall be completed by _____.

(f) Discovery Relating to Claim Construction Hearing

(1) Deadline For Plaintiff's Claim Chart: _____.

Plaintiff's Claim Chart shall identify: (1) which claim(s) of its patent(s) it alleges are being infringed; (2) which specific products or methods of defendant's it alleges literally infringe each claim; and (3) where each element of each claim listed in (1) is found in each product or method listed in (2), including the basis for each contention that the element is present. If there is a contention by Plaintiff that there is infringement of any claims under the doctrine of equivalents, Plaintiff shall separately indicate this on its Claim Chart and, in addition to the information required for literal infringement, Plaintiff shall also explain each function, way, and result that it contends are equivalent, and why it contends that any differences are not substantial.

(2) Deadline For Defendant's Claim Chart: _____.

Defendant's Claim Chart shall indicate with specificity which elements on Plaintiff's Claim Chart it admits are present in its accused device or process, and which it contends are absent. In the latter regard, Defendant will set forth in detail the basis for its contention that the element is absent. As to the doctrine of equivalents, Defendant shall indicate on its chart its contentions concerning any differences in function, way, and result, and why any differences are substantial.

(3) On or before _____, the parties shall simultaneously exchange a list of claim terms, phrases, or clause that each party contends should be construed by the Court. On or before _____, the parties shall meet and confer for the purpose of finalizing a list, narrowing or resolving differences, and facilitating the ultimate preparation of a joint claim construction statement. During the meet and confer process, the parties shall exchange their preliminary proposed construction of each claim term, phrase or clause which the parties collectively have identified for claim construction purposes.

At the same time the parties exchange their respective "preliminary claim construction" they shall 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 that they contend support their respective claim constructions. The parties shall identify each such items 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.

(4) Following the parties' meet and confer described above, and no later than _____, the parties shall notify the Court as to whether they request that the Court schedule a Claim Construction hearing to determine claim

interpretation. If any party believes there is no reason for a Claim Construction hearing, the party shall provide the reason to the Court.

At the same time, the parties shall also complete and file with the Court a joint claim construction statement that 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 of prosecution history that support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either in support of its proposed construction of the claim or to oppose any other party's proposed construction of the claim, including, but not limited, as permitted by law, dictionary definitions, citation to learned treatises and prior art, and testimony of percipient and expert witnesses;

(C) 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.

(5) If the Court schedules a Claim Construction hearing, prior to the date of the Claim Construction hearing, the Court shall issue an Order discussing:

(A) Whether it will receive extrinsic evidence, and if so, the particular evidence it will receive;

(B) Whether the extrinsic evidence in the form of testimony shall be the affidavits already filed, or in the form of live testimony from the affiants; and

(C) A briefing schedule.

(g) Discovery Relating to Validity/Prior Art

(1) Within _____ days of its receipt of Plaintiff's Claim Chart pursuant to Discovery Plan paragraph (1) Defendant shall serve on Plaintiff a list of all of the prior art on which it relies, and a complete and detailed explanation of what it alleges the prior art shows and how that prior art invalidates the claim(s) asserted by Plaintiff ("Defendant's Prior Art Statement").

(2) Within _____ days of its receipt of Defendant's Prior Art Statement Plaintiff shall serve on Defendant "Plaintiff's Prior Art Statement", in which it

will state in detail its position on what the prior art relied upon by Defendant shows, if its interpretation differs from Defendant's, and its position on why the prior art does not invalidate the asserted patent claims.

(3) Plaintiff's and Defendant's "Prior Art Statements" can be, but need not be, in the form of expert reports.

(4) Defendant can add prior art to its original Statement only by leave of the Court.

(h) Other Discovery Issues

(1) Defendant may postpone the waiver of any applicable attorney-client privilege on topics relevant to claims of willful infringement, if any, until _____, provided that all relevant privileged documents are produced no later than _____. All additional discovery regarding the waiver will take place after _____ and shall be completed by _____.

(2) The parties have met and discussed whether any discovery should be conducted in phases to reduce expenses or make discovery more effective and present the following joint or individual proposals:

(3) The parties have discussed the entry of a Protective Order. If either party believes a Protective Order is necessary, the parties shall jointly submit with this report a proposed Protective Order. The parties are encouraged, though not required, to use Form 5 as a template for the proposed Protective Order. If the parties disagree as to any terms to be included in the Protective Order, they shall present with this report any issues of disagreement, including but not limited to any issues relating to persons who are entitled to have access to documents subject to protective treatment. The Court shall endeavor to resolve any issues relating to the Protective Order in connection with the pretrial conference.

