LOCAL RULES OF COURT

Effective: January 1, 2008

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

IN RE: LOCAL CIVIL RULES OF COURT
LOCAL CRIMINAL RULES
LOCAL BANKRUPTCY RULES
LOCAL ADMIRALTY RULES
LOCAL PATENT RULES

ORDER

AND NOW, to-wit, this 12th day of December, 2007, the following Rules, as revised and re-enacted to date, are promulgated as and for the United States District Court for the Western District of Pennsylvania, effective **January 1, 2008.**

Attached hereto and made a part hereof by reference is a copy of said Rules.

Donetta W. Ambrose, C.J.
Maurice B. Cohill, Jr., D.J.
Gustave Diamond, D.J.
Alan N. Bloch, D.J.
William L. Standish, D.J.
Gary L. Lancaster, D.J.
Sean J. McLaughlin, D.J.
Joy Flowers Conti, D.J.
David Stewart Cercone, D.J.
Terrence F. McVerry, D.J.
Arthur J. Schwab, D.J.
Kim R. Gibson, D.J.
Nora Barry Fischer, D.J.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

COURT DIRECTORY

U.S. DISTRICT JUDGES

Chief Judge Donetta W. Ambrose
Pgh: 412-208-7350

Senior Judge Maurice B. Cohill, Jr.
Pgh: 412-208-7380 Erie: 814-464-9620

Senior Judge Alan N. Bloch
Pgh: 412-208-7360

Judge Gary L. Lancaster
Pgh: 412-208-7400

Judge Joy Flowers Conti
Pgh: 412-208-7330

Judge Terrence McVerry
Pgh: 412-208-7495

Judge Kim R. Gibson
Johnstown: 814-533-4514

Senior Judge Gustave Diamond
Pgh: 412-208-7390

Senior Judge William L. Standish
Pgh: 412-208-7430

Judge Sean J. McLaughlin
Erie : 814-464-9610

Judge David Stewart Cercone
Pgh: 412-208-7363

Judge Arthur J. Schwab
Pgh: 412-208-7423

Judge Nora Barry Fischer
Pgh: 412-208-7480

U.S. MAGISTRATE JUDGES

Susan Paradise Baxter, Chief
Erie: 814-464-9630

Robert C. Mitchell
Pgh: 412-208-7470

Francis X. Caiazza
Pgh: 412-208-7460

Amy Reynolds Hay
Pgh: 412-208-7450

Lisa P. Lenihan
Pgh: 412-208-7370

PART-TIME U.S. MAGISTRATE JUDGES

Keith A. Pesto
Johnstown: 814-536-4342

COURT DIRECTORY (cont.)

CLERK OF COURT'S OFFICE

Clerk of Court - Secretary	412-208-7515
Chief Deputy Clerk	412-208-7518

INTAKE & INFORMATION **412-208-7500**

Civil and Criminal Dockets:

TO CHECK ON CASES ENDING WITH THE NUMBER:

1 OR 2	412-208-7502
3 OR 4	412-208-7504
5 OR 6	412-208-7506
7 OR 8	412-208-7508
9 OR 0	412-208-7510

File Room	412-208-7505
Finance & Payroll	412-208-7531
Jury Office	412-208-7540
Naturalization Records	412-208-7507
Erie Clerk's Office	814-464-9600
Johnstown Clerk's Office	814-533-4504

U.S. ATTORNEY

Main Office/Reception	412-644-3500
Erie Office	814-452-2906
Johnstown Office	814-533-4547

U.S. MARSHAL

Main Office	412-644-3351
Erie Office	814-464-9680

U.S. PROBATION OFFICE

Main Office	412-395-6907
Erie Office	814-464-9650
Johnstown Office	814-533-4540

FEDERAL PUBLIC DEFENDER

Main Office	412-644-6565
Erie Office	814-455-8089
Johnstown Office	814-533-4582

PRETRIAL SERVICES OFFICE

Main Office	412-395-4562
Johnstown Office	814-533-4551

CIRCUIT SATELLITE LIBRARY

Room 512	412-208-7340

BANKRUPTCY COURT

Main Office	412-644-2700
Erie Office	814-453-7580

TABLE OF CONTENTS

LOCAL CIVIL RULES OF COURT

LOCAL CRIMINAL RULES OF COURT

LOCAL BANKRUPTCY APPELLATE RULES OF COURT

LOCAL ADMIRALTY RULES OF COURT

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

LOCAL CIVIL RULES OF COURT

LOCAL CIVIL RULES OF COURT

LR 1.1 SCOPE OF RULES

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

B. Effective Date. These rules become effective on November 1, 2000.

C. Scope of Rules. These rules shall apply in all proceedings in civil and criminal actions. Rules governing proceedings before magistrate judges may be found at the end of these rules.

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 and Definitions. United States Code, Title 1, Sections 1 to 5, shall, as far as applicable, govern the construction of these rules.

LR 1.2 AVAILABILITY OF LOCAL RULES

Copies of these rules, as amended and with any appendices attached hereto, are available from the clerk's office for a reasonable charge to be determined by the board of judges. When amendments to these rules are made, notice of such amendments shall be provided in the legal journals for each county and on the bulletin board in the clerk's office. When amendments to these rules are proposed, notice of such proposals and of the ability of the public to comment shall be provided in the legal journals for each county and on the bulletin board in the clerk's office.

LR 3.1 CIVIL COVER SHEET

Where it appears from the complaint, petition or other pleading that (1) the cause of action arose OR any plaintiff or defendant resides in: Crawford, Elk, Erie, Forest, McKean, Venango, or Warren County, the clerk shall give such complaint, petition or other pleading an Erie number and it shall be placed upon the Erie calendar. Should it appear from the complaint, petition or other pleading that (2) the cause of action arose OR any plaintiff or defendant resides in: Bedford, Blair, Cambria, Clearfield or Somerset County, the clerk shall give such complaint, petition or other pleading a Johnstown number and it shall be placed upon the Johnstown calendar. All other cases or matters for litigation shall be docketed and processed at Pittsburgh. In the event of a conflict between divisions, the clerk of court shall place the action in the division of plaintiff's choice.

LR 5.1 GENERAL FORMAT OF PAPERS PRESENTED FOR FILING

A. Filing and Paper Size In order that the files in the clerk's office may be kept under the system commonly known as "flat filing," all papers presented to the court or to the clerk for filing shall be flat and as thin as feasible. Further, all pleadings and other documents presented for filing to the court or to the clerk shall be on 8½ by 11 inch size paper.

B. The lettering or typeface shall be clearly legible and shall not be smaller than12 point word processing font or, if typewritten, shall not be smaller than pica. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. The font type and size used in footnotes shall be the same as that used in the body of the brief. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

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

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

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

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

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

H. Withdrawal of Files. Records and papers on file in the office of the clerk of court may be produced pursuant to a subpoena from any federal or state court, directing their production. At the clerk's discretion, records or papers belonging to the files of the court may be temporarily removed by the United States attorney, bankruptcy judges, and public defender of this district upon receipt of a signed requisition. Otherwise, records and papers may be removed from the files only upon order of court. Whenever records and papers are withdrawn, the person receiving them shall leave with the clerk a signed receipt describing the records of papers taken.

I. Exhibits. All exhibits received in evidence, or offered and rejected, upon the hearing of any cause or motion, shall be delivered to the clerk, who shall keep the same in custody, unless otherwise ordered by the court, except that the clerk may without special order permit an official court reporter to withdraw exhibits, by means of a signed descriptive receipt, for the purpose of preparing the transcript.

J. In all cases where money, firearms, narcotics, controlled substances or any matter of contraband is introduced into evidence, such evidence shall be returned by the courtroom deputy to the law enforcement agency whose case is involved for safekeeping immediately after the return of the jury verdict, or in a non-jury case at the close of the evidence. The law enforcement agent will be responsible for its custody if the matter is required for any evidentiary purpose thereafter.

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

LR 5.1.1 DOCUMENTS TO BE FILED WITH THE CLERK

A. As to any document required or permitted to be filed with the court in paper form, only the original shall be filed with the clerk.

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

C. Documents shall not be faxed to a judge without prior leave of court. Documents shall not be faxed to the clerk's office, except in the event of a technical failure with the court's Electronic Case Filing ("ECF") system. Technical Failure is defined as a malfunction of court owned/leased hardware, software, and/or telecommunications facility which results in the inability of a Filing User to submit a filing electronically. Technical failure does not include malfunctioning of a Filing User's equipment.

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

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

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

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

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

Additional personal data identifier in a criminal case document only:

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

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

1. a sealed and otherwise identical document containing the unredacted personal data identifiers, or

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

The sealed unredacted version of the document or the sealed reference list shall be retained by the court as a part of the record.

The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The clerk will not review each document for compliance with this rule.

LR 5.2 PROOF OF SERVICE WHEN SERVICE IS REQUIRED BY FED.R.CIV.P. 5

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

LR 5.3 FILING OF DISCOVERY MATERIALS

A. Pursuant to Rule 5(d) of the Federal Rules of Civil Procedure, depositions, interrogatories, requests for documents, requests for admissions, and answers and responses thereto shall not be filed with the clerk's office except by order of the court.

B. A party seeking relief under rules 26 through 37 of the Federal Rules of Civil Procedure shall file only that portion of the deposition, interrogatory, request for document, or requests for admissions to which an objection is made.

C. When discovery material is needed for an appeal, upon an application and order of the court, or by stipulation of counsel, the necessary portion of the discovery material shall be filed with the clerk.

D. The party serving discovery or taking depositions shall retain the original and be custodian of it.

E. However, the court shall order discovery matter filed in the usual course in any case where any person shall file an affidavit with the clerk that he has a genuine interest in reading the material.

LR 5.4 FILING OF DOCUMENTS BY ELECTRONIC MEANS

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

LR 5.5 SERVICE OF DOCUMENTS BY ELECTRONIC MEANS

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

LR 7.1 MOTION PRACTICE

A. Motions shall be placed in the following two classifications:

1. Ex Parte Motions. These shall be filed with the clerk of court for presentation to a judge for signature. No notice to opposing party or counsel need be given.

2. Miscellaneous Motions. These are motions which require notice and a copy thereof to be served on the opposing party or counsel, together with a certificate of service. The notice shall set forth the time when said motion will be filed with the clerk of court.

B. Unless such motion is accompanied by a proposed appropriate order of court, it is improper and may be stricken by the court upon its own motion or upon the motion of an adverse party.

C. In addition to the general requirements of LR 7.1 , any discovery motion filed pursuant to Fed. R. Civ. P. 26 through 37 shall comply with the requirements of LR 37.1 and 37.2, and any motion in limine shall comply with the requirements of LR 16.1.40.

D. When there is not sufficient time to give notice of the presentation of a motion to opposing counsel or to an unrepresented party, a motion of an emergency nature shall be filed with the clerk of court and shall then be taken immediately to the judicial officer, who shall forthwith hear such motion or fix a time for hearing so that sufficient notice and copy of the motion may be given to the opposing counsel or party.

E. Timely Resolution of Motions. The court shall resolve non-dispositive motions in an expedited fashion, ordinarily within 30 days, with or without oral argument and without briefs, unless briefs are required by the court.

F. Dispositive motions shall be resolved within 90 days of their filing, on briefs and oral argument, unless oral argument is expressly precluded by the court. Any motion that is not resolved within 90 days of its filing shall be scheduled for oral argument by the clerk of court.

LR 7.1.1 DISCLOSURE STATEMENT

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

entity; "parent" shall be an affiliate controlling such entity directly, or indirectly through intermediaries; and "subsidiary" shall be an affiliate controlled by such entity directly or indirectly through one or more intermediaries.

B. The purpose of this Disclosure Statement is to enable the judges of this court to determine the need for recusal pursuant to 28 U.S.C. §455 or otherwise. Counsel shall have the continuing obligation to amend the disclosure statement to reflect relevant changes.

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

LR 7.2 STIPULATIONS

Counsel may file a stipulation once, without approval of the court, extending the due date for the filing of an answer, or motion, for a period not exceeding 45 days from the due date.

LR 8.1 PLEADING UNLIQUIDATED DAMAGES

Except in diversity cases in which a party must plead that the matter in controversy exceeds the sum of $75,000, any pleading demanding general damages unliquidated in amount shall, without claiming any specific sum, set forth only that money damages are claimed. The categories of damages so claimed may be specified and the claiming party is not precluded from seeking additional damages at a later date.

LR 9.1 STANDARD FORM FOR HABEAS CORPUS PETITIONS AND MOTIONS

Proceedings for habeas corpus under 28 U.S.C. § 2254 and proceedings to vacate sentence under 28 U.S.C. § 2255 shall be in accordance with the rules promulgated with respect to such proceedings by the Supreme Court and modified by the Congress by P.L. 94-426 and P.L. 94-577, effective February 1, 1977, and with the applicable provisions of the Anti-terrorism and Effective Death Penalty Act of 1996, P.L. 104-132, effective April 24, 1996.

A. Petitions and motions in such proceedings shall be in substantially the forms prescribed by the court, copies of which forms shall be made available by the clerk upon request.

B. The district attorney or an assistant of the county where the petitioner was sentenced or is being held shall represent and appear for respondent in all cases challenging convictions or sentences under state law. The Attorney General of the Commonwealth of Pennsylvania shall represent and appear for respondent when the Pennsylvania Board of Probation and Parole is the proper respondent.

LR 9.2 PRO SE CIVIL RIGHTS ACTIONS BY INCARCERATED PERSONS - COMPLAINT FORM AND SERVICE OF PLEADINGS

A. All pro se civil rights actions filed in this district by incarcerated persons shall be submitted on the court approved form supplied by the clerk of court. Any non-conforming complaint shall be accepted and filed by the clerk, although the clerk shall return to the plaintiff a photocopy of the non-conforming complaint, together with adequate copies of the form, instructions for its completion, and instructions for service of process. A non-conforming complaint is any civil rights complaint by a pro se prisoner which:

1. Is not submitted on the required form.

2. Is submitted without adequate identical copies for service.

3. Fails to identify every defendant in the caption.

4. Is not signed.

5. Is not accompanied by either the filing fee, an initial partial filing fee as set forth in 28 U.S.C. § 1915(b) (1), or a signed, completed request for leave to proceed in forma pauperis. The initial partial filing fee and any request for leave to proceed in forma pauperis must include a certified copy of the trust fund account statement (or institutional equivalent) as set forth in 28 U.S.C. § 1915 (a) (2). If the plaintiff certifies that he has attempted without success to have the certificate completed by the prison records officer, the clerk shall not return the complaint to the plaintiff for failure to include the certificate.

