RULES

OF THE
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

EFFECTIVE AS OF
March 2010
(Updated July 2011)

E. Barrett Prettyman
United States Courthouse
333 Constitution Avenue, NW
Washington, DC 20001

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
333 CONSTITUTION AVENUE, NW
WASHINGTON, DC 20001

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CIVIL RULES

LCvR 1.1

SCOPE, CONSTRUCTION AND AMENDMENTS

(a) SCOPE AND CONSTRUCTION.

These Rules govern all proceedings in the United States District Court for the District of Columbia. These Rules supplement the Federal Rules of Civil and Criminal Procedure and shall be construed in harmony therewith.

(b) PUBLICATION OF AMENDMENTS.

Any amendment to these Rules shall be published in The Daily Washington Law Reporter before its adoption. The notice shall state that the proposed amendment will be adopted unless modified or withdrawn after receiving comments from organized bar associations, members of the bar and the public. Such comments shall be submitted in writing within 45 days of publication to the Chairman of the Advisory Committee on District Court Rules. If the court determines there is an immediate need for a particular local rule or amendment to an existing local rule, it may proceed without public notice and opportunity for comment, but the court shall promptly thereafter afford such notice and opportunity for comment.

LCvR 5.1

FORM AND FILING OF PLEADINGS AND OTHER PAPERS

(a) PLACE AND MANNER OF FILING.

All papers relating to a pending action shall be filed with the Clerk unless otherwise directed by the court.

(b) CORRESPONDENCE WITH COURT.

Except when requested by a judge, correspondence shall not be directed by the parties or their attorneys to a judge, nor shall papers be left with or mailed to a judge for filing.

(c) NUMBER OF COPIES.

The original and one copy of every pleading, motion or other paper shall be filed with the Clerk.

(d) ELECTRONIC TRANSMISSION.

No pleading, motion or other document shall be transmitted to the Clerk for filing by means of electronic facsimile transmission except with express leave of Court.

(e) NAME AND ADDRESS OF PARTIES AND ATTORNEYS.

(1) The first filing by or on behalf of a party shall have in the caption the name and full residence address of the party. Where a person is sued in an official capacity, the person's official address shall be used. If the party is appearing *pro se*, the caption shall also include the party's telephone number. Those filing *pro se in forma pauperis* must provide in the caption the name and full residence address or official address of each party. Failure to provide the address information within 30 days upon filing may result in the dismissal of the case against the defendant. All papers signed by an attorney shall contain the name, address, telephone number, and D.C. Bar identification number of the attorney if the attorney is a member of the D.C. Bar. All attorneys listed on any pleading or paper who are members of the D.C. Bar must include their D.C. Bar identification numbers regardless of whether they sign the pleading. Notice of a change in address or telephone number of an attorney or a party not represented by an attorney must be filed within 14 days of the change. Unless changed by notice filed with the Clerk, the address and telephone number of a party or an attorney noted on the first filing shall be conclusively taken as the last known address and telephone number of the party or attorney.

(2) By signing a pleading or paper that is presented to the Court, an attorney is certifying that the attorney, and all other attorneys appearing with the attorney on the pleading or paper, are members of, or have a pending application for admission to, the Bar of this Court, or has complied with LCvR 83.2(c) or (d), or is covered by LCvR 83.2(e) as an attorney employed by the United Sates or one of its agencies.

COMMENT TO LCvR 5.1(e) (1) and (2): *Section (e)(1) was amended to make clear that the reference to the requirement that all papers include "the bar identification number of the attorney" requires a D.C. Bar identification number. Because members of the Bar of this Court are not assigned bar identification numbers, Section (e)(2) was added to assist the Clerk's Office in verifying the bar membership status of attorneys who appear in this Court.*

(f) FORM OF PAPERS.

All papers shall be typed (double spaced) or reproduced by any duplicating or copying process that produces a clear black image on opaque white paper 11 inches long and 8-1/2 inches wide, unfolded, without back or cover, fastened at the top. Every paper shall contain a heading under the caption describing the nature of the pleading, motion or other paper. Papers should also be punched at the top with two holes, 2 3/4 inches apart and 3/8 inch from the top, to facilitate insertion in the file

jacket. The case number on every paper shall be followed by the initials of the judge to whom the case has been assigned. If the case has been referred to a magistrate judge, the magistrate judge's initials shall also be shown. All exhibits or attachments to papers should reflect the number of the case in which they are filed.

(g) ATTACHMENTS TO PLEADINGS.

No complaint, amended complaint, counterclaim, cross claim or third party complaint shall have appended thereto any document that is not essential to determination of the action. Whenever any such pleading is sought to be filed with an attached document, the Clerk shall bring this Rule to the attention of the person filing the pleading.

(h) VERIFICATION.

Whenever any matter is required or permitted by law or by rule to be supported by the sworn written statement of a person (other than a deposition, oath of office, or oath required to be taken before a specified official other than a notary public), the matter may, with the same force and effect, be supported by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

(i) NONCONFORMING PAPERS.

A paper that does not conform to the requirements of this Rule and Rule 10(a) of the Federal Rules of Civil Procedure shall not be accepted for filing.

(j) SEALED OR CONFIDENTIAL DOCUMENTS.

(1) Absent statutory authority, no cases or documents may be sealed without an order from the Court. Any pleading filed with the intention of being sealed shall be accompanied by a motion to seal. The document will be treated as sealed, pending the outcome of the ruling on the motion. Failure to file a motion to seal will result in the pleading being placed in the public record.

(2) Unless otherwise ordered or otherwise specifically provided in these Local Rules, all documents submitted for a confidential *in camera* inspection by the Court, which are the subject of a Protective Order, which are subject to an existing order that they be sealed, or which are the subject of a motion for such orders, shall be submitted to the Clerk securely sealed in an envelope/box needed to accommodate the documents. The envelope/box containing such documents shall contain a conspicuous notation that carries "DOCUMENT UNDER SEAL" or "DOCUMENTS SUBJECT TO PROTECTIVE ORDER," or the equivalent.

(3) The face of the envelope/box shall also contain the case number, the title of the Court, a descriptive title of the document and the case caption unless such information is to be, or has been included among the information ordered sealed. The face of the envelope/box shall also contain the date of any order, or the reference to any statute permitting the item sealed.

(4) Filings of sealed materials must be made in the Clerk's Office during the business hours of 9:00 a.m. and 4:00 p.m. daily except Saturdays, Sundays and legal holidays. Filings at the security desk are prohibited because the Security Officers are not authorized to accept this material.

LCvR 5.2

FILING OF DISCOVERY REQUESTS AND RESPONSES

(a) NONFILING OF DISCOVERY MATERIALS.

Except as otherwise provided by this Rule, interrogatories, depositions, requests for documents, requests for admissions, and answers and responses thereto shall be served upon other counsel and parties but shall not be filed with the Clerk until they are used in the proceeding or upon order of the Court as required below. The party responsible for service of the discovery material shall retain the original and become its custodian and, with respect to depositions, the deposing party shall retain the original deposition and become its custodian and shall make it available for inspection by any party to the action upon request. The Court may in its discretion order that all or any portion of discovery materials in a particular case be filed with the Clerk.

(b) FILING OF DISCOVERY MATERIALS WITH MOTIONS AND AT TRIAL.

Any motion concerning discovery matters shall be accompanied by a copy of, or shall set forth verbatim, the relevant portion of any nonfiled discovery materials to which the motion is addressed. Discovery materials may be used and filed as exhibits or evidence in support of any motion or at a trial or evidentiary hearing in accordance with the Federal Rules of Evidence.

(c) FILING FOR PURPOSE OF APPEAL.

When discovery materials not previously in the record are needed for the purpose of an appeal, they may be filed with the Clerk by stipulation of counsel or upon application to and order of the Court.

LCvR 5.3

PROOF OF SERVICE

Proof of service of papers required or permitted to be served, other than those for which a different method of proof is prescribed by the Federal Rules of Civil Procedure or by statute, shall be filed with such papers. The proof shall show the date and manner of service, and may be by certificate of an attorney of record or other proof satisfactory to the Court. Failure to make proof of service does not affect the validity of service. The Court may at any time allow the proof to be amended or supplied, unless to do so would unfairly prejudice a party.

LCvR 5.4

CASES ASSIGNED TO CASE MANAGEMENT/ELECTRONIC CASE FILING (CM/ECF) SYSTEM

(a) DOCUMENTS TO BE FILED BY ELECTRONIC MEANS

Except as otherwise provided in this Rule 5.4, all documents to be filed with the Court must be filed by electronic means in a manner authorized by the Clerk.

(b) OBTAINING AND USING ELECTRONIC FILING PASSWORD; SIGNATURE; CONSENT TO SERVICE BY ELECTRONIC MEANS

(1) An attorney must obtain a CM/ECF password from the Clerk in order to file documents with the Court or to receive copies of opinions and orders of the Court.

(2) A pro se party may obtain a CM/ECF password from the Clerk with leave of Court. Whether leave of Court should be granted is within the discretion of the judge to whom the case is assigned. To obtain leave of Court, the pro se party must file a written motion entitled "Motion for CM/ECF Password," describing the party's access to the internet and confirming the capacity to file documents and receive the filings of other parties electronically on a regular basis. If leave of Court is granted, the pro se party must complete the CM/ECF training provided by the Clerk to all electronic filers before the Clerk issues a CM/ECF password.

(3) A CM/ECF password may be used only by the person to whom it is assigned, or, in the case of an attorney, by that attorney or an authorized employee or agent of that attorney's law office or organization.

(4) The use of a CM/ECF password to login and submit documents creates an electronic record that operates and serves as the signature of the person to whom the password is assigned for all purposes under the Federal Rules of Civil Procedure and the Local Rules of this Court.