(i) Discovery Definitions

In responding to discovery requests, each party shall construe broadly terms of art used in the patent field (e.g., "prior art", "best mode", "on sale"), and read them as requesting discovery relating to the issue as opposed to a particular definition of the term used. Compliance with this provision is not satisfied by the respondent including a specific definition of the term of art in its response, and limiting its response to that definition.

(j) Motion Schedule

(1) The parties recommend that all non-dispositive motions be filed and served on or before the following dates:

(A) All motions that seek to amend the pleadings or add parties must be served by _____.

(B) All other non-dispositive motions and supporting documents, including those which relate to discovery, shall be served and filed by the discovery deadline date _____.

(C) All non-dispositive motions shall be scheduled, filed and served in compliance with the Local Rules.

(2) The parties recommend that all dispositive motions be filed and served so they can be heard by the following dates:

(A) All dispositive motions shall be served and filed by the parties by _____.

(B) All dispositive motions shall be scheduled, filed and served in compliance with the Local Rules.

(k) Trial-Ready Date

(1) The parties agree that the case will be ready for trial on or after _____.

(2) A final pretrial conference should be held on or before _____.

(l) Settlement

(1) The parties will discuss settlement before _____, the date of the initial pretrial conference, by Plaintiff making a written demand for settlement and each Defendant making a written response/offer to Plaintiff's demand.

(2) The parties believe that a settlement conference is appropriate and should be scheduled by the Court before _____.

(3) The parties have discussed whether alternative dispute resolution will be helpful to the resolution of this case and recommend the following to the Court:

(m) Trial by Magistrate Judge

The parties have/have not agreed to consent to jurisdiction by the Magistrate Judge pursuant to Title 28, United States Code, Section 636(c). (If the parties agree, the consent should be filed with the Fed. R. Civ. P. 26(f) Report.)

(n) Tutorial Describing the Technology and Matters in Issue

If the parties believe that a tutorial for the Court would be helpful for the Court, the parties shall simultaneously submit a letter to the Court, asking whether the Court wishes to schedule a tutorial and proposing the timing and format of the tutorial.

(o) Patent Procedure Tutorial

The parties [agree/do not agree] the video "An Introduction to the Patent System", distributed by the Federal Judicial Center, should be shown to the jurors in connection with its preliminary jury instructions.

DATE: _____ _____

Plaintiff's Counsel
License #
Address
Phone #
Email

DATE: _____ _____

Defendant's Counsel
License #
Address
Phone #
Email

FORM 5. STIPULATION FOR PROTECTIVE ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

[NAME OF PARTY],	)	Case No. _____
Plaintiff,	)	
v.	)	STIPULATION FOR PROTECTIVE ORDER
[NAME OF PARTY],	)	
Defendant.	)	

Upon stipulation of the parties for an order pursuant to Fed. R. Civ. P. 26(c) that trade secret or other confidential information be disclosed only in designated ways:

1. As used in the Protective Order, these terms have the following meanings:

"Attorneys" means counsel of record;

"Confidential" documents are documents designated pursuant to paragraph 2;

"Confidential - Attorneys' Eyes Only" documents are the subset of Confidential documents designated pursuant to paragraph 5;

"Documents" are all materials within the scope of Fed. R. Civ. P. 34;

"Written Assurance" means an executed document in the form attached as Exhibit A.

2. By identifying a document "Confidential", a party may designate any document,

including interrogatory responses, other discovery responses, or transcripts, that it in good faith contends to constitute or contain trade secret or other confidential information.

3. All Confidential documents, along with the information contained in the documents, shall be used solely for the purpose of this action, and no person receiving such documents shall, directly or indirectly, transfer, disclose, or communicate in any way the contents of the documents to any person other than those specified in paragraph 4. Prohibited purposes include, but are not limited to, use for competitive purposes or the prosecution of additional intellectual property rights.