6. Seeks unliquidated damages in a specific sum in violation of LR 8.1.

7. Fails to state whether or not the facts underlying the complaint were the subject of an earlier disciplinary proceeding against the plaintiff and, if so, the basic identifying information regarding that proceeding.

8. Is otherwise incomplete.

B. The pro se plaintiff shall have thirty (30) days to resubmit the complaint in proper form. The thirty (30) day period shall commence on the date of the clerk's notice of return. If the pro se plaintiff fails to resubmit the complaint in proper form within the thirty (30) day period, the clerk shall inform the Court of such failure, and the Court shall dismiss the action without prejudice.

LR 9.3 TIME FOR FILING APPEAL BY PRISONERS

In habeas corpus and all civil matters, the time for filing a formal notice of appeal by a prisoner shall be automatically extended for a period not to exceed 30 days beyond the time required by Rule 4 of the Federal Rules of Appellate Procedure, where it appears that the papers filed by a prisoner show that he/she had delivered his/her notice of appeal to the prison authorities within 30 days after the date of the judgment from which the appeal is taken.

LR 9.4 PETITIONS UNDER 28 U.S.C. § 2254 AND MOTIONS TO VACATE SENTENCE UNDER 28 U.S.C. § 2255 IN DEATH PENALTY CASES

A. All petitions for a writ of habeas corpus under 28 U.S.C. § 2254 and motions to vacate sentence under 28 U.S.C. § 2255 must be accompanied by a cover sheet that lists:

1. petitioner's full name and prisoner number; if prosecuted under a different name or alias, that name must be indicated.

2. name of person having custody of petitioner (warden, superintendent, etc.).

3. petitioner's address.

4. name of trial judge.

5. court term and bill of information or indictment number.

6. charges of which petitioner was convicted .

7. sentence for each of the charges.

8. plea entered.

9. whether trial was by jury or to the bench.

10. date of filing, docket numbers, dates of decision and results of direct appeal of the conviction.

11. date of filing, docket numbers, dates of decision and results of any state collateral attack on a state conviction including appeals.

12. date of filing, docket numbers, dates of decision of any prior federal habeas corpus or § 2255 proceedings including appeals.

13. name and address of each attorney who represented petitioner, identifying the stage at which the attorney represented the litigant.

B. A petition for writ of habeas corpus under 28 U.S.C. § 2254 or motion to vacate sentence under 28 U.S.C. § 2255 in a death penalty case

1. must list every ground on which the petitioner claims to be entitled to relief under 28 U.S.C. § 2254 (or § 2255 for federal prisoners) followed by a concise statement of the material facts supporting the claims;

2. must identify at what stage of the proceedings each claim was exhausted in state court if the petition seeks relief from a state court judgment;

3. must contain a table of contents if the petition is more than 25 pages;

4. may contain citation to legal authority that form the basis of the claim.

C. Petitioner must file, not later than 60 days after the date of the filing of the petition under § 2254 or motion to vacate sentence under § 2255, a memorandum of law in support. The memorandum of law must

1. contain a statement of the case;

2. contain a table of contents if it is more than 25 pages.

D. The petition/motion and memorandum together must not exceed 150 pages.

E. All documents filed must be succinct and must avoid repetition.

F. Respondent need not file a response until the memorandum of law is filed.

1. The response must not exceed 150 pages.

2. The response must contain a table of contents if it is more than 25 pages.

3. The response must be filed within 60 days of the filing of the memorandum of law.

G. Any reply to the response must be filed within 21 days of the filing of the response and may not exceed 30 pages.

H. Upon motion and for good cause shown, the judge may extend the page limits for any document.

I. Upon motion and for good cause shown, the judge may extend the time for filing any document.

J. The petitioner must file with the Clerk of the District Court a copy of the "Certificate of Death Penalty Case" required by Third Circuit L.A.R. Misc. 111.2(a). Upon docketing, the clerk of the district court will transmit a copy of the certificate, together with a copy of the petition to the Clerk of the Court of Appeals as required by Third Circuit L.A.R. Misc. 111.2(a).

K. Upon the entry of a warrant or order setting an execution date in any case within the geographical boundaries of this district, and in aid of this court's potential jurisdiction, the clerk is directed to monitor the status of the execution and any pending litigation and to establish communications with all parties and relevant state and/or federal courts. Without further order of this court, the clerk may, prior to the filing of a petition, direct parties to lodge with this court (1) relevant portions of previous state and/or federal court records, or the entire record, and (2) pleadings, briefs, and transcripts of any ongoing proceedings.

L. In accordance with Third Circuit L.A.R. Misc. 111.3(b), at the time a final decision is entered, the court shall state whether a certificate of appealability is granted or denied. If a certificate of appealability is granted, the court must state the issues that merit the granting of a certificate and must also grant a stay pending disposition of the appeal, except as provided in 28 U.S.C. § 2262.

Comment:

The standard forms have proved inadequate for complex death penalty cases. The purpose of the rule is to supplement the Rules Governing § 2254 Cases and Rules Governing § 2255 Cases so that the court and the parties can identify the issues at an early stage of the proceedings. The word "petitioner" refers to the party who files a petition under 28 U.S.C. § 2254 or a motion to vacate sentence under 28 U.S.C. § 2255. The Rule should be applied flexibly. The court should notify petitioners of deficiencies in filings and provide a reasonable opportunity to correct defects before issuing an order of dismissal for failure to comply with the Rule. The requirement that the petition and/or memorandum of law identify how a claim has been exhausted in state court should not be interpreted to preclude a petitioner from arguing in additional filings that the claim has been exhausted in a proceeding different from the one identified in the initial petition.

LR 16.1 PRE-TRIAL PROCEDURES

LR 16.1.1 Scheduling and Pretrial Conferences - Generally.

A. There shall be two phases of pretrial scheduling as set forth in LR 16.1.2 -- a discovery phase to be governed by an initial scheduling order and a post-discovery phase to be governed by a final scheduling order.

B. As soon as practicable but not later than thirty (30) days after the appearance of a defendant, a judicial officer shall enter an order setting forth the date and time of [a] an initial scheduling conference and the dates by which the parties shall confer and file the written report required by Fed.R.Civ.P. 26(f), which report shall be in the form set forth at Appendix B to these Rules. A judicial officer is either a United States District Judge or a United States Magistrate Judge. The judicial officer may defer [a] the initial scheduling conference if a motion that would dispose of all of the claims within the court's original jurisdiction is pending.

C. The judicial officer may conduct such further conferences as are consistent with the circumstances of the particular case and this Rule, and may revise any prior scheduling order for good cause.

D. At each conference each party not appearing pro se shall be represented by counsel who shall have full authority to bind the party in all pretrial matters and shall have authority to discuss settlement of the action. All counsel and unrepresented parties shall have sufficient knowledge of the claim asserted, defenses presented, relief sought and legal issues fairly raised by the pleadings so as to allow for a meaningful discussion of all such matters at each conference.

E. If ordered by the judicial officer or otherwise required by these Rules, counsel shall ensure that the parties are available, either in person or by telephone, at any conference, except that a governmental party may be represented by a knowledgeable delegate.

F. Upon request or sua sponte, the judicial officer may permit attendance by telephone of counsel or unrepresented parties at any conference.

G. Scheduling conferences shall not be conducted in any civil action that is referred to arbitration pursuant to LR 16.2, or in civil actions involving Social Security claims, bankruptcy appeals, habeas corpus, government collection and prisoner civil rights cases, unless the judicial officer to whom the case is assigned directs otherwise.

H. The judicial officer shall, after consultation with the parties, designate each civil action either Track I or II, as defined in LR 16.1.3.I.

I. The judicial officer shall advise each party of the provisions of LR 16.2 (Voluntary Arbitration).

LR 16.1.2 Scheduling Orders and Case Management.

A. Initial Scheduling Order. At the initial scheduling conference or as soon thereafter as practicable, the judicial officer shall enter [a] an initial scheduling order that sets forth dates for the following:

1. Filing motions to amend pleadings or add new parties;

2. Completion of fact and expert discovery including the dates for expert disclosures required by Fed.R.Civ.P. 26(a)(2) and the dates by which depositions of experts shall be completed;

3. [Designate,] Designation, if appropriate, of the case for arbitration, mediation or appointment of a special master or other special procedure[.]; and

4. A post-discovery status conference to be held within thirty (30) days after the completion of discovery. The initial scheduling order may also include:

5. Modifications of the times for, and extent of, disclosures under Fed.R.Civ.P. 26(a) and 26(e)(1);

6. Such limitations on the scope, method or order of discovery as may be warranted by the circumstances of the particular case to avoid duplication, harassment, delay or needless expenditure of costs;

7. The date to file dispositive motions at an early stage of the proceedings (i.e., before completion of fact discovery or submission of experts' reports); and

8. Any other matters appropriate in the circumstances of the case,

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

1. Filing dispositive motions and responses thereto;

2. Filing motions *in limine* and motions to challenge the qualifications of any proposed expert witness and/or the substance of such expert's testimony;

3. Filing pretrial statements required by LR 16.1.4;

4. Further conferences before trial including the final pretrial conference. The final scheduling order may also include:

5. The presumptive trial date; and

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

E. In a civil action arising under 18 U.S.C. §§ 1961-1968, the judicial officer may require a RICO case statement to be filed and served in a form approved by the court.

F. Before filing a motion to modify the scheduling order, counsel or an unrepresented party shall confer with all other counsel and unrepresented parties

in an effort to reach agreement on the proposed modification. Unless a motion to modify the scheduling order is filed jointly by all parties, any motion to modify shall be accompanied by a certificate of the movant denominated a Scheduling Motion Certificate stating that all parties have conferred with regard to the proposed modification and stating whether or not all parties consent thereto.

LR 16.1.3 SUBSEQUENT CONFERENCES -TRACK I AND TRACK II CASES

A. Track I cases are those that are neither subject to LR 16.2 (Voluntary Arbitration) nor designated as Track II pursuant to LR 16.1.3C. Track I cases are presumed to require infrequent judicial conferences or other judicial intervention after the initial scheduling conference. A final pretrial conference shall presumptively be conducted within 12 months of the filing of an initial answer in Track I cases and scheduled for trial within 18 months of the filing of the complaint.

B. Counsel and unrepresented parties are advised that the judicial officer in a Track I case may issue an order setting a presumptive trial date and/or a date certain for trial or may use a trailing docket (i.e., a list of cases ready for trial and a date upon which the court will begin to call those cases upon reasonable notice in the approximate order that they appear on the list). When a trailing docket is employed, the judicial officer shall provide counsel and unrepresented parties with reasonable notice of the date on which the case will be called for trial.

C. Track II cases are those that, based on the complexity of the pleadings or facts, or the demands of the case, appear to require frequent conferences or other judicial intervention. Each class action, antitrust, securities, environmental, patent, trademark, multi-district or complex case shall presumptively be designated as Track II. Conferences in Track II cases shall be scheduled on a regular basis and such cases shall be scheduled for trial on a date certain.

LR 16.1.4 PRETRIAL STATEMENTS AND FINAL PRETRIAL CONFERENCE

A. By the date specified in the co[s1scheduling order, but no sooner than 30 days after the close of discovery (including expert discovery), counsel for the plaintiff or an unrepresented plaintiff shall file and serve a pretrial statement. The pretrial statement shall include:

1. A brief narrative statement of the material facts that will be offered at trial

2. A statement of all damages claimed, including the amount and the method of calculation of all economic damages;

3. The name, address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises, and identifying each witness as a liability and/or damage witness;

4. The designation of those witnesses whose testimony is expected to be presented by means of a deposition and the designation of the portion of each deposition transcript (by page and line number) to be presented (and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony);

5. An appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those that the party expects to offer and those that the party may offer if the need arises and assigning an exhibit number to those that the party expects to offer;

6. A list of legal issues that the party believes should be addressed at the final pretrial conference;

7. Copies of all expert disclosures that the party made pursuant to Fed. R. Civ. P. 26(a)(2) with respect to expert witnesses identified in the pretrial statement pursuant to LR 16.1.4A(3); and

8. Copies of all reports containing findings or conclusions of any physician who has treated, examined, or has been consulted in connection with the injuries complained of, and whom a party expects to call as a witness at the trial of the case.

B. Within 30 days of filing of the plaintiff's pretrial statement, counsel for the defendant an unrepresented defendant shall file a pretrial statement meeting the requirements set forth in LR 16.1.4A, including defenses to the damages claims asserted against the defendant by any party and a statement of all damages claimed by the defendant in connection with a counterclaim, cross-claim or third-party claim, including the amount and the method of calculation of all economic damages.

C. Within 30 days of the filing of the defendant's pretrial statement, counsel for any third-party defendant or an unrepresented third-party defendant shall file a pretrial statement meeting the requirements set forth above for plaintiffs and/or for defendants, as appropriate.

D. Before filing a motion *in limine*, counsel or an unrepresented party shall confer with all other counsel and unrepresented parties in an effort to reach agreement on the issue to be raised by the motion. In the event an agreement is not reached, the motion *in limine* shall be accompanied by a certificate of the movant denominated a Motion *in Limine* Certificate stating that all parties made a reasonable effort to reach agreement on the issue raised by the motion.

E. Following the filing of the pretrial statements, counsel and any unrepresented parties shall meet with the court at a time fixed by the court for a final pretrial conference. Prior to and in preparation for the conference, counsel and unrepresented parties shall:

1. Make available for examination by opposing counsel or opposing unrepresented parties all exhibits identified in the pretrial statement and examine all exhibits made available by opposing counsel or opposing unrepresented parties;

2. Confer and determine in a jury case whether counsel and any unrepresented parties can agree that the case shall be tried non-jury. If an agreement is reached, the parties shall report to the court at the conference. If no agreement is reported, no inquiry shall be made by the court arid no disclosure shall be made by any counsel or unrepresented party identifying the counsel or party who failed to agree.

3. Unless previously filed or otherwise ordered, prepare a motion accompanied by or containing supporting legal authority for presentation at the final pretrial conference on any legal issues that have not been decided.

F. Unless otherwise ordered by the court, the following shall be done at the final pretrial conference:

1. Counsel and any unrepresented party shall indicate on the record whether the exhibits of any other party are agreed to or objected to, and the reason for any objection.

2. Motions prepared pursuant to LR 16.1.4E(3) shall be presented, accompanied by or containing supporting legal authority.

3. Counsel and any unrepresented party shall be prepared to disclose and discuss the evidence to be presented at trial, including (a) any anticipated use of trial technology in the presentation of evidence or in the opening statement or closing argument, and (b) any anticipated presentation of expert testimony and any challenges thereto.

4. Counsel shall have inquired of their authority to settle and shall have their clients present or available by phone. The judicial officer shall inquire whether counsel have discussed settlement.