(5) The electronic filing of a document that contains a sworn declaration, verification, certificate, statement, oath or affidavit certifies that the original signed document is in the possession of the attorney or pro se party responsible for the filing and that it is available for review upon request by a party or by the Court.

(6) An attorney or pro se party who obtains a CM/ECF password consents to electronic service of all documents, subsequent to the original complaint, that are filed by electronic means pursuant to F.R.Civ.P. 5(b)(2)(E). Such counsel and pro se parties are responsible for monitoring their e-mail accounts, and, upon receipt of notice of an electronic filing, for retrieving the noticed filing.

(c) FILING BY ELECTRONIC MEANS

(1) The filing of any document electronically following procedures set forth in this Rule constitutes filing for all purposes under the Federal Rules of Civil Procedure and the Local Rules of this Court.

(2) A person filing a document by electronic means is responsible for insuring the accuracy of the official docket entry generated by the CM/ECF software.

(3) Any document, order, or notice filed or docketed electronically by the Court or by the Clerk shall have the same binding authority as one filed on paper.

(d) SERVICE

(1) Electronic filing of any document operates to effect service of the document on counsel or pro se parties who have obtained CM/ECF passwords. Counsel or parties who have not yet obtained CM/ECF passwords must serve and be served as otherwise provided in F.R.Civ.P. 5(b).

(2) The requirement of a certificate or other proof of service is satisfied by the automatic notice of filing sent by the CM/ECF software to counsel or pro se parties who have obtained CM/ECF passwords. A separate certificate or other proof of service showing that a paper copy was served on a party or counsel is required when that party or counsel does not receive electronic notification of filings.

(e) EXCEPTIONS TO REQUIREMENT OF ELECTRONIC FILING

(1) Exhibits or attachments that (A) exceed 500 pages (including administrative records and records of state court proceedings); or (B) are not in a format that readily permits electronic filing, such as large maps, charts, video tapes, and similar materials; or (C) are illegible when scanned into electronic format; or (D) are filed under seal, may be filed in paper form. Documents or things filed pursuant to this subsection (e)(1), and in compliance with LCvR 5.1, must be served by mail or by hand delivery, unless counsel have otherwise agreed, and must be identified in an electronically filed notice of filing.

(2) A motion pursuant to LCvR 5.1(j) for leave to file a document under seal shall be filed by electronic means, but sealed documents accompanying such_a motion shall be filed in paper form together with the notice of filing required by subsection (e)(1).

(3) A party appearing pro se shall file documents in paper form with the Clerk and must be served with documents in paper form, unless the pro se party has obtained a CM/ECF password.

(f) PRIVACY REQUIREMENTS

The following personal identifiers shall be excluded, or redacted where inclusion is necessary, from all electronically filed documents unless otherwise ordered by the Court.

(1) Social Security numbers. If an individual's Social Security number must be included in a pleading, only the last four digits of that number should be used.

(2) Names of minor children. If the involvement of a minor child must be mentioned, only the initials of that child should be used.

(3) Dates of birth. If an individual's date of birth must be included in a pleading, only the year should be used.

(4) Financial account numbers. If a financial account number is relevant, only the last four digits should be used.

A party wishing to file a document containing unredacted personal identifiers listed in LCvR 5.4 (f) (1)-(4) may file an unredacted document under seal. This document shall be retained by the Court as part of the record.

(g) INCORRECT FILINGS AND TECHNICAL DIFFICULTIES

(1) The Clerk may direct an attorney or pro se party to re-file a document that has been incorrectly filed, or to correct an erroneous or inaccurate docket entry.

(2) If an attorney or pro se party who has been given leave to file electronically presents a document for filing in paper form, the Clerk may direct the attorney or pro se party to file the document electronically or present it in a format compatible with CM/ECF filing. The document will be deemed filed on the date it was first presented for filing if electronically filed or presented in proper electronic format no later than the next business day.

(3) The inability to complete an electronic filing because of technical problems may constitute "cause" for an order enlarging time or "excusable neglect" for the failure to act within the specified time, within the meaning of F.R.Civ.P. 6(b). Counsel or parties encountering technical problems with CM/ECF filing shall immediately notify a Clerk's Office employee of the problem by telephone and immediately send written confirmation of that notification to the Office of the Clerk. This Rule does not provide authority to extend statutory and jurisdictional time limits.

COMMENT to LCvR 5.4(a): This Rule does not apply to cases that are filed in paper form and are not assigned to the CM/ECF system. Eventually, however, all new civil cases will be assigned to the CM/ECF system.

COMMENT TO LCvR 5.4(c)(3): An opinion, memorandum, order, judgment, default, or other notice issued electronically by the Court or by the Clerk bears an electronic "signature" and does not require a handwritten signature to be official and binding. Also, an order or notice (such as a minute entry or scheduling notice) entered on the docket without an attached document is official and binding.

COMMENT to LCvR 5.4(g): Notice to the Clerk that technical problems interfered with electronic filing can provide a contemporaneous record in support of a party's motion under F.R.Civ.P. 6(b) for an order enlarging time. Only the Court, not the Clerk, may enlarge time. However, if the filing deadline is statutory and jurisdictional, electronic filers should take care not to wait until the last minute to file since not even technical difficulties will provide a means for the Court to extend the deadline.

LCvR 7

MOTIONS

(a) STATEMENT OF POINTS AND AUTHORITIES.

Each motion shall include or be accompanied by a statement of the specific points of law and authority that support the motion, including where appropriate a concise statement of facts. If a table of cases is provided, counsel shall place asterisks in the margin to the left of those cases or authorities on which counsel chiefly relies.

(b) OPPOSING POINTS AND AUTHORITIES.

Within 14 days of the date of service or at such other time as the Court may direct, an opposing party shall serve and file a memorandum of points and authorities in opposition to the motion. If such a memorandum is not filed within the prescribed time, the Court may treat the motion as conceded.

(c) PROPOSED ORDER.

Each motion and opposition shall be accompanied by a proposed order.

(d) REPLY MEMORANDUM.

Within seven days after service of the memorandum in opposition the moving party may serve and file a reply memorandum.

(e) PAGE LIMITATIONS.

A memorandum of points and authorities in support of or in opposition to a motion shall not exceed 45 pages and a reply memorandum shall not exceed 25 pages, without prior approval of the court. Documents that fail to comply with this provision shall not be filed by the Clerk.

(f) ORAL HEARINGS.

A party may in a motion or opposition request an oral hearing, but its allowance shall be within the discretion of the court. If at the time of the hearing the moving party fails to appear, the court may treat the motion as withdrawn; if the opposing party fails to appear, the court may treat the motion as conceded.

(g) MOTIONS TO VACATE DEFAULT; VERIFIED ANSWER.

A motion to vacate an entry of default, or a judgment by default, or both, shall be accompanied by a verified answer presenting a defense sufficient to bar the claim in whole or in part.

(h) MOTIONS FOR SUMMARY JUDGMENT.

(1) Each motion for summary judgment shall be accompanied by a statement of material facts as to which the moving party contends there is no genuine issue, which shall include references to the parts of the record relied on to support the statement. An opposition to such a motion shall be accompanied by a separate concise statement of genuine issues setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated, which shall include references to the parts of the record relied on to support the statement. Each such motion and opposition must also contain or be accompanied by a memorandum of points and authorities and proposed order as required by LCvR 7(a), (b) and (c). In determining a motion for summary judgment, the court

may assume that facts identified by the moving party in its statement of material facts are admitted, unless such a fact is controverted in the statement of genuine issues filed in opposition to the motion.

(2) Paragraph (1) shall not apply to cases in which judicial review is based solely on the administrative record. In such cases, motions for summary judgment and oppositions thereto shall include a statement of facts with references to the administrative record.

(i) MOTIONS TO AMEND PLEADINGS.

A motion for leave to file an amended pleading shall be accompanied by an original of the proposed pleading as amended. The amended pleading shall be deemed to have been filed and served by mail on the date on which the order granting the motion is entered.

(j) MOTION TO INTERVENE.

A motion to intervene as a party pursuant to Rule 24(c), Federal Rules of Civil Procedure, shall be accompanied by an original of the pleading setting forth the claim or defense for which intervention is sought. The pleading shall be deemed to have been filed and served by mail on the date on which the order granting the motion is entered.

(k) NAMES OF PERSONS TO BE SERVED WITH PROPOSED ORDERS, JUDGMENTS AND STIPULATIONS.

Each proposed order, judgment and stipulation shall have appended to it or endorsed upon it a list of the names and addresses of all attorneys entitled to be notified of its entry. If a party is not represented by an attorney, the name and address of the party shall be included.

(l) TIME FOR FILING DISPOSITIVE MOTIONS.

A dispositive motion in a civil action shall be filed sufficiently in advance of the pretrial conference that it may be fully briefed and ruled on before the conference.

(m) DUTY TO CONFER ON NONDISPOSITIVE MOTIONS.

Before filing any nondispositive motion in a civil action, counsel shall discuss the anticipated motion with opposing counsel, either in person or by telephone, in a good-faith effort to determine whether there is any opposition to the relief sought and, if there is opposition, to narrow the areas of disagreement. The duty to confer also applies to non-incarcerated parties appearing pro se. A party shall include in its motion a statement that the required discussion occurred, and a statement as to whether the motion is opposed.

(n) MOTIONS INVOLVING JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY ACTIONS.

1) In cases involving the judicial review of administrative agency actions, counsel shall provide the Court with an appendix containing copies of those portions of the administrative record that are cited or otherwise relied upon in any memorandum in support of or in opposition to any dispositive motion. Counsel shall not burden the appendix with excess material from the administrative record that does not relate to the issues raised in the motion or opposition.

2) The appendix shall be prepared jointly by the parties and filed within 14 days following the final memorandum on the subject motion. The parties are encouraged to agree on the contents of the appendix which shall be filed by plaintiff. In the absence of an agreement, the plaintiff must serve on all other parties an initial designation and provide all other parties the opportunity to designate additional portions of the administrative record. Plaintiff shall include all parts of the record designated by all parties in the appendix.