4. Access to any Confidential document shall be limited to:

(a) the Court and its officers;

(b) Attorneys and their office associates, legal assistants, and stenographic and clerical employees;

(c) persons shown on the face of the document to have authored or received it;

(d) court reporters retained to transcribe testimony;

[Optional: (e) these inside counsel: [names];]

[Optional: (f) these employees of the parties: [names];]

(g) outside independent persons (i.e., persons not currently or formerly employed by, consulting with, or otherwise associated with any party) who are retained by a party or its attorneys to furnish technical or expert services, or to provide assistance as mock jurors or focus group members or the like, and/or to give testimony in this action.

5. The parties shall have the right to further designate Confidential documents or portions of documents [optional: in the areas of [identify]] as "Confidential - Attorneys'

Eyes Only". Disclosure of such information shall be limited to the persons designated in paragraphs 4(a), (b), (c), (d), (e), and (g).

6. Third parties producing documents in the course of this action may also designate documents as "Confidential" or "Confidential - Attorneys' Eyes Only", subject to the same protections and constraints as the parties to the action. A copy of the Protective Order shall be served along with any subpoena served in connection with this action. All documents produced by such third parties shall be treated as "Confidential - Attorneys' Eyes Only" for a period of 15 days from the date of their production, and during that period any party may designate such documents as "Confidential" or "Confidential - Attorneys' Eyes Only" pursuant to the terms of the Protective Order.

7. Each person appropriately designated pursuant to paragraph 4(g) to receive Confidential information shall execute a "Written Assurance" in the form attached as Exhibit A. Opposing counsel shall be notified at least 10 days prior to disclosure to any such person who is known to be an employee or agent of, or consultant to, any competitor of the party whose designated documents are sought to be disclosed. Such notice shall provide a reasonable description of the outside independent person to whom disclosure is sought sufficient to permit objection to be made. If a party objects in writing to such disclosure within 10 days after receipt of notice, no disclosure shall be made until the party seeking disclosure obtains the prior approval of the Court or the objecting party.

8. All depositions or portions of depositions taken in this action that contain trade secret or other confidential information may be designated "Confidential" or "Confidential - Attorneys' Eyes Only" and thereby obtain the protections accorded other "Confidential" or "Confidential - Attorneys' Eyes Only" documents. Confidentiality

designations for depositions shall be made either on the record or by written notice to the other party within 10 days of receipt of the transcript. Unless otherwise agreed, depositions shall be treated as "Confidential - Attorneys' Eyes Only" during the 10-day period following receipt of the transcript. The deposition of any witness (or any portion of such deposition) that encompasses Confidential information shall be taken only in the presence of persons who are qualified to have access to such information.

9. Any party who inadvertently fails to identify documents as "Confidential" or "Confidential - Attorneys' Eyes Only" shall have 10 days from the discovery of its oversight to correct its failure. Such failure shall be corrected by providing written notice of the error and substituted copies of the inadvertently produced documents. Any party receiving such inadvertently unmarked documents shall make reasonable efforts to retrieve documents distributed to persons not entitled to receive documents with the corrected designation.

10. Any party who inadvertently discloses documents that are privileged or otherwise immune from discovery shall, promptly upon discovery of such inadvertent disclosure, so advise the receiving party and request that the documents be returned. The receiving party shall return such inadvertently produced documents, including all copies, within 10 days of receiving such a written request. The party returning such inadvertently produced documents may thereafter seek re-production of any such documents pursuant to applicable law.

11. If a party files a document containing Confidential information with the Court, it shall do so in compliance with the Electronic Case Filing Procedures for the District of Minnesota. Prior to disclosure at trial or a hearing of materials or information designated

"Confidential" or "Confidential - Attorneys' Eyes Only", the parties may seek further protections against public disclosure from the Court.

12. Any party may request a change in the designation of any information designated "Confidential" and/or "Confidential - Attorneys' Eyes Only". Any such document shall be treated as designated until the change is completed. If the requested change in designation is not agreed to, the party seeking the change may move the Court for appropriate relief, providing notice to any third party whose designation of produced documents as "Confidential" and/or "Confidential - Attorneys' Eyes Only" in the action may be affected. The party asserting that the material is Confidential shall have the burden of proving that the information in question is within the scope of protection afforded by Fed. R. Civ. P. 26(c).