5. Counsel and any unrepresented party wishing to supplement his or her pretrial statement shall file and serve a motion to do So not less than five (5) days before the final pretrial conference, which motion shall be granted in the absence of prejudice to another party. If the motion is filed less than seven (7) days before the final pretrial conference, the motion shall be hand-delivered or served by electronic means.

6. Such record shall be made of the conference as the judicial officer orders or as any party may request.

G. Failure to fully disclose in the pretrial statements (or, as permitted by the court, at or before the final pretrial conference) the substance of the evidence proposed to be offered at trial, may result in the exclusion of that evidence at trial, at a hearing or on a motion unless the parties otherwise agree or the court orders otherwise. The only exception will be evidence used for impeachment purposes.

H. In the event that the civil action has not been tried within 12 months of the pretrial conference, the judicial officer shall schedule a status conference to discuss the possibility of settlement and establish a prompt trial date.

LR 16.2 ALTERNATIVE DISPUTE RESOLUTION

A. Application. LR 16.2 shall govern actions as the Board of Judges shall determine, from time to time, commenced on or after that date, with the exception of Social Security cases and cases in which a prisoner is a party.

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

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

1. Mediation

2. Early Neutral Evaluation

3. Arbitration

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

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

LR 17.1 INFANTS OR INCOMPETENT PERSONS -- COMPROMISE SETTLEMENT, DISCONTINUANCE AND DISTRIBUTION

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

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

C. When a compromise or settlement has been so approved by the court, or when a judgment has been entered upon a verdict or by agreement, the court, upon petition by the guardian or any party to the action, shall make an order approving or disapproving any agreement entered into by the guardian for the payment of counsel fees and other expenses out of the fund created by the compromise, settlement or judgment; or the court may make such order as it deems proper fixing counsel fees and other proper expenses. The court shall then order the balance of the fund to be paid to the guardian of the estate of the minor qualified to receive the fund except that if the amount payable to the minor does not exceed the sum of one hundred thousand dollars ($100,000.00), the court may order the monies deposited in a federally insured bank or savings and loan in an account to be marked "not to be withdrawn until majority has been attained or further order of court." If the amount of anticipated interest would cause the account to exceed $100,000.00, then the court may order the deposit to be made in two or more savings institutions. If the minor has no guardian of his/her estate and the balance does not exceed ten thousand dollars ($10,000.00), the court on its own motion or upon petition of any person entitled to apply for the appointment of a guardian for the minor may authorize the amount of the judgment to be paid to the guardian of the person, the natural guardian, the person by whom the minor is maintained, or the minor.

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

LR 17.2 SETTLEMENT PROCEDURE FOR SEAMAN SUITS

A. No suit in admiralty or civil action to which a seaman is a party shall be compromised, settled, discontinued or amicably or voluntarily dismissed except after approval by the court pursuant to a petition presented by the seaman's attorney.

B. In all such cases, the seaman's attorney shall file with the clerk, as part of the record, a petition containing (1) a statement of the essential facts relating to liability, (2) the elements of claimed damage, including a statement of amounts already paid to or on behalf of the seaman, (3) a statement of services rendered by counsel, (4) the expenses incurred or to be incurred by counsel and (5) the amount of fees and expenses requested by counsel. The petition shall also include copies of written statements of those physicians who have treated or examined the seaman setting forth the nature of the injuries and the extent of recovery and a copy of the release, if any, signed or to be signed by the seaman. The petition shall be verified by the seaman's attorney.

C. No such compromise, settlement, discontinuance or dismissal shall be approved by the court unless the seaman appears in open court before the judge to whom the petition is presented. At such time, the court shall examine the seaman under oath in order to insure that the seaman's rights are fully protected and that he or she comprehends the nature of the action being taken by him or her and on his or her behalf before such petition and release shall be approved and order entered thereon.

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

LR 23.1 CLASS ACTIONS

In any case sought to be maintained as a class action:

A. The complaint shall bear next to its caption the legend "Complaint - Class Action ."

B. The complaint shall contain under a separate heading styled "Class Action Allegations":

1. A reference to the portion or portions of Rule 23, Federal Rules of Civil Procedure, under which it is claimed that the suit is properly maintainable as a class action.

2. Appropriate allegations thought to justify such claim, including, but not necessarily limited to:

a. the size (or approximate size) and definition of the alleged class

b. the basis upon which the plaintiff (or plaintiffs) claims

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

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

c. the alleged questions of law and fact claimed to be common to the class, and

d. in actions claimed to be maintainable as class actions under subdivision (b)(3) of Rule 23, Federal Rules of Civil Procedure, allegations thought to support the findings required by that subdivision.

C. Within 90 days after the filing of a complaint in a class action, unless this period is extended on motion for good cause appearing, the plaintiff shall move for a determination under subdivision (c)(1) of Rule 23, Federal Rules of Civil Procedure, as to whether the case is to be maintained as a class action. In ruling upon such a motion, the court may allow the action to be so maintained, may disallow and strike the class action allegations, or may order postponement of the determination pending discovery or such other preliminary procedures as appear to be appropriate and necessary in the circumstances. Whenever possible, where it is held that the determination should be postponed, a date will be fixed by the court for renewal of the motion before the same judge.

D. The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim or crossclaim alleged to be brought for or against a class.

LR 24.1 NOTICE OF CONSTITUTIONAL QUESTION

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 or statutes.

LR 26.1 DISCOVERY MOTIONS

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

LR 30.1 VIDEOTAPE DEPOSITIONS

A. Procedures

1. Witnesses shall be placed under oath on the video-record.

2. Immediately upon the conclusion of the deposition, the operator shall label the recording by deponent's name, caption of the case, and case number. The operator will then file the tape in the clerk's office and the same shall be docketed.

3. When a deposition is taken by videotape, counsel shall file the recording with the clerk, or present it to the courtroom deputy at the time of trial, at which time it will then be the responsibility of the courtroom deputy to file the recording with the clerk.

B. Retention

1. All videotape depositions shall be retained by the clerk for a period of one year after final determination of the case, or unless otherwise ordered by the court.

2. Counsel shall indicate when filing the tape to whom the tape should be returned.

3. Videotape depositions in the clerk's custody may be viewed by any party in the action upon written request to the clerk. Such viewing shall be done on video equipment provided by the court.

C. Objections During Deposition

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

LR 33.1 INTERROGATORIES TO PARTIES

A. Interrogatories and Answers to Interrogatories

Interrogatories shall be prepared in such a fashion that sufficient space for insertion of the answers is provided after each interrogatory or sub-section thereof. The original and two (2) copies shall be served upon the party to whom they are directed.

The answering party shall insert answers on the original interrogatories served upon him/her and shall retain the original and be the custodian of it.

If there is not sufficient space on the original for insertion of answers, the answering party may use and attach supplemental pages for the answers.

In lieu of the foregoing procedure, the answering party may retype the questions with the answers appearing immediately thereafter.

B. Objections to Interrogatories

If a party serves objections to some but not all of a set of interrogatories, he/she shall answer fully under oath and within 30 days the interrogatories to which he has **not** objected, except that a defendant who has been served with interrogatories may serve answers within 45 days after service of summons and complaint upon that defendant. As to those interrogatories to which a party objects, objections shall be served within 30 days after service of interrogatories, except that a defendant who has been served with interrogatories with a complaint may serve objections within 45 days after service of the summons. The interrogatory to which objection is made shall be set out verbatim and reasons in support of each objection shall be set forth in detail. The objections shall be signed by counsel, and if not, the objections may be stricken by the court on its own motion or upon the motion of an adverse party. Otherwise, no action with respect to said objections shall be taken in the absence of a motion to compel discovery under Rule 37, Federal Rules of Civil Procedure, or as otherwise ordered by the court.

LR 35.1 IMPARTIAL MEDICAL EXAMINATION, REPORT AND TESTIMONY

A. In any case involving the medical condition of a party, a judge on his/her own motion, for any reason including assistance in pretrial proceedings or in furtherance of settlement, or by agreement of the parties or by an affidavit by one of the parties setting forth the need, may refer the case to an impartial medical expert. The expert will be a member of a panel of examining physicians designated by the Allegheny County Medical Society after consultation with a committee appointed by the president of the Allegheny County Bar Association, and which panel shall include specialists in the various medical fields.

B. Copies of all available medical reports or hospital records shall be furnished by counsel to the medical expert who shall review them, examine the party, and forward his/her report and opinion to the judge, with copies to counsel for each of the parties. As part of his/her report, the medical expert shall answer the following question: "Considering all the facts presented, and based on your examination of the party, is the proposed medical testimony of any doctor who may be called as a witness in this case such that in the present state of medical science a reasonable medical scientist could not accept it either as to diagnosis, causal connection or prognosis?"

C. If the answer to this question is "yes" and the case proceeds to trial, the medical expert may be called as a witness by the judge or by any party to the action as an impartial medical expert appointed by the judge and his/her testimony submitted to the jury under proper instruction from the judge.

D. If the answer to this question is "no", the medical expert may be called as a witness by any party to the action, but he/she shall not be identified as having been appointed as an impartial medical expert.

E. If the case does not proceed to trial or if the medical expert is not called as a witness at the trial, or is called as a witness by the judge, his/her compensation shall be paid equally by each party to the litigation, unless the judge in his/her discretion orders payment to be made otherwise in order to meet special factual situations.

F. If the medical expert is called as a witness at the trial by any party, his/her compensation shall be paid by that party.

LR 37.1 INFORMAL CONFERENCE TO SETTLE DISCOVERY DISPUTES

A. Unless otherwise ordered, the clerk shall not accept for filing any discovery motion, except those motions brought pursuant to Fed.R.Civ.P. 26(c) by a person who is not a party, unless counsel for the moving party or the unrepresented moving party attaches thereto a certificate that said counsel or unrepresented party has made a reasonable effort to reach agreement with opposing counsel or unrepresented parties on the matters set forth in the motion and summarizing the facts and circumstances of that reasonable effort. The certificate shall be denominated a Discovery Dispute Certificate.

B. The clerk of court shall refer any discovery motion accompanied by a Discovery Dispute Certificate to the member of the court to whom the case was assigned for disposition, except in cases where such matters may be required to be submitted to the emergency or miscellaneous judicial officer, or the judicial officer to whom matters may be temporarily referred by the judicial officer to whom the case was assigned.

LR 37.2 FORM OF DISCOVERY MOTIONS

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

LR 40.1 ASSIGNMENT OF CASES

A. All civil litigation in the court shall be divided into the following categories:

1. Antitrust and Securities Act cases.

2. Labor-Management Relations.

3. Habeas Corpus.

4. Civil Rights.

5. Patent, Copyright, and Trademark.

6. Eminent Domain.

7. All other federal question cases.

8. All personal and property damage tort cases, including maritime, F.E.L.A., Jones Act, motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest.

9. Insurance, indemnity, contract, and other diversity cases.

10. Government Collection Cases (includes inter alia, Health & Human Services (formerly Health, Education and Welfare) Student Loans, Veterans Administration Overpayment, Social Security Overpayment, Enlistment Overpayment, Housing & Urban Development Loans, General Accounting Office Loans, Mortgage Foreclosures, Small Business Administration Loans, Civil and Coal Mine Penalties, and Reclamation Fees.)

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

1. Antitrust and securities fraud.

2. Income tax and other tax prosecutions.

3. General criminal.

C. As the first pleading is filed by the plaintiff, each civil case shall be assigned to a judge who shall thereafter have charge of the case for all purposes. The assignment shall be made by the clerk from a non-sequential list of all judges arranged in each of the various categories. Sequences of judges' names within each category shall be kept secret and no person shall directly or indirectly ascertain or divulge or attempt to ascertain or divulge the name of the judge to whom any case may be assigned before the assignment is made by the clerk.

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

1. All criminal prosecutions arising out of the same criminal transaction or series of transactions are deemed related.

2. Civil cases are deemed related when a case filed relates to property included in another suit, or involves the same issue of fact, or it grows out of the same transaction as another suit, or involves the validity or infringement of a patent involved in another suit.

3. All habeas corpus petitions filed by the same individual shall be deemed related. All pro se civil rights actions by the same individual shall be deemed related.

E. Assignment of related cases.

1. If the fact of relationship is indicated on the appropriate form at time of filing, the clerk shall assign the case to the same judge to whom the lower numbered related case is assigned.

2. If the fact of relationship does not become known until after the case is assigned, the judge receiving the later case may transfer the matter to the judge to whom the earlier related case was assigned.

F. All cases qualifying for the Erie or Johnstown calendars shall be assigned to judges designated by the court to hear such cases and a credit shall be given to such judge in the appropriate category of the master Pittsburgh list for each such Erie or Johnstown case so assigned.

G. Except in the case of death, disability or other exceptional circumstances approved by the chief judge, no civil action shall be transferred from one judge to another where (1) the action has already been transferred from one judge to another; (2) the case has been pending for more than two years; or (3) there are dispositive motions pending.

LR 47.1 VOIR DIRE OF JURORS

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

1. The name and residence of each of the parties.

2. The nature of the suit.

3. The caption of the case.

B. The following questions shall be posed to the jurors collectively:

1. Are you now or have you or any members of your immediate family ever been connected with, or engaged in any capacity with the business of investigating or paying accident claims, either on behalf of claimants or on behalf of parties against whom claims are made?

2. Do you know any of the parties?

3. Do you know any of the attorneys in the case? Have they or their firms ever represented you or any members of your immediate family?

4. Do you know anything about this case?

5. Are you, or any member of your immediate family, employees, former employees, or stockholders in any of the corporate parties?

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

1. Where do you live?

2. What is your present occupation?

3. Who is your employer?

4. Are you married? If so, what is your spouse's occupation and who is your spouse's employer?

5. Do you have any children? Do any of them work in the Western District of Pennsylvania? For whom do they work, and what do they do?

6. Do you own your own home?

7. Do you drive a car?

8. Do you have a family doctor? If so, what is his/her name?

9. What is the name of your attorney, if you have one?

10. Have you ever been a party to a law suit?

11. Any other question, which in the judgment of the trial judge or the judge in charge of miscellaneous matters after application being made, shall be deemed proper.

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

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

LR 52.1 FINDINGS BY THE COURT

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

LR 54.1 JURY COST ASSESSMENT

Whenever the court finds, after 10 days notice and a reasonable opportunity to be heard, that any party or lawyer in any civil case before the court has acted in bad faith, abused the judicial process, or has failed to exercise reasonable diligence in effecting the settlement of such case at the earliest practicable time, the court may impose upon such party or lawyer the jury costs, including mileage and per diem, resulting therefrom.

The court shall issue a rule to show cause and conduct a hearing of record to inquire into the facts prior to imposing any sanction.