3) In appropriate cases, the parties may request the option to submit separate appendices to be filed with any memorandum in support of, or in opposition to, the dispositive motion.

COMMENT TO LCvR 7(h): *This provision recognizes that in cases where review is based on an administrative record the court is not called upon to determine whether there is a genuine issue of material fact, but rather to test the agency action against the administrative record. As a result the normal summary judgment procedures requiring the filing of a statement of undisputed material facts is not applicable.*

COMMENT TO LCvR 7(m): *The changes to this rule are designed to bring non-incarcerated pro se litigants within the scope of the duty to confer on nondispositive motions, so as to extend the benefits of the rule to cases in which such litigants are parties.*

COMMENT TO LcvR 7(n): *This rule is intended to assist the Court in cases involving a voluminous record (e.g., environmental impact statements) by providing the Court with copies of relevant portions of the record relied upon in any dispositive motion. This rule is patterned after Local Rule 30 of the D.C. Circuit and Rule 30 of the Federal Rules of Appellate Procedure. The rule does not relieve any party from any obligation to file the complete record with the Clerk of Court. Pages should retain the original pagination from the administrative record.*

LCvR 7.1

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTERESTS

In all civil or agency cases where a corporation is a party or intervenor, counsel of record for that party or intervenor shall file a certificate listing any parent, subsidiary or affiliate of that

party or intervenor which, to the knowledge of counsel, has any outstanding securities in the hands of the public. Such certificate shall be filed at the time the party's first pleading is filed. The purpose of this certificate is to enable the judges of this court to determine the need for recusal. Counsel shall have the continuing obligation to advise the court of any change. The form of the certificate is:

> "Number and Title of Case"
>
> Certificate required by LCvR 7.1 of the Local Rules of the United States District Court for the District of Columbia:
>
> I, the undersigned, counsel of record for _____, certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of _____ which have any outstanding securities in the hands of the public.
>
> (Here list all such parent companies, subsidiaries and affiliates of the corporation.)
>
> These representations are made in order that judges of this court may determine the need for recusal.
>
> Attorney of Record for _____

LCvR 9.1

APPLICATIONS FOR A STATUTORY THREE-JUDGE COURT

In every case in which by statute a Three-Judge Court is required, there shall be filed with the complaint a separate document entitled "Application for Three-Judge Court," together with a memorandum of points and authorities in support of the application. Upon the convening of a Three-Judge Court, each party shall submit to the Clerk two additional copies of all pleadings and papers previously filed by the party, and all subsequent filings shall be in quadruplicate.

LCvR 9.2

HABEAS CORPUS PETITIONS, SECTION 1983 COMPLAINTS, AND SECTION 2255 MOTIONS

Petitions for a *writ of habeas corpus* and complaints pursuant to 42 U.S.C. § 1983 filed by a petitioner incarcerated in the District of Columbia, and motions filed pursuant to 28 U.S.C. § 2255 (attacking a sentence imposed by the court), must be filed on standard forms to be supplied upon request to the petitioner or plaintiff by the Clerk without cost. Counsel filing a petition for a *writ of habeas corpus*, a complaint under 42 U.S.C. §1983, or a motion under 28

U.S.C. § 2255 need not use a standard form, but any such petition, complaint or motion shall contain essentially the same information set forth on the standard form.

LCvR 11.1

NAMES AND ADDRESSES OF PARTIES AND ATTORNEYS

The first filing by or on behalf of a party shall have in the caption the name and full residence address of the party. Where a person is sued in an official capacity, the person's official address shall be used. If the party is appearing *pro se,* the caption shall also include the party's telephone number. Those filing *pro se in forma pauperis* must provide in the caption the name and full residence address or official address of each party. Failure to provide the address information within 30 days upon filing may result in the dismissal of the case against the defendant. All papers signed by an attorney shall contain the name, address, telephone number, and bar identification number of the attorney. Notice of change in address or telephone number of an attorney or a party not represented by an attorney must be filed within 14 days of the change. Unless changed by notice filed with the Clerk, the address and telephone number of a party or an attorney noted on the first filing shall be conclusively taken as the last known address and telephone number of the party or attorney.

LCvR 11.2

VERIFICATION

Whenever any matter is required or permitted by law or by rule to be supported by the sworn written statement of a person (other than a deposition, oath of office, or oath required to be taken before a specified official other than a notary public), the matter may, with the same force and effect, be supported by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

LCvR 15.1

MOTIONS TO AMEND PLEADINGS

A motion for leave to file an amended pleading shall be accompanied by an original of the proposed pleading as amended. The amended pleading shall be deemed to have been filed and served by mail on the date on which the order granting the motion is entered.

LCvR 16.1

SCHEDULING AND CONTINUANCES

(a) SCHEDULING.

All hearings, conferences and trials shall be scheduled by the judge to whom the case is assigned, except that matters referred to a magistrate judge shall be scheduled by the magistrate judge. Each party is responsible for arranging a conference among the parties to plan discovery in accordance with Rule 26(f), F.R.Civ.P.

(b) CONTINUANCES.

No application for a continuance of a hearing, conference or trial shall be made unless notice of the application has been given to all other parties. An application for a continuance shall be ruled upon by the judge or magistrate judge before whom the hearing, conference or trial is to be held.

(c) NOTICE.

The Clerk shall give notice to counsel of every matter set by the court, unless the matter is scheduled orally in open court in the presence of counsel for all parties, in which case further notice is not required. All scheduling orders pursuant to Rule 16(b), Federal Rules of Civil Procedure must be in writing.

COMMENT TO LCvR 16.1: *This Rule implements Rule 26(f), F.R.Civ.P., as amended in December 2000. Rule 26(f) is amended to require only a conference of the parties rather than a meeting. The Federal Rule 26(f) amendments removed the word "meeting" and replaced it with "conference."*

LCvR 16.2

AVOIDANCE AND RESOLUTION OF CONFLICTS IN ENGAGEMENTS OF COUNSEL AMONG THE COURTS IN THE DISTRICT OF COLUMBIA

The following provisions, which implement the "Procedure for Avoiding and Resolving Conflicts in Engagements of Counsel to Appear Before the Courts in the District of Columbia" dated April 18, 1973, adopted by and applicable to the United States Court of Appeals for the District of Columbia circuit, the District Court for the District of Columbia, The District of Columbia Court of Appeals, and the Superior Court of the District of Columbia, shall apply to matters scheduled in this Court:

(a) PRIORITY TO BE ACCORDED APPELLATE COURTS.

Trial proceedings in this court will yield, and, if under way, will be held in abeyance, during argument by trial counsel in an appellate court.

(b) PRIORITIES IN TRIAL COURTS.

Actual trials of civil or criminal cases in this court or in the Superior Court will be accorded priority over any nontrial matters in either court. For the purpose of this Rule, a hearing on a preliminary injunction shall be regarded as a trial. A judge shall set a date for trial only after ascertaining that trial counsel have no conflicting trial or appellate engagement in any court within the District of Columbia. If, despite the foregoing and the obligations imposed on counsel by section (c) of this Rule, counsel should have more than one trial set on one day, the following priorities will be recognized:

(1) That case which is first set to commence trial on a specific day will receive priority over cases which are later set to commence trial on that day. A continued case shall be treated as set as of the last setting date.

(2) Any trial in progress, including a trial in progress from day to day, shall take precedence over trial or nontrial engagements of counsel which are set for times during which the trial is still in progress.

(3) If a scheduled trial conflicts with a previously set nontrial matter and, because of the urgency or complexity of the nontrial matter or the number of persons involved, it would be difficult to reschedule the nontrial matter, counsel shall immediately advise the court in which or the judge before whom the conflicting trial is scheduled. The court or the judge will be receptive to counsel's application for a change of the trial date or an adjustment of the hours of trial, but shall retain discretion to grant or deny such an application.

(4) The judges of this court insofar as practical will attempt to adjust their schedules to enable an attorney to attend to brief nontrial matters such as pleas, sentences, or status and pretrial conferences pending in another court. It is

recognized that emergency situations will arise and that certain types of cases may require special consideration. The judges of this court will attempt to accommodate these situations by recognizing the need to depart, on occasion, from rigid scheduling rules when such situations are brought to their attention by counsel.

(c) RESPONSIBILITIES OF COUNSEL.

It is the professional responsibility of attorneys to avoid the setting of conflicting engagements in the courts, to inform the courts of expected difficulties or conflicts which may arise, and to achieve the resolution of such conflicts or problems at the earliest possible time. The following particular obligations are imposed upon counsel:

(1) Attorneys are expected to carry with them at all times they are in court a calendar of their future court appearances.

(2) Attorneys shall appear personally before the judge when a case is being set, reset, or continued except as otherwise specified below. They shall in every case inform the court fully as to any matters which may conflict with a setting, resetting, or continued date being considered by the court. Counsel shall not schedule engagements which they cannot reasonably expect to attend at the time scheduled. They shall observe such limitations on the number of matters they schedule as are imposed herein, or are imposed by the individual courts of this jurisdiction, or which arise by reason of their professional obligations to their clients. The sole exception to the requirement that counsel appear personally before the judge when a case is being reset or continued arises when counsel is physically unable to be present. In such event counsel should leave three open dates with the judge in question, and the trial may be reset in counsel's absence. It shall, however, be the attorney's duty to appear personally as soon as possible before the judge who reset the case to confirm the reset date.

(3) Attorneys are obliged to take action immediately upon becoming aware of any conflict and specifically to call the conflicting engagements to the attention of the judge being asked to yield, and to pursue the matter until the conflict is resolved. Such matters may be presented to the judge in open court as a preliminary matter, with advance notice to other counsel.