13. Within 60 days of the termination of this action, including any appeals, each party shall either destroy or return to the opposing party all documents designated by the opposing party as "Confidential" , and all copies of such documents, and shall destroy all extracts and/or data taken from such documents. Each party shall provide a certification as to such return or destruction as within the 60-day period. Attorneys shall be entitled to retain, however, a set of all documents filed with the Court and all correspondence generated in connection with the action.

14. Any party may apply to the Court for a modification of the Protective Order, and nothing in the Protective Order shall be construed to prevent a party from seeking such further provisions enhancing or limiting confidentiality as may be appropriate.

15. No action taken in accordance with the Protective Order shall be construed as a waiver of any claim or defense in the action or of any position as to discoverability or admissibility of evidence.

16. The obligations imposed by the Protective Order shall survive the termination of this action. Within 60 days following the expiration of the last period for appeal from any order issued in connection with this action, the parties shall remove any materials designated "Confidential" from the office of the Clerk of Court. Following that 60-day period, the Clerk of Court shall destroy all "Confidential" materials.

Stipulated to:

Date: _____ By _____

Date: _____ By _____

EXHIBIT A
WRITTEN ASSURANCE

_____ declares that:

I reside at _____ in the city of _____ , county _____ , state of _____ ;

I am currently employed by _____ located at _____and my current job title is _____.

I have read and believe I understand the terms of the Protective Order dated _____ , filed in Civil Action No. _____, pending in the United States District Court for the District of Minnesota. I agree to comply with and be bound by the provisions of the Protective Order. I understand that any violation of the Protective Order may subject me to sanctions by the Court.

I shall not divulge any documents, or copies of documents, designated "Confidential" or "Confidential - Attorneys' Eyes Only" obtained pursuant to such Protective Order, or the contents of such documents, to any person other than those specifically authorized by the Protective Order. I shall not copy or use such documents except for the purposes of this action and pursuant to the terms of the Protective Order.

As soon as practical, but no later than 30 days after final termination of this action, I shall return to the attorney from whom I have received them, any documents in my possession designated "Confidential" or "Confidential - Attorneys' Eyes Only", and all copies, excerpts, summaries, notes, digests, abstracts, and indices relating to such documents.

I submit myself to the jurisdiction of the United States District Court for the District of Minnesota for the purpose of enforcing or otherwise providing relief relating to the Protective Order.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ _____

(Date) (Signature)

FORM 6. STIPULATION FOR PROTECTIVE ORDER

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

[NAME OF PARTY],	)	Case No. _____
Plaintiff,	)	
	)	STIPULATION FOR
v.	)	PROTECTIVE ORDER
[NAME OF PARTY],	)	
Defendant.	)	

Upon stipulation of the parties for an order pursuant to Fed. R.Civ. P. 26(c) that confidential information be disclosed only in designated ways:

1. As used in the Protective Order, these terms have the following meanings:

"Attorneys" means counsel of record;

"Confidential" documents are documents designated pursuant to paragraph 2;

"Documents" are all materials within the scope of Fed. R. Civ. P. 34;

"Outside Vendors" means messenger, copy, coding, and other clerical-services vendors not employed by a party or its Attorneys; and

"Written Assurance" means an executed document in the form attached as Exhibit A.

2. A Party may designate a document "Confidential", to protect information within the scope of Fed. R. Civ. P. 26(c).

3. All Confidential documents, along with the information contained in the documents, shall be used solely for the purpose of this action, and no person receiving such documents shall, directly or indirectly, use, transfer, disclose, or communicate in any way the documents or their contents to any person other than those specified in paragraph 4. Any other use is prohibited.

4. Access to any Confidential document shall be limited to:

(a) the Court and its staff;

(b) Attorneys, their law firms, and their Outside Vendors;

(c) persons shown on the face of the document to have authored or received it;

(d) court reporters retained to transcribe testimony;

(e) the parties;

(f) outside independent persons (i.e., persons not currently or formerly employed by, consulting with, or otherwise associated with any party) who are retained by a party or its Attorneys to provide assistance as mock jurors or focus group members or the like, or to furnish technical or expert services, and/or to give testimony in this action.

5. Third parties producing documents in the course of this action may also designate documents as "Confidential", subject to the same protections and constraints as the parties to the action. A copy of the Protective Order shall be served along with any subpoena served in connection with this action. All documents produced by such third parties shall be treated as "Confidential" for a period of 15 days from the date of their production, and during that period any party may designate such documents as "Confidential" pursuant to the terms of the Protective Order.