LR 56.1 MOTION FOR SUMMARY JUDGMENT

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

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

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

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

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

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

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

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

(b) setting forth the basis for the denial if any fact contained in the moving party's Concise Statement of Material Facts is not admitted in its entirety (as to whether it is undisputed or material), with appropriate reference to the record (See LR 56.1B(1) for instructions regarding format and annotation); and

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

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

3. Appendix: Documents referenced in the Responsive Concise Statement shall be included in an appendix. (See LR 56.1B(3) for instructions regarding the appendix).

D. Moving Party's Reply to Opposing Party's Submission. Within 15 days of service of the opposing party's submission in opposition to the motion for summary judgment, the moving party may reply to the opposing party's submission in the same manner as set forth in LR 56.1C.

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

LR 66.1 RECEIVERS

A. In the exercise of the authority vested in the district courts by Rule 66 of the Federal Rules of Civil Procedure, this rule is promulgated for the administration of estates by receivers, appointed by the court, in civil actions.

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

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

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

LR 67.1 BONDS AND OTHER SURETIES

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

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

C. Qualifications Of Surety. Every bond for costs under this rule must have as surety either (1) a cash deposit equal to the amount of the bond or (2) a corporation authorized by the Secretary of the Treasury of the United States to act as surety on official bond under the Act of August 13, 1894 (28 Stat. 279), as amended, U.S.C. Title 6, Secs. 1-13.

D. No clerk, marshal, member of the bar, or other officer of this court will be accepted as surety on any bond or undertaking in any action or proceeding in this court.

LR 67.2 DEPOSIT IN COURT

A. The clerk of court will invest funds under Rule 67 of the Federal Rules of Civil Procedure as soon as the business of his/her office allows. Such funds may be retained temporarily in a non-interest bearing treasury account until the depository pledges sufficient collateral when the deposit exceeds the federal insurance limit.

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

C. The posting party must move the court to have registry funds deposited into an interest-bearing account. The proposed investment order should be reviewed by the clerk or his/her financial deputy to insure that all of the required investment information is included. It is the responsibility of the posting party to serve the clerk or his/her financial deputy with a copy of the signed investment order. In most instances, the clerk's office can provide a standard investment order that would satisfy the requirements of the federal rules and these local rules. Counsel should contact the clerk's office prior to depositing funds into the registry of the court to obtain information regarding the possible use of the standard investment order.

D. PNC Bank is the designated depository for the court. The clerk shall, upon an order from the court, deposit funds subject to Rule 67 into PNC Bank.

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

F. Registry deposits involving designated or qualified settlement funds may be subject to IRS Regulations that require the appointment of an administrator outside of the court to handle fiduciary and tax matters. A registry account may be a designated or qualified settlement fund if A) there has been a settlement agreement in the case, B) the court has entered an order establishing or approving a deposit into the registry as a settlement fund, and C) the liability resolved by the settlement is of a kind described in 26 U.S.C. §468B or 26 C.F.R. § 1.468B-1(c). It is the responsibility of the depositing party to identify any registry deposit intended to be a designated or qualified settlement fund. Depositors should contact the clerk's office prior to the deposit of settlement fund monies to insure that proper procedures are followed for the reporting of interest income and the payment of income tax on registry accounts.

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

The court's order for disbursement of invested registry funds must include the name and address of the payee(s) in addition to the total amount of the principal and interest (if the interest is not known, the order may read "plus interest") which will be disbursed to each payee. In order for the clerk to comply with Rule 76-50 of the Internal Revenue Code, payees receiving earned interest must provide a W-9 Taxpayer Identification and Certification form to the clerk's office prior to disbursement from the invested account. The disbursement order should be reviewed by the clerk or the financial deputy prior to being signed by the judge in order to insure that the necessary information is provided.

LR 71A.1 CONDEMNATION OF PROPERTY

When the United States files separate land condemnation actions and concurrently files a single declaration of taking relating to those separate actions, the clerk 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."

LR 72.1 MAGISTRATE JUDGES

LR 72.1.1 DUTIES UNDER 28 U.S.C. §§ 636(a)(1) and (2)

Each United States magistrate judge appointed by this court is authorized to perform the duties prescribed by 28 U.S.C. Section 636(a)(1) and (2) and may:

A. Exercise all the powers and duties conferred or imposed upon United States commissioners or magistrate judges by law or the Federal Rules of Criminal Procedure;

B. Administer oaths and affirmations, impose conditions of release under 18 U.S.C. Sec. 3146 and take acknowledgments, affidavits, and depositions;

C. Conduct removal proceedings and issue warrants of removal in accordance with Rule 40, Federal Rules of Criminal Procedure;

D. Conduct extradition proceedings, in accordance with 18 U.S.C. Sec. 3184; and

E. Supervise proceedings conducted pursuant to letters rogatory, in accordance with 28 U.S.C. Sec. 1782.

LR 72.1.2 DISPOSITION OF MISDEMEANOR CASES -- 28 U.S.C. § 636 (a)(3)

A magistrate judge may:

A. Try persons accused of, and sentence persons convicted of, misdemeanors committed within this district in accordance with 18 U.S.C. Section 3401.

B. Direct the probation service of the court to conduct a presentence investigation in any misdemeanor case.

C. Upon the transfer under Rule 20 of the Federal Rules of Criminal Procedure of an information or indictment charging a misdemeanor, the case shall be referred immediately to a magistrate judge who may take the plea and impose sentence in accordance with the applicable rules, if the defendant consents in writing and signs a written waiver of his/her right to trial, judgment and sentencing by a judge of the district court.

D. Within twenty (20) days after disposing of a misdemeanor or, in other cases, after completing his/her assigned duties, a magistrate judge shall file the record of proceedings and all other official papers with the clerk of court.

E. All fines collected or collateral forfeited shall be transmitted immediately to the clerk.

F. An appeal from a judgment of a United States magistrate judge having been certified to the court in accordance with the Rules of Procedure for Trials before magistrate judges (18 U.S.C. Sec. 3402), the appellant shall, within fifteen (15) days, serve and submit a brief. The United States Attorney shall serve and submit a reply brief within fifteen (15) days after receipt of a copy of the appellant's brief.

G. In a case involving a petty offense as defined in 18 U.S.C. Sec. 1(3), payment of a fixed sum may be accepted in lieu of appearance and as authorizing the termination of the proceeding.

H. There shall be maintained at the office of the clerk a list of those petty offenses for which collateral forfeiture may apply and the amounts of said collateral forfeiture. The list shall enumerate those offenses for which collateral forfeiture shall not apply and for which appearance shall be mandatory.

I. Nothing contained in this rule shall prohibit a law enforcement officer from arresting a person for the commission of any offense, including those for which collateral may be posted and forfeited, and requiring the person charged to appear before a United States magistrate judge or, upon arrest, taking him/her immediately before a United States magistrate judge.

J. Each magistrate judge is authorized to conduct a jury trial in any misdemeanor case where the defendant so requests and is entitled to trial by jury under the Constitution and laws of the United States.

LR 72.1.3 NONDISPOSITIVE PRETRIAL MATTERS

A. In accordance with 28 U.S.C. Sec. 636(b)(1)(A), a magistrate judge may hear and determine any pretrial motion or other pretrial matter, other than those motions specified in Rule 4, infra.

B. Any party may appeal from a magistrate judge's determination made under this rule within ten (10) days after issuance of the magistrate judge's order, unless a different time is prescribed by the magistrate judge or judge. Such party shall file with the clerk of court, and serve on all parties, a written notice of appeal which shall specifically designate the order or part thereof appealed from and the basis for objection thereto. The opposing party shall be allowed seven (7) days after service to respond to the appeal. A judge of the court shall consider the appeal and set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law. The judge may also reconsider any matter sua sponte.

LR 72.1.4 DISPOSITIVE PRETRIAL MOTIONS AND PRISONER CASES

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

1. applications for post-trial relief made by individuals convicted of criminal offenses;

2. prisoner petitions challenging conditions of confinement; and

3. motions for injunctive relief (including temporary restraining orders and preliminary injunctions), for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by a defendant, to suppress evidence in a criminal case, to dismiss or permit the maintenance of a class action, to dismiss for failure to state a claim upon which relief may be granted, to involuntarily dismiss an action, for judicial review of administrative determinations, and for review of default judgments.

B. Any party may object to the magistrate judge's proposed findings, recommendations or report issued under this rule within ten (10) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. Such party may be ordered to file with the clerk a transcript of the specific portions of any evidentiary proceedings to which objection is made. The opposing party shall be allowed seven (7) days from the date of service to respond to the objections. A judge shall make a de novo determination of those portions to which objection is made and may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge. The judge, however, need not conduct a new hearing and may consider the record developed before the magistrate judge, making his/her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions;

C. A magistrate judge may exercise the powers enumerated in Rules 2, 3, 4, 5, 6, 7, 8, and 9 of the Rules Governing Section 2254 and Section 2255 Proceedings, in accordance with the standards and criteria established in 28 U.S.C. Sec. 636(b)(1).

LR 72.1.5 SPECIAL MASTER REFERENCES AND TRIALS BY CONSENT

A. A magistrate judge may serve as a special master subject to the procedures and limitations of 28 U.S.C. Sec. 636(b)(2) and Rule 53 of the Federal Rules of Civil Procedure.

B. Where the parties consent, a magistrate judge may serve as a special master in any civil case without regard to the provisions of Rule 53(b) of the Federal Rules of Civil Procedure.

C. The magistrate judges may, upon consent of the parties, conduct any and all proceedings in a jury or non-jury civil matter and order the entry of judgment in accordance with 28 U.S.C. Sec. 636(c).

D. The plaintiff or his/her representative shall attach to the service copies of the complaint and summons a notice informing the parties to the action that they may consent to have a magistrate judge conduct any or all proceedings in the case and order the entry of a final judgment. Additional notices may be furnished by the clerk to the parties at later stages of the proceedings, and may be included with pretrial notices and instructions.

E. The clerk shall not accept a consent form unless it has been signed by all parties in a case. The plaintiff shall be responsible for securing the execution of a consent form by the parties and for filing such form with the clerk. No consent form will be made available, nor will its contents be made known to any judge or magistrate judge, unless all parties have consented to the reference to a magistrate judge. No magistrate judge, judge, or other court official may attempt to persuade or induce any party to consent to the reference of any matter to a magistrate judge. This rule, however, shall not preclude a judge or magistrate judge from informing the parties that they may have the option of referring a case to a magistrate judge. The consent form may be filed at any time prior to trial.

F. After the consent form has been executed and filed, the clerk shall transmit it to the judge to whom the case has been assigned for approval and referral of the case to a magistrate judge.

LR 72.1.6 OTHER DUTIES

A magistrate judge is also authorized to:

A. Exercise general supervision of the civil and criminal calendars of the court, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the judges;

B. Conduct pretrial conferences, settlement conferences, omnibus hearings and related pretrial proceedings;

C. Conduct arraignments in cases not triable by the magistrate judge to the extent of taking a not guilty plea or noting a defendant's intention to plead guilty or nolo contendere and ordering a presentence report in appropriate cases;

D. Receive grand jury returns in accordance with Rule 6(f) of the Federal Rules of Criminal Procedure, issue bench warrants and enter orders sealing the record in accordance with Rule 6(e), 6(f) and 9(a) Fed.R.Crim.P.

E. Conduct voir dire and select petit juries for the court;

F. Accept petit jury verdicts in civil cases in the absence of a judge;

G. Conduct necessary proceedings leading to the potential revocation of probation;

H. Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings;

I. Order the exoneration or forfeiture of bonds;

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

K. Conduct examinations of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure;

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

M. Approve deferred prosecution agreements in felony cases pending before the magistrate judge in which no indictment or information has been filed;

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

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

LR 72.1.7 ASSIGNMENT OF DUTIES OF MAGISTRATE JUDGES

A magistrate judge may perform the duties authorized by 28 U.S.C., Sec. 636(b) and Rules 3 through 6, supra, upon specific designation by a judge of the court or pursuant to a general order or resolution of the court assigning duties. In performing such duties the magistrate judge shall conform to the general procedural rules of this court and the instructions of the judge to whom the case is assigned.

LR 72.1.8 FORFEITURE OF COLLATERAL IN LIEU OF APPEARANCE

A. Pursuant to paragraph G(2) of the order of court adopting rules for United States magistrate judges (LR 72.1.1) this list is established setting forth those petty offenses for which trial appearance shall be mandatory and the amounts of collateral forfeiture which may be acceptable in lieu of appearance.

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

1. Traffic Offenses.

a. Indictable offenses.

b. Offenses resulting in an accident where one of the following conditions are met:

(1) Two or more vehicles are involved;

(2) Personal injury has resulted.

(3) Property damage in excess of $200 has resulted.

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

d. Reckless driving.

e. Leaving the scene of an accident.

f. Driving while under suspension or revocation of a driver's license.

g. Driving without being licensed to drive.

h. Exceeding the speed limit by more than 15 miles per hour.

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

2. Non-traffic offenses.

a. Drunkenness.

b. Disorderly conduct.

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

LR 77.1 SESSIONS OF COURT

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

LR 83.1 FREE PRESS -- FAIR TRIAL PROVISIONS

A. It is the duty of the 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 (for dissemination by any) means of public communication, in connection with pending or imminent criminal litigation with which he/she or the 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.

B. With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated by (for dissemination 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 otherwise to aid in the investigation.

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

1. The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his/her apprehension or to warn the public of any dangers he/she may present;

2. The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

3. The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

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

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

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

The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of his/her or its 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 officer 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 charges made against him/her.

D. 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 extrajudicial statement or interview, relating to the trial or the parties or issues in the trial which a reasonable person would expect to be disseminated by (for dissemination by any) means of public communication, if there is a reasonable likelihood that such dissemination will interfere with the fair trial, except that the lawyer or law firm may quote from or refer without comment to public records of the court in the case.

E. After the completion of a trial or disposition without trial of any criminal matter, and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement which a reasonable person would expect to be disseminated by (for dissemination by any) means of public communication if there is a reasonable likelihood that such dissemination will affect the imposition of sentence.

F. 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/her.

G. A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial and which relates to:

1. Evidence regarding the occurrence or transaction involved.

2. The character, credibility, or criminal record of a party, witness, or prospective witness.

3. The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

4. His/her opinion as to the merits of the claims or defenses of a party except as required by law or administrative rule.