(4) If counsel cannot avoid being unexpectedly late for, or absent from any scheduled appearance before any judge, they shall in advance of the scheduled appearance notify by telephone the judge's courtroom deputy of that fact, the reason therefore and the nature and duration of the conflicting engagements.

(5) If an attorney has a criminal felony case set for trial in any court on a given day, the attorney shall not schedule any other case for trial on that day or for any date thereafter during which that felony trial may reasonably be expected to continue. If an attorney has a misdemeanor case set for jury trial on a given date, the attorney shall not schedule more than one other misdemeanor case for

trial on that day. These restrictions do not apply to cases as to which an attorney is certain there will be a nontrial disposition.

(6) This court will take appropriate disciplinary action when an attorney fails to conduct himself or herself in accordance with the requirements and obligations imposed by this Rule.

LCvR 16.3

DUTY TO CONFER

(a) TIME FOR CONFERENCE.

Counsel (including any nonprisoner *pro se* party) must confer in accordance with this Rule and Rule 26(f), Federal Rules of Civil Procedure, within 21 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), F.R.Civ.P. to:

(1) Discuss the matters set forth in Rule 16.3(c).

(2) Make or arrange for disclosures required by Rule 26(a)(1), F.R.Civ.P.; and

(3) Develop a discovery plan that indicates the parties' views and proposals.

In a case involving multiple defendants, the 21-day period shall run from the date of appearance or first filing in the form of an answer or motion, pursuant to Rule 12, F.R.Civ.P., by the defendant who is given the longest time to answer under the Federal Rules of Civil Procedure. Any party may move to extend the deadline to a time fixed by the court on the ground that another defendant has not been served or has not yet appeared in the case, or for other sufficient reasons.

If necessary to comply with its expedited schedule for Rule 16(b) conferences, a court may require the conference between the parties to occur fewer than 21 days before the scheduling conference is held or a scheduling order is due under Rule 16(b), F.R.Civ.P.

(b) EXEMPTED CASES

The requirement of this Rule, of LCvR 16.3 of these Rules, and Rules 16(b) and 26(f), Federal Rules of Civil Procedure, shall not apply in the following categories of proceedings exempted from initial disclosure under Rule 26(a)(1)(E), F.R.Civ.P., or when otherwise ordered. The following categories of proceedings are exempted from both initial disclosure under Rule 26(a)(1)(E), F.R.Civ.P., and the Rule 26(f) conference, F.R.Civ.P.:

(1) an action for review on an administrative record;

(2) a petition for *habeas corpus* or other proceeding to challenge a criminal conviction or sentence;

(3) an action brought without counsel by a person in custody of the United States, a state, or a state subdivision;

(4) an action to enforce or quash an administrative summons or subpoena;

(5) an action by the United States to recover benefit payments;

(6) an action by the United States to collect on a student loan guaranteed by the United States;

(7) a proceeding ancillary to proceedings in other courts

(8) an action to enforce an arbitration award; and

(9) FOIA actions.

(c) MATTERS TO BE DISCUSSED BY THE PARTIES.

At the conference required by this Rule, the parties must confer to discuss the following matters:

(1) Whether the case is likely to be disposed of by dispositive motion; and whether, if a dispositive motion has already been filed, the parties should recommend to the court that discovery or other matters should await a decision on the motion.

(2) The date by which any other parties shall be joined or the pleadings amended, and whether some or all the factual and legal issues can be agreed upon or narrowed.

(3) Whether the case should be assigned to a magistrate judge for all purposes, including trial.

(4) Whether there is a realistic possibility of settling the case.

(5) Whether the case could benefit from the Court's alternative dispute resolution (ADR) procedures (or some other form of ADR); what related steps should be taken to facilitate such ADR; and whether counsel have discussed ADR and their response to this provision with their clients. In assessing the above, counsel shall consider:

(i) the client's goals in bringing or defending the litigation;

(ii) whether settlement talks have already occurred and, if so, why they did not produce an agreement

(iii) the point during the litigation when ADR would be most appropriate, with special consideration given to:

(aa) whether ADR should take place after the informal exchange or production through discovery of specific items of information; and

(bb) whether ADR should take place before or after the judicial resolution of key legal issues;

(iv) whether the parties would benefit from a neutral evaluation of their case, which could include suggestions regarding the focus of discovery, the legal merits of the claim, an assessment of damages and/or the potential settlement value of the case; and

(v) whether cost savings or any other practical advantages would flow from a stay of discovery or of other pre-trial proceedings while an ADR process is pending.

(6) Whether the case can be resolved by summary judgment or motion to dismiss; dates for filing dispositive motions and/or cross-motions, oppositions, and replies; and proposed dates for a decision on the motions.

(7) Whether the parties should stipulate to dispense with the initial disclosures required by Rule 26(a)(1), F.R.Civ.P., and if not, what if any changes should be made in the scope, form or timing of those disclosures.

(8) The anticipated extent of discovery, how long discovery should take, what limits should be placed on discovery; whether a protective order is appropriate; and a date for the completion of all discovery, including answers to interrogatories, document production, requests for admissions, and depositions.

(9) Whether the requirement of exchange of expert witness reports and information pursuant to Rule 26(a)(2), F.R.Civ.P., should be modified, and whether and when depositions of experts should occur.

(10) In class actions, appropriate procedures for dealing with Rule 23, F.R.Civ.P. proceedings, including the need for discovery and the timing thereof, dates for filing a Rule 23 motion, and opposition and reply, and for oral argument and/or an evidentiary hearing on the motion and a proposed date for decision.

(11) Whether the trial and/or discovery should be bifurcated or managed in phases, and a specific proposal for such bifurcation.

(12) The date for the pretrial conference (understanding that a trial will take place 30 to 60 days thereafter).

(13) Whether the Court should set a firm trial date at the first scheduling conference or should provide that a trial date will be set at the pretrial conference from 30 to 60 days after that conference.

(14) Such other matters that the parties believe may be appropriate for inclusion in a scheduling order.

(d) REPORT TO THE COURT AND PROPOSED ORDER.

Not later than 14 days following the conference required by this Rule, the attorneys of record and all unrepresented parties that have appeared in the case shall submit to the court a written report outlining the discovery plan and including a succinct statement of all agreements reached with respect to any of the 14 matters set forth in paragraph (c), a description of the positions of each party on any matters as to which they disagree, and a proposed scheduling order. The report shall be submitted jointly, but the parties may submit alternative proposed orders that reflect any disagreements. The plaintiff shall have the duty to ensure timely filing of the report. If, by the time the report is due, any defendant has not responded to the plaintiff's proposed report or declines to join in the report, the plaintiff shall certify in the report that efforts were made to secure that defendant's participation.

If necessary to comply with its expedited schedule for Rule 16(b) conferences, a court may require the written report outlining the discovery plan be filed fewer than 14 days after the conference between the parties, or excuse the parties from submitting a written report and permit them to report orally on their discovery plan at the Rule 16(b) conference as per Rule 26(f), F.R.Civ.P.

COMMENT TO LCvR 16.3(a): *LCvR 16.3(a) has been modified to conform to the amendments to the Federal Rules of Civil Procedure as amended in December 2000. The amendment (1) modified the date by which the Rule 26(f), F.R.Civ.P., conference is to be held and (2) removed the requirement that the Rule 16(b), F.R.Civ.P. conference be a face-to-face meeting. The court, however, encourages face-to-face meetings and retains its authority to require that the conference be conducted face-to-face in a particular case.*

COMMENT TO LCvR 16.3(b): *The amendment to Rule 26(f), F.R.Civ.P., removed the authority to exempt cases by local rule from the discovery conference requirement. The amendment exempts the same categories of proceedings from the conference requirement that are exempted from the initial disclosure requirement. Accordingly, LCvR 16.3(b) lists the proceedings exempted under LCvR 26.2(a) and Rule 26(a)(1)(E), F.R.Civ.P., and removes the cases previously exempted by local rule (viz., proceedings involving a nonprisoner pro se plaintiff in which a dispositive motion is filed before the deadline for the meeting expires). Although the first eight enumerated exempt categories of cases were intended to be exclusive and are considered actions that are brought in most, if not all of the Federal District Courts, we have included Freedom of Information Act actions to this list, as item number (9) because they are actions that typically do not require discovery or actions in which an initial disclosure requirement*

would not make sense. A significant portion of the nation's FOIA actions are pending in this court.

COMMENT TO LCvR 16.3(c): *LCvR 16.3(c) has been amended slightly to conform to the amendments to the Federal Rules of Civil Procedure as amended in December 2000.*

COMMENT TO LCvR 16.3(d): *The submission date for the report, following the Rule 26(f) conference, F.R.Civ.P., has been extended from 10 to 14 days.*

LCvR 16.4

SCHEDULING ORDERS

SCHEDULING CONFERENCE AND ORDER.

After receiving the report of the parties pursuant to LCvR 16.3(d) of these Rules, the court will hold a scheduling conference unless it determines, on the basis of the report, that a conference is unnecessary. At or after the scheduling conference, or after receiving the report of the parties where no scheduling conference is held, the court will issue a scheduling order governing future proceedings in accordance with Rule 16(b), Federal Rules of Civil Procedure. The Scheduling Order will include the limits if any on the number of interrogatories, the number and duration of depositions, and the use of other forms of discovery. The court may modify the scheduling order at any time upon a showing of good cause. Objections made to the discovery plan during the Rule 26(f) conference are to be ruled on by the court in the scheduling conference or order. In its ruling on the objection, the court must determine what disclosures if any are to be made and set the time for disclosure.

COMMENT TO LCvR 16.4(a): *The amendment to Rule 26(f), F.R.Civ.P., requires that the conference between parties be held 21 days before the Rule 16(a) scheduling conference or scheduling order is due, as per the Federal Rules of Civil Procedure. The reference to the track assignment has been deleted from the rule above.*

LCvR 16.5

PRETRIAL STATEMENTS

(a) GENERAL.