6. Each person appropriately designated pursuant to paragraphs 4(f) to receive Confidential information shall execute a "Written Assurance" in the form attached as Exhibit A. Opposing counsel shall be notified at least 10 days prior to disclosure to any such person who is known to be an employee or agent of, or consultant to, any competitor of the party whose designated documents are sought to be disclosed. Such notice shall provide a reasonable description of the outside independent person to whom disclosure is sought sufficient to permit objection to be made. If a party objects in writing to such disclosure within 10 days after receipt of notice, no disclosure shall be made until the party seeking disclosure obtains the prior approval of the Court or the objecting party.

7. All depositions or portions of depositions taken in this action that contain confidential information may be designated "Confidential" and thereby obtain the protections accorded other "Confidential" documents. Confidentiality designations for depositions shall be made either on the record or by written notice to the other party within 10 days of receipt of the transcript. Unless otherwise agreed, depositions shall be treated as "Confidential" during the 10-day period following receipt of the transcript. The deposition of any witness (or any portion of such deposition) that encompasses Confidential information shall be taken only in the presence of persons who are qualified to have access to such information.

8. Any party who inadvertently fails to identify documents as "Confidential" shall, promptly upon discovery of its oversight, provide written notice of the error and substitute appropriately-designated documents. Any party receiving such improperly-designated documents shall retrieve such documents from persons not entitled to receive those

documents and, upon receipt of the substitute documents, shall return or destroy the improperly-designated documents.

9. If a party files a document containing Confidential information with the Court, it shall do so in compliance with the Electronic Case Filing Procedures for the District of Minnesota. Prior to disclosure at trial or a hearing of materials or information designated "Confidential", the parties may seek further protections against public disclosure from the Court.

10. Any party may request a change in the designation of any information designated "Confidential". Any such document shall be treated as designated until the change is completed. If the requested change in designation is not agreed to, the party seeking the change may move the Court for appropriate relief, providing notice to any third party whose designation of produced documents as "Confidential" in the action may be affected. The party asserting that the material is Confidential shall have the burden of proving that the information in question is within the scope of protection afforded by Fed. R. Civ. P. 26(c).

11. Within 60 days of the termination of this action, including any appeals, each party shall either destroy or return to the opposing party all documents designated by the opposing party as "Confidential", and all copies of such documents, and shall destroy all extracts and/or data taken from such documents. Each party shall provide a certification as to such return or destruction within the 60-day period. However, Attorneys shall be entitled to retain a set of all documents filed with the Court and all correspondence generated in connection with the action.

12. Any party may apply to the Court for a modification of the Protective Order, and nothing in this Protective Order shall be construed to prevent a party from seeking such further provisions enhancing or limiting confidentiality as may be appropriate.

13. No action taken in accordance with the Protective Order shall be construed as a waiver of any claim or defense in the action or of any position as to discoverability or admissibility of evidence.

14. The obligations imposed by the Protective Order shall survive the termination of this action.

Stipulated to:

Date: _____ By _____

Date: _____ By _____

EXHIBIT A
WRITTEN ASSURANCE

_____ declares that:

I reside at _____ in the City of _____, County of _____, State of _____ _____. My telephone number is _____.

I am currently employed by _____, located at _____, and my current job title is _____.

I have read and I understand the terms of the Protective Order dated _____, filed in Case No. _____, pending in the United States District Court for the District of Minnesota. I agree to comply with and be bound by the provisions of the Protective Order. I understand that any violation of the Protective Order may subject me to sanctions by the Court.

I shall not divulge any documents, or copies of documents, designated "Confidential" obtained pursuant to such Protective Order, or the contents of such documents, to any person other than those specifically authorized by the Protective Order. I shall not copy or use such documents except for the purposes of this action and pursuant to the terms of the Protective Order.

As soon as practical, but no later than 30 days after final termination of this action, I shall return to the attorney from whom I have received them, any documents in my possession designated "Confidential", and all copies, excerpts, summaries, notes, digests, abstracts, and indices relating to such documents.

I submit myself to the jurisdiction of the United States District Court for the District of Minnesota for the purpose of enforcing or otherwise providing relief relating to the Protective Order.

Executed on _____ _____
(Date) (Signature)