5. Any other matter reasonably likely to interfere with a fair trial of the action.

H. RESOLUTION OF THE BOARD OF JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA
Adopted May 21, 1968

WHEREAS, the Judicial Conference of the United States at its meeting on March 8-9, 1962, adopted the following resolution (Report of the Judicial Conference of the United States proceedings March 8-9, 1962 as reaffirmed in the Report of March 18-19, 1965):

"Resolved, That the Judicial Conference of the U.S. condemns the taking of photographs in the courtroom or its environs in connection with any judicial proceedings, and the broadcasting of judicial proceedings by radio, television, or other means, and considers such practices to be inconsistent with fair judicial procedure and that they ought not to be permitted in any federal court."

and,

WHEREAS, said Resolution enlarges the provisions of Federal Rules of Criminal Procedure, Rule 53, prohibiting photographing, broadcasting and televising in courtrooms during the progress of judicial proceedings so as to include not only criminal but also civil proceedings, and so as to exclude photographing, broadcasting and televising not only from the courtrooms, but also from its "environs";

and

WHEREAS, Canon 35 of the American Bar Association provides in part as follows:

"Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the courtroom during sessions of court, recesses, or between sessions, and the broadcasting or televising of court proceedings are calculated to detract from the essential dignity of the proceedings, distract the witness so that his/her testimony degrades the court and creates misconception with respect thereto in the minds of the public, and should not be permitted."

and,

WHEREAS, in order to avoid misunderstanding with representatives of news media, it appears appropriate to clarify the subject of photography, recording, broadcasting and televising from or in the courts and environs in order to conform to the standards set by the Judicial Conference of the United States;

NOW, THEREFORE, IT IS HEREBY ORDERED that all forms, means and manner of taking photographs, recording, broadcasting and televising are prohibited in any hearing room, corridor or stairway leading thereto, on any floor occupied entirely or in part by the United States District Court for the Western District of Pennsylvania, in any United States courthouse or federal facility, or any other building designated by the United States District Court for the Western District of Pennsylvania as a place for holding court or other judicial proceeding, whether or not court is in session.

Except, however, the press rooms set aside for the use of members of the press and other communications media in which photographs may be taken and radio and television may be transmitted with the voluntary consent of the individual involved.

Adopted at a regular meeting of the board of judges this 21st day of May, 1968, and effective forthwith.

The foregoing was amended by the following resolution, adopted by the board of judges on February 16, 1982.

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

A) Available light is to be used.

B) Only one camera is to be used. The station owning that camera must make a tape available to all stations requesting one.

C) The camera must remain in one position throughout. It must be in position before the opening of court and remain there until the court has recessed.

D) Microphones must be placed in fixed positions and remain there throughout.

E) Camera and microphone personnel shall not move about the courtroom during the proceeding.

LR 83.2.1 ADMISSION TO PRACTICE

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

B. Eligibility. Any person who is eligible to be admitted to practice before the Supreme Court of Pennsylvania is eligible for admission to the bar of this court.

C. Any person who is a member in good standing of the bar of the Supreme Court of Pennsylvania, or a member in good standing of the Supreme Court of the United States, or a member in good standing of any United States district court, may be admitted to practice before the bar of this court.

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

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

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

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

F. No attorney, otherwise qualified for admission to practice in this court, either generally or specially, or who is not a member of the bar of this court, shall be permitted to practice in the criminal branch of the federal law as counsel for any person accused of crime in the United States District Court for the Western District of Pennsylvania, where said attorney or a member of the bar of this court is serving by appointment or election in any of the following categories in either the state of Pennsylvania or for the United States of America:

1. District attorney of any county in the Commonwealth of Pennsylvania.

2. Assistant, deputy or special advisor of any district attorney of any county in the Commonwealth of Pennsylvania.

3. Attorney general of the Commonwealth of Pennsylvania.

4. Assistant, deputy or special advisor of the attorney general of the Commonwealth of Pennsylvania.

5. Legal counsel for and any assistant or deputy of any agency of the United States Government.

6. Magistrates or justices of the peace of any city, county or state.

LR 83.2.2 APPEARANCES AND WITHDRAWALS OF APPEARANCE

A. Appearance - How entered. In all criminal proceedings a praecipe for appearance by counsel shall be filed with the magistrate judge at the defendant's arraignment before the magistrate judge, in duplicate. The magistrate judge shall distribute the copies as follows: one copy to the United States attorney, and one copy shall be retained by the magistrate judge for his/her record. In all other cases which do not involve a hearing before a magistrate judge, a praecipe for appearance shall be filed prior to or on the day of arraignment of the defendant, in duplicate, one copy of which shall be filed by the clerk in the permanent records, and the second copy shall be transmitted to the United States attorney. It shall be the duty of the clerk of court to make available the required forms for attorneys to enter their appearances in accordance with this rule.

B. Any appearance by a Pennsylvania attorney shall contain a Pennsylvania attorney identification number.

C. Except as modified by LR 83.2.1(F), a separate praecipe for appearance need not be filed by an attorney for an original party to an action or for an intervenor. The endorsement of names of attorneys appearing on the first pleading or motion filed by a party shall constitute the entry of appearance of such attorneys. Appearance by other attorneys shall be by praecipe filed with the clerk.

D. Withdrawal of Appearance. In any civil or criminal proceeding, no attorney whose appearance has been entered shall withdraw his/her appearance except upon filing a written petition stating reasons for withdrawal, and only with leave of court and upon reasonable notice to the client.

LR 83.2.3 STUDENT PRACTICE RULE

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

B. Student Requirements. An eligible student must:

1. be duly enrolled in a law school accredited by the American Bar Association:

2. have completed a least four semesters of legal studies, or the equivalent;

3. be enrolled for credit in a law school clinical program which has been approved by this court;

4. be certified by the Dean of the law school, or the Dean's designee, as being of good character, and having sufficient legal ability to fulfill the responsibilities of a legal intern to both the client and this court;

5. be certified by this court to practice pursuant to this rule;

6. be accept personal compensation from a client or other source for legal services provided pursuant to this rule.

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

1. must provide the student with academic and practice advocacy training, utilizing law school faculty or adjunct faculty, including federal government attorneys or private practitioners, for practice supervision;

2. must grant the student academic credit for satisfactory participation therein;

3. must be certified by this court;

4. must be conducted in such a manner as not to conflict with normal court schedules;

5. may accept compensation other than from a client;

6. must secure and maintain professional liability insurance for it activities.

D. Supervisor Requirements. A supervisor must:

1. have faculty or adjunct faculty status at the law school offering the clinical practice program, and must be certified by the Dean of the law school as being of good character, and having sufficient legal ability and adequate training to fulfill the responsibilities of a supervisor;

2. be admitted to practice before this court;

3. be present with the student at all times during court appearance, and at all other proceedings, including depositions in which testimony is taken;

4. co-sign all pleadings or other documents filed with this court;

5. assume full professional responsibility for the student's guidance in, and for the quality of, any work undertaken by the student pursuant to this rule;

6. be available for consultation with represented clients;

7. assist and counsel the student in all activities conducted pursuant to this rule, and review such activities with the student so as to assure the proper practical training of the student and the effective representation of the client;

8. be responsible for supplementing oral or written work of the student, where necessary, to ensure the effective representation of the client.

E. Certification of Student, Program and Supervisor

1. Students.

a. Certification by the law school Dean and approval by this court shall be filed with the clerk of court, and unless it is sooner withdrawn, shall remain in effect until expiration of 18 months;

b. Certification to appear in a particular case may be withdrawn at any time, in the discretion of the court, and without any showing of cause.

2. Program.

a. Certification of a program by this court shall be filed with the clerk of court and shall remain in effect indefinitely unless withdrawn by he court;

b. Certification of a program may be withdrawn by this court at any time;

3. Supervisor.

a. Certification of a supervisor must be filed with the clerk of court, and shall remain in effect indefinitely unless withdrawn by this court;

b. Certification of a supervisor may be withdrawn by the court at any time;

c. Certification of a supervisor may be withdrawn by the Dean by mailing notice of such withdrawal to the clerk of court.

F. Activities. A certified student, under the personal supervision of the supervisor, as set forth in section (d) of this Rule, may:

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

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

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

LR 83.3 RULES OF DISCIPLINARY ENFORCEMENT FOR ATTORNEYS

LR 83.3.1 INTRODUCTION

A. Responsibility of Court. The United States District Court for the Western District of Pennsylvania, in furtherance of its inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it, or admitted for the purpose of a particular proceeding (pro hac vice), promulgates the following rules of Disciplinary Enforcement superseding all of its rules pertaining to disciplinary enforcement heretofore promulgated.

B. Adoption of Rules of Professional Conduct. Acts or omissions by an attorney admitted to practice before this court, individually or in concert with others, which violate the rules of professional conduct adopted by this court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The rules of professional conduct adopted by this court are the rules of professional conduct adopted by the Supreme Court of Pennsylvania, as amended from time to time by the state court, except that Rule 3.10 has been specifically deleted as a rule of this court, and as otherwise provided by specific order of this court.

C. Sanctions for Misconduct. For misconduct defined in these rules, any attorney admitted to practice before this court may be disbarred, suspended from practice before this court, reprimanded or subjected to such other disciplinary action as the circumstances may warrant.

D. Admission to Practice as Conferring Disciplinary Jurisdiction. Whenever an attorney applies to be admitted or is admitted to this court for purposes of a particular proceeding (pro hac vice), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

LR 83.3.2 ATTORNEYS CONVICTED OF CRIMES

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

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

C. Certified Copy of Conviction as Evidence. A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.

D. Mandatory Reference for Disciplinary Proceeding. Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the court shall refer the matter for the institution of a disciplinary proceeding in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

E. Discretionary Reference for Disciplinary Proceedings. Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a serious crime, the court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding provided, however, that the court may in its discretion make no reference with respect to convictions for minor offenses.

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

LR 83.3.3 DISCIPLINE IMPOSED BY OTHER COURTS

A. Notice by Attorney of Public Discipline. Any attorney admitted to practice before this court shall, upon being subjected to public discipline by any other court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, promptly inform the clerk of this court of such action.

B. Proceedings after Notice of Discipline. Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this court has been disciplined by another court, this court shall forthwith issue a notice directed to the attorney containing:

1. A copy of the judgment or order from the other court; and

2. An order to show cause directing that the attorney inform this court within thirty (30) days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in paragraph D that the imposition of the identical discipline by the court would be unwarranted and the reasons therefore.

C. Stay of Discipline in Other Jurisdiction. In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this court shall be deferred until such stay expires.

D. Reciprocal Discipline. Upon the expiration of thirty (30) days from service of the notice issued pursuant to the provisions of LR 83.3.3.B.2 above, this court shall impose the identical discipline unless the respondent-attorney demonstrates, or this court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears that:

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

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

3. The imposition of the same discipline by this court would result in grave injustice; or

4. The misconduct established is deemed by this court to warrant substantially different discipline.

In the event that an attorney files a timely answer alleging one or more of the elements set forth in LR 83.3.3.D, the chief judge shall set the matter for prompt hearing before one or more judges of this court who may order and conduct a further hearing, or take testimony or hear argument, and make a recommendation to the board of judges. The board, after consideration of the recommendation, shall enter such order, as it shall determine by a majority vote of the active judges in service at the next meeting of the board, including dismissal of the charges, reprimand, suspension for a period of time, disbarment, or such action as may be proper.

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

F. Appointment of Counsel. This court may at any stage appoint counsel to prosecute the disciplinary proceedings, subject to the conditions of LR 83.3.9.

LR 83.3.4 DISBARMENT ON CONSENT OR RESIGNATION

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

B. Attorney to Notify Clerk of Disbarment. Any attorney admitted to practice before this court shall, upon being disbarred on consent or resigning from the bar of any other court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States, promptly inform the clerk of this court of such disbarment on consent or resignation.

LR 83.3.5 DISCIPLINARY PROCEEDING

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

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

C. Order to Show Cause. To initiate formal disciplinary proceedings, counsel shall obtain an order of this court upon a showing of probable cause requiring the respondent-attorney to show cause within thirty (30) days after service of that order upon that attorney, personally or by mail, why the attorney should not be disciplined.

D. Hearings. Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation, the chief judge shall set the matter for prompt hearing before one or more judges of this court, provided, however, that if the disciplinary proceeding is predicated upon the complaint of a judge of this court the hearing shall be conducted before a panel of three other judges of this court appointed by the chief judge, or if there are less than three judges eligible to serve or the chief judge is the complainant, by the chief judge of the court of appeals. Where a judge merely refers a matter and is not involved in the proceeding, he/she shall not be considered a complainant.

The judge or judges to whom a disciplinary proceeding is assigned by the chief judge may order and conduct a further hearing, or take testimony, or hear argument, and make a recommendation to the board of judges. The board, after consideration of the recommendation, shall enter such order, as it shall determine by a majority vote of the active judges in service at the next meeting of the board, including dismissal of the charges, reprimand, suspension for a period of time, disbarment, or such action as may be proper.

All such proceedings shall be conducted, as the court shall order, by an attorney of the Office of Disciplinary Counsel of the Supreme Court of Pennsylvania, or by one or more members of the bar of this court, subject to the conditions set forth in LR 83.3.9.

LR 83.3.6 DISBARMENT ON CONSENT WHILE UNDER DISCIPLINARY INVESTIGATION OR PROSECUTION

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

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

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

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

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

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

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

LR 83.3.7 REINSTATEMENT

A. After Disbarment or Suspension. An attorney suspended for three (3) months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three (3) months or disbarred may not resume practice until reinstated by order of this court.

B. Time of Application Following Disbarment. A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five (5) years from the effective date of this disbarment.

C. Hearing on Application. Petitions for reinstatement by a disbarred or suspended attorney under this rule shall be filed with the chief judge of this court. Upon receipt of the petition, the chief judge shall refer the petition to counsel for investigation and recommendation, and shall assign the matter for a hearing, or other appropriate action, before one or more judges of this court, provided, however, that if the disciplinary proceeding was predicated upon the complaint of a judge of this court, the hearing shall be conducted before a panel of three (3) other judges of this court appointed by the chief judge, or, if there are less than three (3) judges eligible to serve or the chief judge was the complainant, by the chief judge of the court of appeals. The judge or judges assigned to the matter shall schedule a hearing, if necessary, at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he/she has the moral qualifications, competency and learning in the law required for admission to practice law before this court and that his/her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

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

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

E. Deposit for Costs of 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.

F. Conditions of Reinstatement. If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him/her, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further, that if the petitioner has been suspended or disbarred for five (5) years or more, reinstatement may be conditioned, in the discretion of the judge or judges before whom the matter is heard, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

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

LR 83.3.8 SERVICE OF PAPERS AND OTHER NOTICES

Service of an order to show cause instituting a formal disciplinary proceeding or other papers or notices required by these rules shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at the address most recently registered by him/her with the clerk. Service of any other papers or notices required by these rules shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at the address shown on the most recent registration statement filed with this court; 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 under these rules.