(1) In any case scheduled for trial or evidentiary hearing the court may order a final Pretrial Conference before the court or a magistrate judge. Trial counsel for each party must be present at the final Pretrial Conference unless the court authorizes otherwise.

(2) Not less than 14 days prior to the final Pretrial Conference, each party shall file and serve on every other party a Pretrial Statement, in the form prescribed by subparagraph (b) of this Rule. Amendments to a party's Pretrial Statement shall be permitted for excusable neglect until entry by the court or magistrate judge of a final Pretrial Order.

(3) As soon as practicable following the final Pretrial Conference the court or magistrate judge shall enter a final Pretrial Order which shall govern the trial of the case. The final Pretrial Order may incorporate, in whole or part, the parties' Pretrial Statements. Objections to the final Pretrial Order shall be promptly made, and shall be determined by the court before trial. Thereafter no departures from the final Pretrial Order shall be permitted except to prevent manifest injustice.

(b) PRETRIAL STATEMENTS.

(1) A party's Pretrial Statement shall contain the following:

(i) a statement of the case;

(ii) a statement of claims made by the party;

(iii) a statement of defenses raised by the parties;

(iv) a schedule of witnesses to be called by the party;

(v) a list of exhibits to be offered in evidence by the party;

(vi) a designation of depositions, or portions thereof, to be offered in evidence by the party;

(vii) an itemization of damages the party seeks to recover; and

(viii) a request for other relief sought by the party.

(2) The statement of the case shall set forth a brief description of the nature of the case, the identities of the parties, and the basis of the court's jurisdiction.

(3) The statement of claims shall set forth each claim a party has against any other party (including counter-, cross-, and third-party claims), and the party or parties against whom the claim is made.

(4) The statement of defenses shall set forth each defense a party interposes to a claim asserted against it by any other party, including defenses raised by way of general denial, without regard to which party has the burden of persuasion.

(5) The schedule of witnesses shall set forth the full names and addresses of all witnesses the party may call if not earlier called by another party, separately identifying those whom the party expects to present and those whom the party may call if the need arises including rebuttal witnesses. The schedule shall also set forth a brief description of the testimony to be elicited from the witness; and an estimate of the time the party will take in eliciting such testimony. Expert witnesses shall be designated by an asterisk. A party need not list any witness who will be called solely for impeachment purposes.

No objection shall be entertained to a witness or to testimony on the ground that the witness or testimony was disclosed for the first time in a party's Pretrial Statement, unless the party objecting has unsuccessfully sought to learn the identity of the witness or the substance of the testimony by discovery, and the court or magistrate judge finds the information to have been wrongfully withheld.

(6) The list of exhibits shall set forth a description of each exhibit the party may offer in evidence (other than those created at trial), separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Exhibits shall be listed by title and date. Exhibits will be presumed to be authentic unless objection to their authenticity is made at or before the final Pretrial Conference and the objection is sustained.

(7) The designation of depositions shall identify each deposition or portion thereof (by page and line numbers) the party intends to offer in evidence. Any cross-designation sought by any other party pursuant to Rule 106, Federal Rules of Evidence, must be made at or before the final Pretrial Conference.

(8) The itemization of damages shall set forth separately each element of damages, and the monetary amount thereof, the party claims to be entitled to recover of any other party, including prejudgment interest, punitive damages and attorneys' fees. No monetary amount need be set forth for elements of intangible damage (e.g., pain and suffering, mental anguish, or loss of consortium).

(9) The request for other relief shall set forth all relief, other than judgment for a sum of money, the party claims to be entitled to receive against any other party.

(c) EXEMPTED CASES.

The following categories of actions are exempt from this Rule:

(1) Actions brought pursuant to the Freedom of Information Act;

(2) Petitions for *writ of habeas corpus* brought by a petitioner incarcerated in the District of Columbia

(3) Motions filed pursuant to 28 U.S.C. section 2255;

(4) All other petitions brought by prisoners incarcerated in federal facilities, in the District of Columbia

(5) Appeals from bankruptcy decisions;

(6) All actions brought by the United States to collect student loans or other debts owed to the United States Government.

(7) Actions involving the review of Social Security benefit denials;

(8) All applications for attorneys' fees and costs;

(9) Multi-district litigation;

(10) Condemnation proceedings;

(11) Forfeiture actions by the United States;

(12) Appeals from a decision by a United States Magistrate Judge; and

(13) Motions to quash or enforce administrative subpoenas.

(d) ORDERS AFFECTING CONTENT OF PRETRIAL STATEMENTS.

Nothing in this Rule shall preclude the court in a particular case from entering an order requiring the parties to submit, in addition to the foregoing contents of pretrial statements, the following:

(1) Stipulations of fact agreed upon or proposed by the parties;

(2) A trial brief incorporating a concise statement of law supporting the party's claims or defenses, and addressing any unusual issues of fact or evidence not already submitted to the court;

(3) In jury cases, proposed voir dire questions, jury instructions and verdict forms;

(4) In nonjury cases, proposed findings of fact and conclusions of law; and

(5) A joint pretrial statement.

(e) OBJECTIONS TO DEPOSITIONS AND EXHIBITS.

The statement of objections to the use of depositions and to the admissibility of exhibits required by Rule 26(a)(3), Federal Rules of Civil Procedure, shall be filed at or before the pretrial conference.

(f) COMPLIANCE WITH FEDERAL RULES OF CIVIL PROCEDURE.

Compliance with the requirements of this Rule shall constitute full compliance with Rules 26(a)(3) and (4), Federal Rules of Civil Procedure. Those rules shall apply, however, in cases exempted from this Rule.

COMMENT TO LCvR 16.5: *The changes in this Rule are made to conform to the recent amendments to Rule 26(a)(3), Federal Rules of Civil Procedure. Categories of cases exempted from this Rule are not exempted from the scheduling order provisions of Rule 16(b), F.R.Civ.P., and LCvR 16.3 of these Rules.*

LCvR 16.6

STIPULATIONS

A stipulation need not be considered by the court unless it is in writing and signed by the parties thereto or their attorneys, or stenographically recorded in court or during a deposition.

LCvR 23.1

CLASS ACTIONS

(a) CLASS ACTION ALLEGATIONS.

In any case sought to be maintained as a class action, the complaint shall contain under a separate heading styled "Class Action Allegations":

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

(2) Appropriate allegations justifying such claim, including, but not necessarily limited to:

(i) the size (or approximate size) and definition of the alleged class;
(ii) the basis upon which the plaintiff claims to be an adequate representative of the class, or if the class is comprised of defendants, that those named as parties are adequate representatives of the class;

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

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

(b) MOTION FOR CERTIFICATION.

Within 90 days after the filing of a complaint in a case sought to be maintained as a class action, unless the court in the exercise of its discretion has extended this period, the plaintiff shall move for a certification under Rule 23(c)(1), Federal Rules of Civil Procedure, that the case may be so maintained. In ruling upon the motion, the court may allow the action to be so maintained, may deny the motion, or may order that a ruling be postponed pending discovery or other appropriate preliminary proceedings. A defendant may move at any time to strike the class action allegations or to dismiss the complaint.

(c) PROVISIONS AS TO NOTICE.

In an action maintained under Rule 23(b)(3) of the Federal Rules of Civil Procedure, the plaintiff shall include in the motion for certification a statement proposing (1) how, when, by whom, and to whom the notice required by Rule 23(c)(2) shall be given, (2) how and by whom payment therefore is to be made, and (3) by whom the response to the notice is to be received. In lieu of such a statement the movant may state reasons why a determination of these matters cannot then be made, and offer a proposal as to when the determination should be made. In certifying a class action as maintainable under Rule 23(b)(3), the court may include in its order the provisions for notice pursuant to Rule 23(c)(2) or may postpone a determination of the matter.

(d) APPLICABILITY TO COUNTERCLAIMS AND CROSS-CLAIMS.

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

COMMENT TO LCvR 23.1(b) AS AMENDED 10/10/90: *This amendment makes clear that the court may enlarge the 90-day period within which the motion for certification is to be filed.*

LCvR 26.1

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTERESTS

In all civil, agency, or criminal cases where a corporation is a party or intervenor, counsel of record for that party or intervenor shall file a certificate listing any parent, subsidiary, affiliate*, or any company which owns 10% or more of the stock* of that party or intervenor which, to the knowledge of counsel, has any outstanding securities in the hands of

the public. Such certificate shall be filed at the time the party's first pleading is filed. The purpose of this certificate is to enable the judges of this court to determine the need for recusal. Counsel shall have the continuing obligation to advise the court of any change. The form of the certificate is:

"Number and Title of Case"

Certificate required by LCvR 26.1 of the Local Rules of the United States District Court for the District of Columbia:

I, the undersigned, counsel of record for _____, certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries, affiliates*, or companies which own at least 10% of the stock* of _____ which have any outstanding securities in the hands of the public.

(Here list all such parent companies, subsidiaries, affiliates*, and companies which own at least 10% of the stock* of the corporation.)

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record for _____

COMMENT TO RULE LCvR 26.1: *Language has been added in order to identify any publicly held companies which own 10% or more of the stock of the party or intervenor. This language mirrors a recommendation by the Judicial Conference's Committee on Codes of Conduct.*

LCvR 26.2

DISCOVERY

(a) INITIAL DISCLOSURE REQUIREMENTS.

Unless otherwise provided by the court in its scheduling order, the requirement of Rule 26(a)(1), F.R.Civ.P., for initial disclosure of information are applicable in all cases except for cases exempted by order of the court and in the following categories of proceedings:

(1) an action for review on an administrative record;

(2) a petition for *habeas corpus* or other proceeding to challenge a criminal conviction or sentence;

(3) an action brought without counsel by a person in custody of the United States, a state, or a state subdivision;

(4) an action to enforce or quash an administrative summons or subpoena;

(5) an action by the United States to recover benefit payments;

(6) an action by the United States to collect on a student loan guaranteed by the United States;

(7) a proceeding ancillary to proceedings in other courts;

(8) an action to enforce an arbitration award; and

(9) FOIA actions.