LR 83.3.9 APPOINTMENT OF COUNSEL

Whenever counsel is to be appointed pursuant to these rules to investigate allegations of misconduct or to prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this court in its discretion and with prior agreement of the Disciplinary Board of the Supreme Court of Pennsylvania shall appoint as counsel attorneys serving in the Office of Disciplinary Counsel of the Disciplinary Board or one or more members of the bar of this court to investigate allegations of misconduct or to prosecute disciplinary proceedings under these rules or in conjunction with such a reinstatement petition, provided, however, that the respondent-attorney may move to disqualify an attorney so appointed who is or has been engaged as an adversary of the respondent-attorney in any matter. Counsel, once appointed, may not resign unless permission to do so is given by this court.

LR 83.3.10 DUTIES OF THE CLERK

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

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

C. Filing Consent Order. Upon being informed that an attorney admitted to practice before this court has been disbarred on consent or resigned in another jurisdiction while an investigation into allegations of misconduct was pending, the clerk of this court shall determine whether a certified or exemplified copy of the disciplinary judgment or order striking the attorney's name from the rolls of those admitted to practice has been filed with the court, and, if not, shall promptly obtain a certified or exemplified copy of such judgment or order and file it with the court.

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

E. National Discipline Data Bank. The clerk of this court shall promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this court.

LR 83.3.11 RETENTION OF CONTROL

Nothing contained in these rules shall be construed to deny to this court such powers as are necessary for the court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Fed.R.Crim.P. 42.

LR 83.3.12 CONFIDENTIALITY

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

A. The judge or judges to whom the matter is assigned determine otherwise; or

B. The respondent-attorney requests in writing that the matter be public; or

C. The investigation or proceeding is predicated on a conviction of the respondent-attorney for a crime; or

D. The court determines that discipline is appropriate in accordance with LR 83.3.5(D).

This rule shall not prohibit counsel, appointed pursuant to LR 83.3.9, or any member of this court, from reporting to law enforcement authorities the suspected commission of any criminal offense.

LR 100.1 TRANSFER OF MULTIDISTRICT LITIGATION

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

B. The clerk shall maintain a multidistrict litigation docket sheet for the group of cases compositely numbered, as well as an individual docket sheet for each separate action. All pleadings, papers, depositions, interrogatories, etc., relating to two or more actions shall be entered only on the multidistrict litigation docket sheet. If such pleading or document relates to a single action only, it shall be entered on the individual case docket sheet.

C. Counsel who entered an appearance in the transferor court prior to the transfer need not enter a separate appearance before this court.

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

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

F. Unless the Judicial Panel on Multidistrict Litigation or this court by order specifically otherwise directs for a specific case or group of cases, only the original of all documents shall be filed with the clerk of this court; provided, however, upon remand, it shall be the responsibility of the attorneys who filed a given document to furnish an adequate number of copies for transmittal to the transferor court. The clerk shall notify counsel of the number of copies needed. The copies shall be furnished within thirty (30) days from the date of notification of remand. Upon receipt of an order of the Judicial Panel transferring or remanding cases, without further order of this court, the clerk shall assemble the files, together with their documentation, and forward the files as directed by the Judicial Panel.

LR 100.2 PUBLICATION OF NOTICE OR ADVERTISEMENTS

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

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

LOCAL CRIMINAL RULES OF COURT

LOCAL CRIMINAL RULES OF COURT[1]

LCrR 10.1 ARRAIGNMENTS

Arraignments may be conducted by the magistrate judge in cases triable by the magistrate judge and in other cases to the extent of taking a not guilty plea or noting a defendant's intention to plead guilty or nolo contendere and ordering a presentence report in appropriate cases.

LCrR 12.1 PLEADINGS AND MOTIONS BEFORE TRIAL

A. The court shall give the parties a trial date at the arraignment, or within ten (10) days thereafter. After a case has been listed for trial, it shall not be continued except upon motion of a party or the court's own motion, and for just cause.

B. Motions under Rule 12 and Rule 41(e) of the Federal Rules of Criminal Procedure shall be made either before a plea is entered or within ten days after arraignment, unless the court extends the time either at arraignment, or upon written application made within the said ten-day period. Such application shall set forth the grounds upon which it is made and shall be served on the United States attorney. The court, in its discretion, may, however, for good cause shown, permit a motion to be made and heard at a later date.

C. All such motions shall contain or be accompanied by a memorandum or brief presented at the time of filing setting forth the reasons and legal support for granting such motion. All such motions and any supporting briefs shall be served on the United States attorney who shall file a response to said motion which shall contain or be accompanied by a memorandum or brief presented at the time of filing setting forth the reasons and legal support for the government's position within ten days of service of the motion.

LCrR 16.1 DISCOVERY AND INSPECTION

A. Within five (5) days after the arraignment, the United States attorney and the defendant's counsel shall confer and the parties shall comply with the requirements of Fed.R.Crim.P. 16. Unless the defendant or counsel for the defendant, at the arraignment, shall specifically decline to participate in discovery, the defendant shall comply with the reciprocal discovery required by Fed.R.Crim.P. 16(b).

---

1. NOTE: Where the defendant is proceeding pro se, references in these rules to defense counsel shall be taken to include the pro se defendant.

B. If, in the judgment of counsel for the government or the defendant, it would not be in the interest of either party to make any one or more disclosures required by Fed.R.Crim.P. 16, disclosure may be declined. A declination of any required disclosure shall be in writing, directed to opposing counsel, and signed. It shall specify the types of disclosures that are declined. If opposing counsel seeks to challenge the declination, he or she shall proceed pursuant to subsection C below.

C. Additional Discovery or Inspection. If additional discovery or inspection is sought, requesting counsel shall confer with opposing counsel within ten (10) days of the arraignment with a view to satisfying these requests in a cooperative atmosphere without recourse to the court. The request may be oral or written and the response shall be in like manner.

D. In the event an agreement cannot be reached, any motion for additional discovery or inspection shall be filed within the time set by the court for the filing of pretrial motions. It shall contain either a statement that the prescribed conference could not be held and the reasons, or the following information:

1. the statement that the prescribed conference was held;

2. the date of said conference;

3. the names of the parties participating; and

4. the statement that agreement could not be reached concerning the discovery or inspection that is the subject of the motion.

E. Any disclosure granted by the government pursuant to this rule of material within the purview of Fed.R.Crim.P. 16(a)(1)(C) and (D) shall trigger the reciprocal discovery obligations of the defendant under those provisions.

F. Within five (5) days after the arraignment, the United States attorney shall permit the defendant or defendant's attorney to inspect, copy or photocopy any evidence favorable to the defendant.

LCrR 23.1 TRIAL BY THE COURT

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

LCrR 24.1 TRIAL JURORS

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

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

/s/_____

Date:_____"

LCrR 24.2 EXAMINATION OF JURORS BEFORE TRIAL

A. During the examination of jurors before trial, the judge or a representative of the clerk of court conducting such examination, shall state the following to the jurors collectively:

1. The name of each of the defendants and the names of the attorneys for the parties.

2. The nature of the case and the offenses charged.

B. The following questions shall also be posed:

1. Do you know any of the defendants?

2. Do you know any of the attorneys in the case? Have they or their firms ever represented you or any members of your immediate family?

3. Do you know anything about this case?

4. (If appropriate) Are you or any member of your immediate family, employees, former employees or stockholders in any of the corporations or businesses involved in this case? The names of corporations and businesses involved in this case are:

5. Are you or any member of your immediate family employed by the federal government (with the exception of military service)? What do they do?

6. Are you or any member of your immediate family employed by any law enforcement agency?

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

1. What is your present occupation?

2. Who is you employer?

3. If you are retired, who was your last employer and what was your occupation?

4. Are you married? If so, what is your spouse's occupation and who is your spouse's employer?

5. Do you have any children? Do any of them work in the Western District of Pennsylvania? For whom do they work and what do they do?

6. Have you ever been a witness or defendant in a criminal case?

7. Have you ever been the victim of a crime?

8. Any other question, which in the judgment of the trial judge or the judge in charge of miscellaneous matters after application being made, shall be deemed proper.

LCrR 32.1 PROCEDURE FOR GUIDELINE SENTENCING

The following procedures hereby are established to govern sentencing proceedings in the United States District Court for the Western District of Pennsylvania under the Sentencing Reform Act of 1984, 18 U.S.C. §3551, et seq. (1987) and the Sentencing Guidelines of the United States Sentencing Commission promulgated under that Act and the Sentencing Commission Act, 28 U.S.C. §991, et seq. (1987).

A. Sentencing proceedings shall be scheduled no earlier than seventy (70) days following the entry of a plea of guilty or nolo contendere or a verdict of guilty.

B. Not less than thirty-five (35) days prior to the date set for sentencing, the United States Probation Office ("USPO") shall disclose the presentence investigation report ("PSI") to the defendant and to counsel for the defendant and the government.

C. If a party disputes facts or factors material to sentencing contained in the PSI or seeks the inclusion in the PSI of additional facts or factors material to sentencing, it shall be the obligation of that party to seek the administrative resolution of that matter through a presentence conference with opposing counsel and the USPO prior to filing the pleading referred to in paragraph D, infra. This presentence conference shall be mandatory in all cases except where sentencing facts or factors are not in dispute. Where practicable, the administrative resolution of all issues involving facts or factors material to sentencing shall be through informal presentence conference procedures, which may include telephone calls.

D. Not later than fourteen (14) days after disclosure of the PSI to the parties, counsel for the government and counsel for the defendant each shall file with the clerk of court and serve upon opposing counsel and the USPO a pleading entitled "Position of [Defendant or Government, as appropriate] With Respect to Sentencing Factors", in accordance with §6A1.2 of the Sentencing Guidelines of the United States Sentencing Commission ("Guidelines"). This pleading shall be accompanied by a written statement certifying that filing counsel has conferred with opposing counsel and with the USPO in a good faith effort to resolve any disputed matters.

E. After receiving counsel's objections, the USPO shall conduct such further investigation and make such revisions to the PSI as may be necessary. The USPO may require counsel to meet or otherwise to confer with the USPO to discuss unresolved factual or legal issues.

F. Seven (7) days prior to the date of the sentencing hearing, the USPO shall submit the PSI to the sentencing judge. The report shall be accompanied by an addendum setting forth any objections of counsel to the PSI which have been made and which have not been resolved, together with the USPO's comments thereon. The USPO shall certify that the PSI and any revision thereof and addendum thereto have been disclosed to the defendant and to all counsel and that the addendum fairly sets forth any remaining objections.

G. Except with regard to any objections made under paragraph D, supra, which have not been resolved, the PSI may be accepted by the court as accurate. The court, however, for good cause shown, may allow additional objections to be raised at any time before the imposition of sentence. When any factor important to the sentencing determination is reasonably in dispute, the parties shall be given an adequate opportunity to present information to the court regarding that factor. In resolving disputed issues of fact, the court, in accordance with §6A1.3(a) of the Guidelines, may consider any reliable information presented by, or on behalf of, the USPO, the defendant or the government.

H. Prior to the sentencing hearing, in accordance with §6A1.3(b) of the Guidelines, the sentencing judge shall notify the parties through the USPO of the court's tentative findings and rulings concerning disputed facts or factors. Reasonable opportunity shall be provided to the parties for the submission prior to the imposition of sentence of oral or written objections to the court's tentative findings and rulings.

I. The PSI is a confidential court document, and this rule shall not be construed to require the disclosure of any portions of the PSI which are not disclosable under Rule 32 of the Federal Rules of Criminal Procedure. No copies or any dissemination of the PSI or information contained therein shall be made without the express permission of the court, except that, under Third Circuit Local Appellate Rule 30.3(c), copies may be provided and information disclosed to the court of appeals in any appeal from the sentence. Unauthorized copying or disclosure may be treated as a contempt of court and punished accordingly.

J. Any document required by this rule to be disclosed to a defendant or counsel shall be deemed to have been disclosed as required by this rule (1) when a copy of that document is physically delivered to that person or entity, or (2) two days after the availability for inspection of that document is orally communicated to that person or entity, except that disclosure may not be made in this manner to a defendant who is incarcerated, or (3) three days after a copy of that document is mailed to that person or entity.

K. The times set forth in this rule may be modified by the court for good cause shown, except that the period set forth in paragraph B, supra, may be diminished to less than ten (10) days only with the consent of the defendant and the government.

L. Any party aggrieved by the alleged failure of the court, the USPO, or any other party to comply with the time tables or other procedures prescribed by this rule must make timely objection thereof in writing to the court so as to afford the court reasonable opportunity to correct any such non-compliance prior to the imposition of sentence. Failure to make such timely objection will be deemed to be a waiver thereof.

M. The contents of paragraph I, except the second clause of the first sentence, shall be set out conspicuously on the PSI thus: "LCrR 32.1 I of the Rules of the United States District Court for the Western District of Pennsylvania provides in its pertinent part as follows..."

LCrR 35.1 CORRECTION OR REDUCTION OF SENTENCE

Application for correction or modification of sentence, as authorized in Fed.R.Crim.P. 35, shall be in writing and the grounds or reasons therefore fully stated therein. If deemed appropriate under the circumstances of the case, the application may be made under seal. A copy of the application shall be served upon the defendant and counsel for the parties.

LCrR 46.1 TYPES OF BAIL IN CRIMINAL CASES

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

A. United States currency, or a certificate of deposit of a federally insured bank or savings and loan association, or federal, state or local government securities or bonds, or corporate securities or bonds of companies listed on the New York Stock Exchange, or a combination thereof, in the face amount of the bail, provided that the instruments are payable on demand, and provided further that, if the instruments are payable to one or more persons, the clerk of court or the appropriate judicial officer is satisfied that the endorsements of all owners have been secured as obligers, in accordance with Fed.R.Crim.P. 46(d).

B. Real property in the Commonwealth of Pennsylvania, including realty of a defendant, in which the market value of the property, after subtracting the current value of all mortgages, liens and judgments, equals the amount of the bond. Market value shall be ascertained by use of the assessed valuation, adjusted by the known percentage of market value used by the county in which the property is situated in making such assessments. In the event a claim is made that the market value of the real estate exceeds the assessed valuation adjusted by the known percentage, a defendant bears the burden of producing a current appraisal from a licensed real estate appraiser, or other competent evidence, to establish the market value of the property. Provided further that a defendant shall present to the clerk of court certified copies of all deeds, mortgages, tax receipts, judgments, liens or other relevant documents to permit the clerk of court or the appropriate judicial official to make an informed judgment. Provided further that, if the real property is titled in one or more names, all grantees must sign the appropriate documents as obligers in the presence of the clerk of court, or his/her designate.