Initial disclosures must be made at or within 14 days after the Rule 26(f) conference, F.R.Civ.P., unless the parties agree or the court orders a different date or unless a party objects during the conference that initial disclosures are not appropriate in the circumstances of the action and states the objection in the Rule 26(f) discovery plan, F.R.Civ.P.

Any party first served or otherwise joined after the Rule 26(f) conference, F.R.Civ.P., must make these disclosures within 30 days after being served or joined unless a different time is set by stipulation or court order. A party must make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

A party that without substantial justification fails to disclose information required by this Rule or by Rule 26(a) or 26(e)(1), F.R.Civ.P., or to amend a prior response to discovery as required by Rule 26(e)(2), F.R.Civ.P., is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. These sanctions may include any of the actions authorized under Rule 37(b)(2)(A),(B), and (C), F.R.Civ.Proc., in addition to requiring payment of reasonable expenses, including attorney's fees, caused by the failure, and may also include informing the jury of the failure to make the disclosure.

Except in categories of proceedings exempted from initial disclosure under Rule 26(a)(1)(B), F.R.Civ.P., or when authorized under these rules or by order or agreement of the parties, a party may not seek discovery from any sources before the parties have conferred as required by Rule 26(f), F.R.Civ.P.

(b) PRESUMPTIVE LIMITS ON INTERROGATORIES AND DEPOSITIONS.

Whether and to what extent limitations shall be placed on the permitted number of interrogatories and depositions will be determined by the court in the scheduling order and may thereafter be changed on motion of the parties or the court's own motion. When the scheduling order sets limits different from those contained in Rules 30(1)(2)(1) and 33(a), Federal Rules of Civil Procedure, the scheduling order shall govern. By order in a particular case, the court may alter the limits on the number of depositions and interrogatories or the length of depositions under Rule 30, F.R.Civ.P. The court may also limit by order in a particular case the number of requests under Rule 36, F.R.Civ.P.

(c) DURATION OF DEPOSITIONS.

A deposition is limited to one day of seven hours, however, the court may authorize or the parties may agree to different limits on the length of a deposition. The court must allow additional time consistent with Rule 26(b)(2), F.R.Civ.P., if needed for a fair examination of the deponent or if the deponent or another person, or other circumstance impedes or delays the examination. If the court finds that the fair examination of the deponent has been frustrated by any impediment or delay, it may impose an appropriate sanction upon the persons responsible, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(d) FORM OF RESPONSES TO INTERROGATORIES AND REQUESTS FOR ADMISSION OR PRODUCTION OF DOCUMENTS.

Answers, responses and objections to interrogatories and requests for admissions or for production of documents and motions to compel answers or responses, shall identify and quote each interrogatory or request in full immediately preceding the answer, response or objection thereto.

COMMENT TO LCvR 26.2(a): *LCvR 26.2(a) has been amended to conform with the Rules of this Court to the amendments to the Federal Rules of Civil Procedure as amended in December 2000. Also FOIA actions have been added as item (9). See comment to Local Rule 16.3(b). The 1993 amendment permitted local rules to "opt out" of disclosure requirements or to alter its operation. According to the committee notes for the amendment, the 1994 "opt out" provision was a response to opposition to initial disclosure in some districts and permitted districts to tailor their rules to their preference. The purpose of the present amendment is to "restore" national uniformity.*

COMMENT TO LcvR 26.2(b): *LcvR 26.2(b) has been modified to conform to the amendments to the Federal Rules of Civil Procedure as amended in December 2000. The amendment established a presumptive national limit on the number of depositions and interrogatories. The amendment however, purposefully removed previous permission for local rules that established different presumptive limits on these discovery activities. Limits can, however, be made by court order or agreement in individual actions, but "standing" orders imposing different presumptive limits are not authorized.*

COMMENT TO LCvR 26.2(c): *LCvR 26.2(c) has been modified to conform to the amendments to Federal Rules of Civil Procedure as amended in December 2000. Partial reasoning for this amendment included removing the "deponent veto," the requirement that the deponent consent to extension of a deposition beyond the presumptive time limitation. Additionally, the committee was guided by concern that overlong depositions resulted in undue costs and delays. The limitation contemplates that there will be reasonable breaks during the day for lunch and other reasons, and that the only time to be counted is the time occupied by the actual deposition.*

COMMENT TO LCrR 26.2(d): *No change appears to be intended by amendment to the F.R.Civ.P., however, discovery requests and responses (including depositions, interrogatories, requests for documents or to permit entry upon land, and requests for admission) must not be filed until they are used in the proceeding or the court orders filing.*

LCvR 30.1

SERVICE OF NOTICE OF DEPOSITION

Service of a notice of deposition seven days in advance of the date set for taking the deposition shall constitute "reasonable notice" to a party as required by Rule 30(b), Federal Rules of Civil Procedure, unless the deposition is to be taken at a place more than 50 miles from the District of Columbia, in which case 14 days shall constitute reasonable notice. The computation of time under this Rule shall be governed by Rule 6, Federal Rules of Civil Procedure. The court may enlarge or shorten the time on application of a party for good cause shown. Nothing in this Rule modifies the provision in Rule 32(a), Federal Rules of Civil Procedure, prohibiting the use of depositions against certain parties who with due diligence are unable to obtain counsel to represent them, or against parties with less than 14 days' notice who file a motion for protective order.

LCvR 30.4

FORM OF RESPONSES TO INTERROGATORIES AND REQUESTS FOR ADMISSION OR PRODUCTION OF DOCUMENTS

Answers, responses and objections to interrogatories and requests for admissions or for production of documents and motions to compel answers or responses, shall identify and quote each interrogatory or request in full immediately preceding the answer, response or objection thereto.

LCvR 40.1

ASSIGNMENT SYSTEM

(a) CASES TO BE ASSIGNED TO A SINGLE JUDGE.

Unless otherwise provided in these Rules, each civil and criminal case shall be assigned to a single judge in the manner provided herein.

(b) CALENDAR AND CASE MANAGEMENT COMMITTEE.

The assignment of cases to judges of this Court shall be performed by the Clerk under the direction of the Calendar and Case Management Committee. The Committee shall be composed of no less than three and no more than five active judges appointed by the Chief Judge for two year terms. All matters dealing with the assignment of cases, including but not limited to any efforts to restrain or avoid the enforcement or application of rules under this Part shall be referred to the Chairman of the Calendar and Case Management Committee for resolution by the Committee.

(c) EMERGENCY JUDGE.

A judge of this Court will be available, in accordance with a schedule of assignments announced from time to time by the Chief Judge, to hear emergency civil or criminal matters on all legal holidays and weekends. The emergency judge's assignment starts at 4:30 p.m. on the day preceding the weekend and ends at 9:00 a.m. the next business day. The judge designated for emergency assignments will not be present in the Courthouse but will be reasonably available, on call, in the area.

(d) NOTICE OF TRANSFERS AND REASSIGNMENTS.

All case transfers and reassignments shall be accompanied by formal notice to the Chairman of the Calendar and Case Management Committee and to the Clerk's Office Liaison. The Clerk will notify each of the judges involved and all counsel in the case of the reassignment.

COMMENT TO LCvR 40.1: *The rule has been changed to reflect a change in scope and to provide the court with greater flexibility with respect to this Committee.*

LCvR 40.2

CLASSES OF CASES

(a) CLASSIFICATION.

In order to assure a more even distribution of each type of case among the judges of this Court, each civil and criminal case will be classified for assignment purposes in accordance with a set of categories established by the court on the recommendation of the Calendar and Case Management Committee.

(b) DESIGNATION AT TIME OF FILING.

Upon filing the complaint in a civil action, the attorney for the plaintiff shall note the proper classification of the case on a form provided by the Clerk. In criminal cases the United States Attorney shall, at the time of the return of an indictment, note the proper classification of the case on a form provided by the Clerk.

LCvR 40.3

MANNER OF ASSIGNMENT

(a) RANDOM ASSIGNMENT.

Except as otherwise provided by these Rules, civil, criminal and miscellaneous cases shall be assigned to judges of this court selected at random in the following manner:

(1) The Clerk shall create a separate assignment deck in the automated system for each subclassification of civil and criminal cases established by the Court pursuant to LCvR 40.2 of these Rules and a separate deck for miscellaneous cases[1]. The decks will be created by the Liaison to the Calendar and Case Management Committee or the Liaison's backup and access to this function shall be restricted to these individuals to protect the integrity and confidentiality of the random assignment of cases. The Calendar and Case Management Committee will, from time to time determine and indicate by order the frequency with which each judge's name shall appear in each designated deck, to effectuate an even distribution of cases among the active judges.

(2) At the time a civil complaint is filed or an indictment or information is returned in a criminal case, the case shall be assigned to the judge whose name appears

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[1] For the purpose of this Rule, miscellaneous cases that will be randomly assigned will include, but not be limited to, these proceedings: (a) actions to perpetuate testimony as in Rule 27, Federal Rules of Civil Procedure; (b) actions to enforce administrative subpoenas and summonses; (c) proceedings ancillary to an action pending in another district; (d) supplementary proceedings brought in aid of execution; (e) motions for return of property in criminal proceedings; and (f) requests for judicial assistance. Grand Jury Miscellaneous cases will continue to be assigned to the Chief Judge and Pen Register Applications will continue to be assigned to magistrate judges.

on the screen when the appropriate deck is selected. The Clerk shall also stamp on the indictment, information, complaint or other initial pleading of each case, and on the file jacket, the number of the case and the name of the judge to whom it is assigned. The numbering and assignment of each case shall be completed before processing of the next case is begun. Notwithstanding the foregoing, a civil case, requiring an emergency hearing, which is filed after normal business hours, shall not be assigned to a judge until the next business day.