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

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

LCrR 57.1 ASSIGNMENT OF CASES

All criminal cases in this jurisdiction shall be divided into the following categories:

A. Antitrust and securities fraud.
B. Income tax and other tax prosecutions.
C. General criminal.

LCrR 57.1.1 All criminal cases, excepting fugitive cases, shall be assigned by the clerk at the time of filing of the indictment or information or when any appeal is taken from a magistrate judge's decision on bail, or motions for return of seized goods, to quash subpoenas, to dismiss the complaint or any motions of a similar nature that a magistrate judge concludes must be handled by a district judge. The clerk shall also assign to a district judge at the time of filing any motion in a case at the magisterial stage for a competency determination. Fugitive cases shall be assigned at the time the clerk is notified of the fugitive's apprehension.

LCrR 57.1.2 At the time of filing any criminal prosecution or entry of appearance or any initial pleading or motion by defense counsel, as the case may be, counsel shall indicate on an appropriate form whether the case is related to any other pending or previously terminated actions in this court. All criminal prosecutions arising out of the same criminal transaction or series of transactions are deemed related.

LCrR 57.1.3 FREE PRESS -- FAIR TRIAL PROVISIONS

See LR 83.1.

LCrR 58.1 PROCEDURES FOR MISDEMEANORS AND OTHER PETTY OFFENSES

See LR 72.1.2, LR 72.1.5, LR 72.1.6, LR 72.1.7 and LR 72.1.8.

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

LOCAL BANKRUPTCY APPELLATE RULES OF COURT

LOCAL BANKRUPTCY APPELLATE RULES OF COURT

LBR 8007-2 APPEAL TO THE DISTRICT COURT FROM THE BANKRUPTCY COURT

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

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

1. the bankruptcy clerk shall provide fifteen (15) day's notice to the appellant and appellee of an intention to transmit a partial record consistent with Subsection B.2. of this rule;

2. after the 15 day notice period required by subsection B.1. of this rule has expired, the clerk of the bankruptcy court shall thereafter promptly forward to the clerk of the United States District Court a partial record consisting of a copy of the order or judgment appealed from, any opinion, findings of fact, and conclusions of law by the court, the notice of appeal, a copy of the docket entries, any documents filed as part of the appeal, and any copies of the record which have been designated by the parties pursuant to FRBP 8006; the record as transmitted shall be deemed to be the complete record for purposes of the appeal; and

3. the district court may dismiss said appeal for failure to comply with FRBP 8006 upon its own motion, or upon motion filed in the district court by any party in interest or the United States trustee.

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

LBR 9015-1 JURY TRIAL IN BANKRUPTCY COURT

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

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

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

LOCAL ADMIRALTY RULES

LOCAL ADMIRALTY RULES

RULE (a) AUTHORITY AND SCOPE

LAR(a)(1) AUTHORITY

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

LAR(a)(2) SCOPE

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

LAR(a)(3) CITATION

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

LAR(a)(4) OFFICERS OF COURT

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

RULE (b) MARITIME ATTACHMENT AND GARNISHMENT

LAR(b)(1) AFFIDAVIT THAT DEFENDANT IS NOT FOUND WITHIN THE DISTRICT

The affidavit required by Supplemental Rule B(2) to accompany the complaint shall list the efforts made by and on behalf of plaintiff to find and serve the defendant within the district.

RULE (c) ACTIONS IN REM: SPECIAL PROVISIONS

LAR(c)(1) INTANGIBLE PROPERTY

The summons issued pursuant to Supplemental Rule C(3) shall direct the person having control of intangible property to show cause no later than 10 days after service why the intangible property should not be delivered to the court to abide the judgment. A judicial officer for good cause shown may lengthen or shorten the time. Service of the summons has the effect of an arrest of the intangible property and brings it within the control of the court. The person who is served may deliver or pay over to the marshal the intangible property proceeded against to the extent sufficient to satisfy the plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. The claimant of the property may show cause as provided in Supplemental rule C(6) why the property should not be delivered to the court.

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

The notice required by Supplemental Rule C(4) shall be published once in a newspaper named in LAR(g)(5), and plaintiff's attorney shall file a copy of the notice as it was published with the clerk. The notice shall contain:

A. The court, title, and number of the action;

B. The date of the arrest;

C. An identification of the property arrested;

D. The name, address, and telephone number of the attorney for plaintiff;

E. A statement that the claim of the person who is entitled to possession or who claims an interest pursuant to Supplemental Rule C(6) must be filed with the clerk and served on the attorney for plaintiff within 10 days after publication;

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

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

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

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

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

B. Persons with Recorded Interests

1. If the defendant property is a vessel documented under the laws of the United States, the party seeking the default must attempt to notify all persons named in the United States Coast Guard certificate of ownership.

2. If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, plaintiff must attempt to notify the persons named in the records of the issuing authority.

3. If the defendant property is of such character that there exists a governmental registry of recorded property interests and/or security interests in the property, the plaintiff must attempt to notify all persons named in the records of each such registry.

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

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

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

B. Notice has been attempted as required by LAR(c)(3)(b), where appropriate, and

C. The time for answer has expired, and

D. No one has appeared to claim the property.

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

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

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

RULE (d) POSSESSORY, PETITORY AND PARTITION ACTIONS

LAR(d)(1) RETURN DATE

In a possessory action under Supplemental Rule D, a judicial officer may order that the claim and answer be filed on a date earlier than 20 days after arrest. The order may also set a date for expedited hearing of the action.

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

LAR(e)(1) ITEMIZED DEMAND FOR JUDGMENT

The demand for judgment in every complaint filed under Supplemental Rule B or C shall allege the dollar amount of the debt or damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of

damage. The amount of the special bond posted under Supplemental Rule E(5)(a) may be based upon these allegations.

LAR(e)(2) VERIFICATION OF PLEADINGS

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

LAR(e)(3) REVIEW BY JUDICIAL OFFICER

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

LAR(e)(4) INSTRUCTIONS TO THE MARSHAL

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

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

When the property to be attached or arrested is in the custody of an employee or officer of the United States, the marshal will deliver a copy of the complaint and warrant of arrest or summons

and process of attachment or garnishment to that officer or employee if present, and otherwise to the custodian of the property. The marshal will instruct the officer or employee or custodian to retain custody of the property until ordered to do otherwise by a judicial officer.

LAR(e)(6) SECURITY FOR COSTS

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

LAR(e)(7) ADVERSARY HEARING

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

LAR(e)(8) APPRAISAL

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

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

The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall deposit with the marshal the sum estimated by the marshal to be sufficient to cover the expenses of the marshal including, but not limited to, dockage, keepers, maintenance and insurance for at least 30 days. The marshal is not required to execute process until the deposit is made. That party shall advance additional sums from time to time as requested to cover the marshal's estimated expenses until the

property is released or disposed of as provided in Supplemental Rule E. If the first party fails to deposit requested funds, the marshal may seek relief from the district court including, but not limited to, the right to request the release of the property from arrest or attachment with a reservation of the right to proceed against the first party for any balance due.

LAR(e)(10) INTERVENORS' CLAIMS

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

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

LAR(e)(11) CUSTODY OF PROPERTY

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

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

therefor. The premiums charged for the liability insurance are taxable as administrative costs while the vessel, cargo, or other property is in custody of the court.

C. Cargo Handling, Repairs, and Movement of the Vessel. Following arrest or attachment of a vessel, no cargo handling, repairs, or movement may be made without an order of court. The applicant for such an order shall give notice to the marshal and to all parties of record unless the applicant avers that exigent circumstances exist. Upon proof of adequate insurance coverage of the applicant to indemnify the marshal for his/her liability, the court may direct the marshal to permit cargo handling, repairs, movement of the vessel, or other operations. Before or after the marshal has taken custody of a vessel, cargo, or other property, any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the marshal and to all parties of record. The judicial officer will require that adequate insurance on the property will be maintained by the successor to the marshal, before issuing the order to change arrangements.

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

LAR(e)(12) SALE OF PROPERTY

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

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

court days after the sale is confirmed. Payment shall be made in cash, by certified check, or by cashier's check.

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

D. Default. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder is deemed to be in default. In such a case, the judicial officer may accept the second highest bid or arrange a new sale. The defaulting bidder's deposit shall be forfeited and applied to any additional costs incurred by the marshal because of the default, the balance being retained in the registry of the court awaiting its order.

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

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

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

H. Disposition of Deposits

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

2. Objection Overruled. If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property

from the day the objection was filed until the day the sale is confirmed, and any balance remaining will be returned to the objector forthwith.

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

RULE (f) LIMITATION OF LIABILITY

LAR(f)(1) SECURITY FOR COSTS

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

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

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

RULE (g) SPECIAL RULES

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

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

LAR(g)(2) USE OF STATE PROCEDURES

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

LAR(g)(3) NEWSPAPERS FOR PUBLISHING NOTICES

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

LAR(g)(4) REPEALER

The existing local admiralty rules in this district, consisting of 15 separately numbered rules, are hereby repealed in their entirety.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LOCAL PATENT RULES

1. SCOPE OF RULES LPR

1.1. Authority.

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

LPR 1.2. Citation.

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

LPR 1.3. Application and Construction.

These rules apply to all civil actions filed in or transferred to this Court which allege infringement of a utility patent in a complaint, counterclaim, cross-claim or third party claim, or which seek a declaratory judgment that a utility patent is not infringed, is invalid or is unenforceable. The Court may accelerate, extend, eliminate, or modify the obligations or deadlines set forth in these Local Patent Rules based on the circumstances of any particular case, including, without limitation, the complexity of the case or the number of patents, claims, products, or parties involved. If any motion filed prior to the Claim Construction Hearing provided for in LPR 4.6 raises claim construction issues, the Court may, for good cause shown, defer the motion until after completion of the disclosures, filings, or ruling following the Claim Construction Hearing. The Local Civil Rules of this Court shall also apply to these actions, except to the extent that they are inconsistent with these Local Patent Rules.

LPR 1.4. Effective Date.

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

2. GENERAL PROVISIONS LPR

2.1. Governing Procedure.

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

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

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

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

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

(5) Whether parties are willing to go to trial in front of a Magistrate Judge.

(b) **Further Scheduling Conferences.** To the extent that some or all of the matters provided for in LPR 2. 1(a)(1)-(4) are not resolved or decided at the Initial Scheduling Conference, the parties shall propose dates for further Scheduling Conferences at which such matters shall be decided.

LPR 2.2. Confidentiality.

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

LPR 2.3. Certification of Initial Disclosures.

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

LPR 2.4. Admissibility of Disclosures.

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

LPR 2.5. Relationship to Federal Rules of Civil Procedure.

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

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

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

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

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

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

3. PATENT INITIAL DISCLOSURES LPR

3.1. Initial Disclosures.

Not later than ten (10) calendar days before the Initial Scheduling Conference, the parties shall exchange the initial disclosures required by Fed.R.Civ.P. 26(a)(1) ("Initial Disclosures").

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

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

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

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

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

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

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

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

LPR 3.2. Disclosure of Asserted Claims and Infringement Contentions.

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

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

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

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

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

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

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

LPR 3.3. Document Production Accompanying Disclosure.

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

LPR 3.4. Non-Infringement and Invalidity Contentions.

Not later than fifteen (15) calendar days after service upon it of the "Disclosure of Asserted Claims and Infringement Contentions," each party opposing a claim of patent infringement, shall serve upon all parties its "Non-Infringement and Invalidity Contentions." Non-Infringement Contentions shall contain a chart, responsive to the chart required by LPR 3.2(c), that states as to each identified element in each asserted claim, whether such element is present literally or under the doctrine of equivalents in each Accused Instrumentality, and, if not, the reason for such denial and the relevant distinctions. Invalidity Contentions must contain the following information:

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

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

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

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

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

LPR 3.5. Document Production Accompanying Invalidity Contentions.

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

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

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

LPR 3.6. Disclosure Requirement in Patent Cases Initiated by Declaratory Judgment.

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

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

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

LPR 3.7. Amendment to Contentions.

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

4. CLAIM CONSTRUCTION PROCEEDINGS LPR 4.1.

Exchange of Proposed Claim Terms and Phrases for Construction.

Not later than ten (10) calendar days after: (I) service of the Non-Infringement and Invalidity Contentions pursuant to LPR 3.4; or (ii) an agreement of the parties to expedite claim construction following the Initial Scheduling Conference pursuant to LPR 2.1 (a), each party shall simultaneously exchange a list of claim terms and phrases which that party contends should be construed by the Court, and identify any claim element which that party contends should be governed by 35 U.S.C. § 112(6).

LPR 4.2. Preparation and Filing of Joint Disputed Claim Terms Chart.

Not later than ten (10) calendar days after the exchange set forth in LPR 4.1, the parties shall meet and confer to identify claim terms and phrases that are in dispute, and claim terms and phrases that are not in dispute, and shall prepare and file a Joint Disputed Claim Terms Chart listing claim terms and phrases and corresponding intrinsic evidence for each disputed claim term and phrase, asserted by each party. The Joint Disputed Claim Terms Chart shall be in the format shown in Appendix "B". Each party shall also file with the Joint Disputed Claim Terms Chart an appendix containing a copy of each exhibit of intrinsic evidence cited by the party in the Joint Disputed Claim Terms Chart.

LPR 4.3. Claim Construction Briefing and Extrinsic Evidence.

(a) Not later than thirty (30) calendar days after filing of the Joint Disputed Claim Terms Chart pursuant to LPR 4.2, the Plaintiff, unless otherwise stipulated by the parties, shall serve and file an Opening Claim Construction Brief including a proposed construction of each claim term and phrase which the parties collectively have identified as being in dispute. Such Opening Claim Construction Brief shall also, for each element which the party contends is governed by 35 U.S.C. § 112(6), describe the claimed function of that element and identify the structure(s), act(s), or material(s) corresponding

to that element. Such Opening Claim Construction Brief shall further include a statement of the anticipated length of time necessary for the party to present its case at the claim construction hearing. For purposes of this rule, if there is no claim of patent infringement present in the complaint as originally filed, then the party first alleging infringement of the subject patent shall serve and file the Opening Claim Construction Brief.

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

(c) Not later than twenty (20) calendar days after service of the Opening Claim Construction Brief, the opposing party shall serve and file a Response to Opening Claim Construction Brief including the party's proposed construction of each claim term and phrase which the parties collectively have identified as being in dispute. Such Response shall also, for each element which the opposing party contends is governed by 35 U.S.C. § 112(6), describe the claimed function of that element and identify the structure(s), act(s), or material(s) corresponding to that element. Such Response shall further include a statement of the anticipated length of time necessary for the party to present its case at the Claim Construction Hearing and a concise statement not to exceed five (5) pages as to whether the party objects to the opening party's offer of extrinsic evidence.