(b) THREE-JUDGE COURT CASES.

Civil, including miscellaneous, cases requested or required to be heard by a Three-Judge Court shall be randomly assigned to a District Court judge, excluding the Chief Judge.

(c) BANKRUPTCY MATTERS.

Bankruptcy matters requiring the attention of a District Judge shall be submitted to the Motions Judge, except as otherwise provided in D.C. LBR 5011-1(f)' and except that appeals from a Bankruptcy Judge's decisions and cases requiring a jury trial shall be randomly assigned.

(d) PRISONER PETITIONS.

Petitions for a *writ of habeas corpus* and complaints filed pursuant to 42 U.S.C. § 1983 filed by a petitioner incarcerated in the District of Columbia shall be randomly assigned, except that related petitions from the same petitioner may be assigned to the judge who received the initial petition after consultation with that judge. Motions filed under 28 U.S.C. § 2255 shall, if possible be assigned to the sentencing judge.

(e) ASSIGNMENT TO VISITING AND SENIOR JUDGES.

Cases may be assigned to visiting and senior judges in accordance with procedures adopted from time to time by the Calendar and Case Management Committee.

(f) PROCEEDINGS AFTER ASSIGNMENT.

All proceedings in a case after its assignment shall be conducted by the judge to whom the case is assigned, except as otherwise provided in these Rules. A judge who declares a mistrial shall retain the case for subsequent proceedings including, where appropriate, retrial.

COMMENT TO LCvR 40.3: *To ensure an even distribution of cases filed on the miscellaneous docket these cases will now be randomly assigned to a judge of this Court at the time of filing. The assigned judge will maintain jurisdiction of the miscellaneous case for all purposes. The assignment of miscellaneous cases does not affect the duties of the Motions Judge as specified in LCvR 40.8*

LCvR 40.4

SUSPENSION OF NEW ASSIGNMENTS

A judge shall be relieved by the Calendar and Case Management Committee from any new assignment of indictments and civil cases accompanied by motions for temporary restraining orders and preliminary injunctions or civil cases in which an intention to file a motion for a preliminary injunction is expressed, upon notification by the judge or the Chief Judge to the Committee that the judge: (1) has continued in a protracted trial or hearing for 10 consecutive trial days;[2] (2) is confined to a hospital; (3) is confined at home due to illness for seven days; (4) has had a death in the judge's immediate family; or (5) is performing judicial duties out of this jurisdiction pursuant to assignment. New cases shall be assigned to the judge in accordance with normal procedures upon the conclusion of any such condition.

Whenever a judge begins what is expected to be an unusually protracted criminal trial (one lasting four weeks or more) he or she may refer to the Calendar and Case Management Committee for routine reassignment such other criminal cases assigned to such judge as the judge was unable to dispose of prior thereto and which are expected to require disposition pursuant to the Speedy Trial Act within the time period of the unusually protracted trial.

LCvR 40.5

RELATED CASES

(a) DEFINITION.

A related case for the purpose of this Rule means as follows:

(1) Criminal cases are deemed related when (i) a superseding indictment has been filed, or (ii) more than one indictment is filed or pending against the same defendant or defendants, or (iii) prosecution against different defendants arises from a common wiretap, search warrant, or activities which are a part of the same alleged criminal event or transaction. A case is considered pending until a defendant has been sentenced.

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[2] If a judge, after suspension based upon 10 consecutive days in a trial or hearing, thereafter devotes an occasional day to other court business, that judge shall not by virtue thereof be reinstated in the complete draw.

(2) If a civil forfeiture proceeding is filed concerning a criminal defendant, or a defendant is charged in a criminal case while a civil forfeiture proceeding is pending concerning that defendant, the civil and criminal cases are to be deemed related.

(3) Civil, including miscellaneous, cases are deemed related when the earliest is still pending on the merits in the District Court and they (i) relate to common property, or (ii) involve common issues of fact, or (iii) grow out of the same event or transaction or (iv) involve the validity or infringement of the same patent. Notwithstanding the foregoing, a case filed by a *pro se* litigant with a prior case pending shall be deemed related and assigned to the judge having the earliest case. However, if a judge in the interest of judicial economy, consolidates a significant number of similar *pro se* prisoner complaints, or has a single case with a significant number of *pro se* prisoner plaintiffs, and any of those prisoners later files a new complaint which is unrelated to the subject matter of the consolidated cases or the multiple plaintiffs' case, the judge who receives the new case as related may, if he or she chooses, refer the new case to the Calendar and Case Management Committee for random assignment.

(4) Additionally, cases whether criminal or civil, including miscellaneous, shall be deemed related where a case is dismissed, with prejudice or without, and a second case is filed involving the same parties and relating to the same subject matter.

(b) NOTIFICATION OF RELATED CASES.

The parties shall notify the Clerk of the existence of related cases as follows:

(1) At the time of returning an indictment the United States Attorney shall indicate, on a form to be provided by the Clerk, the name, docket number and relationship of any related case pending in this court or in any other United States District Court. The form shall be mailed to all defense counsel along with the notification of the arraignment. Any objection by the defendant to the related case designation shall be served on the U.S. Attorney and filed with the Clerk within 14 days after arraignment.

(2) At the time of filing any civil, including miscellaneous, action, the plaintiff or his attorney shall indicate, on a form to be provided by the Clerk, the name, docket number and relationship of any related case pending in this court or in any other United States Court. The plaintiff shall serve this form on the defendant with the complaint. Any objection by the defendant to the related case designation shall be filed and served with the defendant's first responsive pleading or motion.

(3) Whenever an attorney for a party in a civil, including miscellaneous, or criminal action becomes aware of the existence of a related case or cases, the attorney shall immediately notify, in writing, the judges on whose calendars the cases

appear and shall serve such notice on counsel for all other parties. Upon receiving information from any source concerning a relationship between pending cases, the Clerk shall transmit that information in writing to the judges on whose calendars the cases appear and to all parties to the proceeding.

(c) ASSIGNMENT OF RELATED CASES.

Related cases noted at or after the time of filing shall be assigned in the following manner:

(1) Where the existence of a related case in this court is noted at the time the indictment is returned or the complaint is filed, the Clerk shall assign the new case to the judge to whom the oldest related case is assigned. If a judge who is assigned a case under this procedure determines that the cases in question are not related, the judge may transfer the new case to the Calendar and Case Management Committee. If the Calendar and Case Management Committee finds that good cause exists for the transfer, it shall cause the case to be reassigned at random. If the Calendar and Case Management Committee finds that good cause for the transfer does not exist, it may return the case to the transferring judge.

(2) Where the existence of related cases in this court is revealed after the cases are assigned, the judge having the later-numbered case may transfer that case to the Calendar and Case Management Committee for reassignment to the judge having the earlier case. If the Calendar and Case Management Committee finds that good cause exists for the transfer, it shall assign the case to the judge having the earlier case. If the Calendar and Case Management Committee finds that good cause for the transfer does not exist, it may return the case to the transferring judge.

(3) Where a party objects to a designation that cases are related pursuant to subparagraphs (b)(1) or (b)(2) of this Rule, the matter shall be determined by the judge to whom the case is assigned.

(d) MOTIONS TO CONSOLIDATE.

Motions to consolidate cases assigned to different judges of this court shall be heard and determined by the judge to whom the earlier-numbered case is assigned. If the motion is granted, the later-numbered case shall be reassigned in accordance with section (c) of this Rule.

(e) REFERRALS TO A SINGLE JUDGE BY THE CALENDAR AND CASE MANAGEMENT COMMITTEE.

Upon a finding by the Calendar and Case Management Committee that two or more cases assigned to different judges should be referred for a specific purpose to one judge in order to avoid a duplication of judicial effort, the Calendar and Case Management Committee may enter such an order of referral. The order shall be with the consent of

the judge to whom the cases will be referred and shall set forth the scope of authority of said judge. Unless otherwise provided, such an order shall not transfer any cases nor affect the assignment of future cases.

COMMENT TO LCvR 40.5(c)(3): *The Court has eliminated the provision in this Rule that permitted a party to appeal to the Calendar and Case Management Committee an individual judge's decision with respect to whether cases are related because the Court does not believe it is appropriate for a party to be able to seek review of a decision of one judge of this Court by three of that judge's co-equal colleagues. As amended, the Rule would make the individual judge's decision final.*

LCvR 40.6

OTHER TRANSFERS AND REASSIGNMENTS

(a) TRANSFERS BY CONSENT.

A judge, upon written advice to the Calendar and Case Management Committee, may transfer directly all or part of any case on the judge's docket to any consenting judge.

(b) DEATH, RETIREMENT, APPOINTMENT OF NEW JUDGES, ETC.

When reassignments are necessitated by the death, retirement, resignation or incapacity of any judge or by the appointment of a new judge, or by any other circumstances, the Calendar and Case Management Committee shall determine and indicate by order the method by which such reassignments shall be made.

(c) REASSIGNMENT OF CRIMINAL CASES

If the Calendar and Case Management Committee, giving due consideration to LcrR 45.1 of these Rules, determines in its discretion that the interests of justice require the transfer of any criminal case from one judge to another, it may reassign the case.