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

(e) Not later than fifteen (15) calendar days after service of the Response, the opening party may serve and file a Reply directly rebutting the opposing party's Response. Such Reply shall further include a concise statement not to exceed five (5) pages as to whether the party objects to the opposing party's offer of extrinsic evidence.

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

LPR 4.4. Claim Construction Hearing.

Subject to the convenience of the Court's calendar, fifteen (15) calendar days following submission of the Reply specified in LPR 4.3(e), the Court shall conduct a Claim Construction Hearing.

5. EXPERT WITNESSES LPR

5.1. Disclosure of Experts and Expert Reports.

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

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

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

(d) Unless otherwise ordered by the Court, no later than ten (10) calendar days after the second round of disclosures, each party shall make any rebuttal expert witness disclosures permitted by Rule 26.

LPR 5.2. Depositions of Experts.

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

APPENDIX A

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

)) Civil Action No.

Plaintiff, v. Defendant.

PROTECTIVE ORDER

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

Proceedings and Information Governed.

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

Designation and Maintenance of Information.

2. For purposes of this Protective Order, (a) the "Confidential Information" designation shall mean that the document is comprised of trade secrets or commercial information which is not publicly known and is of technical or commercial advantage to its possessor, in accordance with Fed.R.Civ.P. 26(c)(7), or other information required by law or agreement to be kept confidential and (b) the "Confidential Attorney Eyes Only" designation shall mean that the document is comprised of information that the producing party deems especially sensitive, which may include, but is not limited to, confidential research and development, financial, technical, marketing, any other sensitive trade secret information, or information capable of being utilized for the preparation or prosecution of a patent application dealing with such subject matter. Confidential Information and Confidential Attorney Eyes Only Information does not include, and this Protective Order shall not apply to, information that is already in the knowledge or possession of the party to whom disclosure is made unless that party is already bound by agreement not to disclose such information, or information that has been disclosed to the public or third persons in a manner making such information no longer confidential.

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

CONFIDENTIAL INFORMATION
SUBJECT TO PROTECTIVE ORDER

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

CONFIDENTIAL ATTORNEY EYES ONLY INFORMATION
SUBJECT TO PROTECTIVE ORDER

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

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

Inadvertent Failure to Designate.

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

Challenge to Designations.

5. A receiving party may challenge a producing party's designation at any time. Any receiving party disagreeing with a designation may request in writing that the producing party change the designation. The producing party shall then have ten (10) business days after receipt of a challenge notice to advise the receiving party whether or

not it will change the designation. If the parties are unable to reach agreement after the expiration of this ten (10) business day time frame, and after the conference required under Local Rule 37.1, the receiving party may at any time thereafter seek a Court Order to alter the confidential status of the designated information. Until any dispute under this paragraph is ruled upon by the Court, the designation shall remain in full force and effect and the information shall continue to be accorded the confidential treatment required by this Protective Order.

Disclosure and Use of Confidential Information.

6. Information designated as Confidential Information or Confidential Attorney Eyes Only Information may only be used for purposes of preparation, trial and appeal of this action. Confidential Information or Confidential Attorney Eyes Only Information may not be used under any circumstances for prosecuting any patent application, for patent licensing or for any other purpose.

7. Subject to paragraph 9 below, Confidential Information may be disclosed by the receiving party only to the following individuals provided that such individuals are informed of the terms of this Protective Order: (a) two (2) employees of the receiving party who are required in good faith to provide assistance in the conduct of this litigation, including any settlement discussions, and who are identified as such in writing to counsel for the designating party in advance of the disclosure; (b) two (2) in-house counsel who are identified by the receiving party; (c) outside counsel for the receiving party; (d) supporting personnel employed by (b) and (c), such as paralegals, legal secretaries, data entry clerks, legal clerks and private photocopying services; (e) experts or consultants; and (f) any persons requested by counsel to furnish services such as document coding, image scanning, mock trial, jury profiling, translation services, court reporting services, demonstrative exhibit preparation, or the creation of any computer database from documents.

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

9. Further, prior to disclosing Confidential Information or Confidential Attorney Eyes Only Information to a receiving party's proposed expert, consultant or employees, the receiving party shall provide to the producing party a signed Confidentiality Agreement in the form attached as Exhibit A, the resume or curriculum vitae of the proposed expert or consultant, the expert or consultant's business affiliation, and any current and past consulting relationships in the industry. The producing party shall thereafter have ten (10) business days from receipt of the Confidentiality Agreement to object to any proposed individual. Such objection must be made for good cause and in writing, stating with particularity the reasons for objection. Failure to object

within ten (10) business days shall constitute approval. If the parties are unable to resolve any objection, the receiving party may apply to the Court to resolve the matter. There shall be no disclosure to any proposed individual during the ten (10) business day objection period, unless that period is waived by the producing party, or if any objection is made, until the parties have resolved the objection, or the Court has ruled upon any resultant motion.

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

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

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

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

(c) counsel for the party designating the material agrees that the material may be disclosed to the person. In the event of disclosure under this paragraph, only the reporter, the person, his or her counsel, the judge and persons to whom disclosure may be made, and who are bound by the Protective Order, may be present during the disclosure or discussion of Confidential Information. Disclosure of material pursuant to this paragraph shall not constitute a waiver of the confidential status of the material so disclosed.

Non-Party Information.

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

Filing Documents With the Court.

13. In the event that any party wishes to submit Confidential Information to the Court, such a submission shall be filed only in a sealed envelope bearing the caption of this action and a notice in the following form:

CONFIDENTIAL INFORMATION

[caption]

This envelope, which is being filed under seal,
contains documents that are subject to a Protective
Order governing the use of confidential discovery material.

No Prejudice.

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

Conclusion of Litigation.

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

Other Proceedings.

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

Remedies.

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

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

Exhibit A

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA
)) Civil Action No.
Plaintiff, v. Defendant.

CONFIDENTIALITY AGREEMENT FOR EXPERT, CONSULTANT OR EMPLOYEES OF ANY PARTY

I hereby affirm that:

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

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

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

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

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

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

Dated: _____ By: _____

Exhibit B

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

Plaintiff, v. Defendant.)) Civil Action No.

CONFIDENTIALITY AGREEMENT FOR THIRD-PARTY VENDORS

I hereby affirm that:

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

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

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

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

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

By: _____

APPENDIX B

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

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

* This chart shall not contain legal argument.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA
)) Civil Action No.

Plaintiff, v. Defendant.

MODEL SCHEDULING ORDER FOR USE IN PATENT CASES

AND NOW, this_____day of_____20_____,

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

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

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

(1) The parties shall move to amend the pleadings or add new parties by _____;

(2) The party claiming patent infringement must serve on all parties a Disclosure of Asserted Claims and Infringement Contentions by _____; *[30 calendar days after the Initial Scheduling Conference; LPR 3.2]*

(3) The party claiming non-infringement and invalidity must serve on all parties a Disclosure of Non-Infringement and Invalidity Contentions by_____; [15 calendar days after service of *Disclosure of Asserted Claims and Infringement Contentions; LPR 3.4]*

(4) Each party will simultaneously exchange Proposed Claim Terms and Phrases for Construction by _____; *[10 calendar days after service of the Non-Infringement and Invalidity Contention; LPR 4.1]*

(5) The parties shall meet and confer by _____ to identify claim terms and phrases that are in dispute, and claim terms and phrases that are not in dispute and prepare and file a Joint Disputed Claim Terms Chart. Each party shall also file with the Joint Disputed Claim Terms Chart an appendix containing a copy of each item of intrinsic evidence cited by the party in the Joint Disputed Claim Terms Chart; *[Not later than ten (10) calendar days after the exchange of proposed claim terms and phrases; LPR 4.2]*

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

(7) The Opposing Party shall file and serve a response to the Opening Claims Construction Brief, an identification of extrinsic evidence and any objections to extrinsic evidence by _____; *[20 calendar days after service of the opening claim construction brief; LPR 4.3 (c) and (d)]*

(8) The opening party may serve and file a Reply directly rebutting the opposing party's Response, and any objections to extrinsic evidence by _____; *[15 calendar days after opposing party's response is served; LPR 4.3(e)]*

(9) The Court will conduct a hearing on the issue of Claim Construction on_____, *[15 calendar days after submission of the reply; LPR 4]*

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

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

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

(13) Rebuttal expert witness disclosures are to be made by _____; *[10 calendar days after second round of expert disclosures; LPR 5.1(d)]*

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

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

(16) Plaintiff's pretrial narrative statement shall comply with Rule 16.1.4. A, and be filed by _____;

(17) Defendant's pretrial narrative statement shall comply with Rule 16.1.4.B, and be filed by _____;

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

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

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

(21) The trial shall commence on_____, 20_____, at_____(time), Courtroom No._____.

_____

United States District Judge

cc: All Counsel of Record.

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

_____

Civil Action No. _____

vs. or

Criminal Action No. _____

_____

DISCLOSURE STATEMENT

Pursuant to Local Rule 3.2 of the Western District of Pennsylvania and to enable Judges and Magistrate Judges to evaluate possible disqualification or recusal, the undersigned counsel for _____ _____, in the above captioned action, certifies that the following are parents, subsidiaries and/or affiliates of said party that have issued shares or debt securities to the public:

or

Pursuant to Local Rule 3.2 of the Western District of Pennsylvania and to enable Judges and Magistrate Judges to evaluate possible disqualification or recusal, the undersigned counsel for _____, in the above captioned action, certifies that there are no parents, subsidiaries and/or affiliates of said party that have issued shares or debt securities to the public.

_____ _____

Date Signature of Attorney or Litigant

Appendix A

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

[CAPTION]
[JUDICIAL OFFICER(S)]

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

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

1. **Identification of counsel and unrepresented parties**. Set forth the names, addresses, telephone and fax numbers and e-mail addresses of each unrepresented party and of each counsel and identify the parties whom such counsel represent:

2. **Set forth the general nature of the case** (patent, civil rights, anti-trust, class action, etc):

3. **Date Rule 26(f) Conference was held, the identification of those participating therein and the identification of any party who may not yet have been served or entered an appearance as of the date of said Conference:**

4. **Date of Rule 16 Initial Scheduling Conference as scheduled by the Court:** (Lead Trial Counsel and unrepresented parties shall attend the Rule16 Initial Scheduling Conference with their calendars in hand for the purpose of scheduling other pre-trial events and procedures, including a Post-Discovery Status Conference; Counsel and unrepresented parties shall attend the Rule 16 Initial Scheduling Conference prepared to discuss the anticipated number of depositions and identities of potential deponents and the anticipated dates by which interrogatories, requests for production of documents and requests for admissions will be served):

5. **Identify any party who has filed or anticipates filing a dispositive motion pursuant to Fed. R. Civ. P. 12 and the date(s) by which any such anticipated motion may be filed**:

6. **Designate the specific Alternative Dispute Resolution (ADR) process the parties have discussed and selected, if any, and specify the anticipated time frame for completion of the ADR process. Set forth any other information the parties wish to communicate to the court regarding the ADR designation:**

7. Set forth any change that any party proposes to be made in the timing, form or requirements of Fed. R. Civ. P. Rule 26(a) disclosures, whether such change is opposed by any other party, whether any party has filed a motion seeking such change and whether any such motion has been ruled on by the Court:

8. Subjects on which fact discovery may be needed. (By executing this report, no party shall be deemed to (1) have waived the right to conduct discovery on subjects not listed herein or (2) be required to first seek the permission of the Court to conduct discovery with regard to subjects not listed herein):

9. Set forth suggested dates for the following (The parties may elect by agreement to schedule a Post-Discovery Status Conference, as identified in Paragraph 12, below, at the conclusion of Fact-Discovery rather than at the conclusion of Expert Discovery. In that event, the parties should provide suggested dates only for the events identified in sub-paragraphs 9.a through 9.e, below. The parties shall provide such information even if dispositive motions pursuant to Fed. R. Civ. P. 12 have been or are anticipated to be filed. If there are dates on which the parties have been unable to agree, set forth the date each party proposes and a brief statement in support of each such party's proposed date. Attach to this report form a proposed Court Order setting forth all dates agreed to below and leaving a blank for the insertion of a date by the Court for any date not agreed to):

i.a Date(s) on which disclosures required by Fed. R. Civ. P. 26(a) have been or will be made:

i.b Date by which any additional parties shall be joined:

i.c Date by which the pleadings shall be amended:

i.d Date by which fact discovery should be completed:

i.e If the parties agree that discovery should be conducted in phases or limited to or focused on particular issues, identify the proposed phases or issues and the dates by which discovery as to each phase or issue should be completed:

i.f Date by which plaintiff's expert reports should be filed:

i.g Date by which depositions of plaintiff's expert(s) should be completed:

i.h Date by which defendant's expert reports should be filed:

i.i Date by which depositions of defendant's expert(s) should be completed:

i.j Date by which third party expert's reports should be filed:

i.k Date by which depositions of third party's expert(s) should be completed:

10. If the parties agree that changes should be made to the limitations on discovery imposed or Local by the Federal Rules of Civil Procedure Rule or that any other limitations should be imposed on discovery, set forth such changes or limitations:

11. Set forth whether the parties have considered the need for special deadlines, procedures or orders of court dealing with discovery of electronically-stored information (electronic discovery), including the need for the preservation of discoverable information and the protection of the right to assert privilege(s) after the production of privileged information and if so, set forth the results of such consideration:

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

l.a Settlement and/or transfer to an ADR procedure;

l.b Dates for the filing of expert reports and the completion of expert discovery as itemized in sub-paragraphs 9.f. through 9.k., above, if the parties elected to defer such discovery until after the Post-Discovery Status Conference

l.c Dates by which dispositive motions pursuant to Fed. R. Civ. P. 56, replies thereto and responses to replies should be filed;

l.d Dates by which parties' pre-trial statements should be filed;

l.e Dates by which *in limine* and *Daubert* motions and responses thereto should be filed;

l.f Dates on which motions *in limine* and *Daubert* motions shall be heard;

l.g Dates proposed for final pre-trial conference;

l.h Presumptive and final trial dates.

13. Set forth any other order(s) that the parties agree should be entered by the court pursuant to Fed. R. Civ. P. 16(b) or 26(c):

14. Set forth whether the parties anticipate that the court may have to appoint a special master to deal with any matter and if so, specify the proposed role of any such master and any special qualifications that such master may require to perform such role:

15. If the parties have failed to agree with regard to any subject for which a report is required as set forth above, except for proposed dates required in paragraph 9, above, briefly set forth the position of each party with regard to each matter on which agreement has not been reached:

16. Set forth whether the parties have considered the possibility of settlement of the action and describe briefly the nature of that consideration:

Respectfully submitted,

_____

_____

_____

_____

_____

_____

_____

_____

(Signatures of counsel and unrepresented parties)

Appendix B