(d) CALENDAR AND CASE MANAGEMENT COMMITTEE CALENDAR

Any criminal case in which the only defendant is a fugitive or is mentally incompetent to stand trial shall be assigned to the Calendar and Case Management Committee by the judge upon whose calendar it appears after the case has been pending for 90 days or more. In cases involving two or more defendants, in the event that one or more are fugitives or are mentally incompetent to stand trial, the case may go to trial as to those defendants who are not fugitives and are not mentally incompetent to stand trial. Upon the entry of a final judgment as to such defendants, the case shall be assigned to the Calendar and Case Management Committee for further action as to those defendants who are fugitives or mentally incompetent to stand trial. Additionally, the case of any criminal defendant who becomes a fugitive subsequent to a guilty plea but prior to sentencing shall be assigned to the Calendar and Case Management Committee by the

judge upon whose calendar the case appeared after such a fugitive has been an absconder for 90 days or more. The Calendar and Case Management Committee may assign one or more judges for the purpose of making a periodic call of such cases. The judge or judges so assigned shall from time to time consult with the United States Attorney to ascertain whether dismissals of particular criminal actions or civil commitment of defendants incompetent to stand trial shall be deemed advisable. If the reasons which made a case untriable cease to exist, the case shall be reassigned for trial to the transferring judge.

(e) TRANSFERS NOT PROVIDED FOR BY OTHER RULES. CALENDAR

If a case is transferred to the Calendar and Case Management Committee for any reason not otherwise provided for in this title, and the Calendar and Case Management Committee approves the transfer, it shall cause the case to be reassigned by random lot or otherwise as these Rules provide.

LCvR 40.7

DUTIES OF THE CHIEF JUDGE

In addition to the trial of such cases as he/she may undertake and other duties provided by these Rules, the Chief Judge shall:

(a) preside at the assignment of criminal cases;

(b) hear and determine requests for excuse from service on grand and petit juries;

(c) empanel the grand jury and hear and determine all matters relating to proceedings before the grand jury;

(d) receive indictments from the grand jury;

(e) consider application for allowance under the Criminal Justice Act in a case not already assigned;

(f) dispose of matters requiring immediate action in criminal cases already assigned to any judge of the Court if that judge is unavailable or otherwise unable to hear the matters;

(g) hear and determine requests for review of rulings by magistrate judges in criminal cases not already assigned to a judge of the Court; and

(h) take such other administrative actions, after consultation with appropriate committees of the Court, as in his/her judgment are necessary to assure the just,

speedy and inexpensive determination of cases, and are not inconsistent with these Rules.

The Chief Judge may, from time to time, reassign any of the foregoing duties to an active judge for a reasonable period.

LCvR 40.8

MOTIONS JUDGE

(a) ASSIGNMENT BY ROTATION.

The active judges of this court except the Chief Judge shall be assigned in rotation according to seniority to serve one month as Motions Judge. Part or all of the Motions Judge assignment may be discharged by a volunteer senior judge designated by the Chief Judge.

(b) MATTERS HEARD BY MOTIONS JUDGE.

The Motions Judge shall hear and determine the following matters:

(1) Any petition, application or other proceeding of a civil nature which is not assigned to a judge of this court;

(2) Matters requiring action by a District Court Judge in bankruptcy cases, except that appeals from decisions of the Bankruptcy Judge shall be randomly assigned;

(3) Matters requiring immediate action in civil cases already assigned to a judge of the court, if that judge is absent or indicates that he or she is unavailable or otherwise unable to hear the matter;

(4) Naturalization proceedings; and

(5) Proceedings for admissions to the Bar of this court.

(c) EXTENDED PROCEEDINGS IN MATTERS ASSIGNED TO THE MOTIONS JUDGE.

A judge who first takes a matter described in paragraph (b)(1) of this Rule may decide to retain all further proceedings in the same matter, and in this event the judge shall promptly so advise the Calendar and Case Management Committee. If the judge determines at the outset that the matter appears to require a substantial investment of judicial time and the judge decides not to retain it for all further proceedings, the judge shall promptly so advise the Calendar and Case Management Committee for reassignment by lot.

LCvR 40.9

SANCTIONS IMPOSED

(a) COURT OFFICERS AND EMPLOYEES.

The Clerk or his/her designee may respond to or describe, in general terms, the process of creating case assignment decks for the automated case assignment system. In addition, the Clerk or his/her designee is also authorized to reveal the name of a judge assigned a case and the procedure by which the assignment was made. No employee of the court may reveal to any other person, other than members of the Calendar and Case Management Committee and the Chief Judge, any list that may show the composition of any deck. No court employee may number or assign any case other than in the manner provided in these rules or in the manner ordered by the Calendar and Case Management Committee. An employee who violates this provision shall be subject to discharge from service.

(b) THIRD PARTIES.

No person shall directly or indirectly cause, or procure, or attempt to cause or procure, a court officer or employee to reveal to any person, other than the members of the Calendar and Case Management Committee, the sequence of the judges' names within each block of assignment cards, or to number or assign any case otherwise than herein provided or as ordered by the Calendar and Case Management Committee. A violation of this Rule may be punished as a contempt of court.

COMMENT TO LCvR 40.9(a): *This amendment provides the Clerk's Office with sufficient latitude to generally discuss the creation of the case assignment decks. Further, it permits the Chief Judge to be apprised of the composition of any deck.*

LCvR 40.10

COMPLAINTS AGAINST JUDGES

The Judicial Conduct and Disability Act of 1980, 28 U.S.C. § 372(c), authorizes that complaints against United States circuit, district, bankruptcy, and magistrate judges who have "engaged in conduct prejudicial to the effective, and expeditious administration of the business of the courts" or who are "unable to discharge all the duties of office by reason of mental or physical disability" may be submitted to a judicial committee for review.

Written complaints may be filed with the Judicial Council of the District of Columbia Circuit, E. Barrett Prettyman Courthouse, 333 Constitution Avenue, N.W, Washington, D.C. 20001-2866, attention "Circuit Executive."

LCvR 47.1

JURY

(a) SELECTION AND ASSIGNMENT.

Grand and petit jurors shall be selected at random in accordance with a plan adopted by the court and available from the Jury Office. Petit jurors shall be assigned to a single jury pool and reassigned for service upon the requisition of each trial judge.

(b) NOTIFICATION OF SETTLEMENT IN CIVIL JURY CASES.

Whenever any civil action scheduled for jury trial is settled or otherwise resolved by the parties after the final pretrial conference, counsel shall notify the Clerk of the resolution of the action promptly and no later than one business day prior to the day on which the trial is scheduled to commence. In the event that the action is resolved by the parties less than one business day prior to the scheduled trial date, counsel shall notify the Clerk as soon as practicable after resolution of the action. The court may assess against the settling parties any juror costs incurred if the parties fail to provide notification as set forth in this Rule, unless good cause for such failure is shown. Any such costs shall be assessed equally among the settling parties unless otherwise ordered by the Court.

COMMENT TO LCvR 47.1: *This Rule is intended to address situations where the parties resolve a civil action shortly before a scheduled jury trial. While the court encourages the settlement of cases, budgetary constraints require that increased attention be paid to jury utilization practices. This Rule requires the parties to notify the Clerk of any resolution as soon as possible in order to avoid the unnecessary cost to the court as well as the inconvenience to jurors that result when jurors are required to appear for a case that will not go forward as scheduled. To the extent available, the Clerk in this situation should be the Deputy Clerk assigned to the presiding judge. The Rule authorizes the court to assess juror costs against the parties for a violation of the Rule.*

LCvR 47.2

COMMUNICATION WITH A JUROR

(a) DURING TRIAL.

No party, attorney for a party, or person acting on behalf of a party or attorney, shall communicate directly or indirectly with a juror or an excused juror or a member of a juror's, or an excused juror's family during the trial.

(b) AFTER TRIAL.

After a verdict is rendered or a mistrial is declared but before the jury is discharged, an attorney or party may request leave of court to speak with members of the jury after their discharge. Upon receiving such a request, the court shall inform the jury that no juror is required to speak to anyone but that a juror may do so if the juror wishes. If no request to speak with jurors is made before discharge of the jury, no party or attorney shall speak with a juror concerning the case except when permitted by the court for good cause shown in writing. The court may grant permission to speak with a juror upon such conditions as it deems appropriate, including but not limited to a requirement that the juror be examined only in the presence of the court.

COMMENT TO LCvR 47.2: *This Rule gives the court greater flexibility by stating that where the request to converse with jurors is made after their discharge, the court may impose such conditions as it deems appropriate.*

LCvR 53.1

EXPENSES OF A MASTER

In each order referring a matter to a special master pursuant to Rule 53 of the Federal Rules of Civil Procedure, the court shall direct the allocation of costs among the parties.

LCvR 54.1

TAXATION OF COSTS

(a) BILL OF COSTS.

Costs shall be taxed as provided in Rule 54(d), Federal Rules of Civil Procedure. A prevailing party may serve and file a bill of costs which shall include all costs the party seeks to have taxed. This bill of costs shall specifically designate which costs fall within paragraph (d) of this Rule. A bill of costs must be filed within 21 days after

entry of judgment terminating the case as to the party seeking costs, unless the time is extended by the court. Any cost omitted from the bill of costs shall not be allowed, except for post-judgment costs.

(b) OPPOSITION TO THE BILL OF COSTS.

A party from whom costs are sought may file an opposition to the bill of costs within 14 days after service of the bill. The opposition shall identify each item objected to, and the grounds for the objection. If no objection is filed, the Clerk shall tax those costs specified in the bill which are permitted by paragraph (d) of this Rule.

(c) TAXATION OF COSTS BY THE CLERK.

The Clerk shall tax costs after the judgment has become final or at such earlier time as the parties may agree or the court may order. A judgment is final when the time for appeal has expired and no appeal has been taken, or when the court of appeals issues its mandate.

(d) COSTS TAXABLE BY THE CLERK.

When requested to do so in the bill of costs, the Clerk shall tax the following costs:

(1) Clerk's fees;

(2) costs of service of summons and complaint;

(3) Marshal's fees and expenses specified in 28 U.S.C. § 1921;

(4) docket fees and costs specified in 28 U.S.C. § 1923

(5) the cost of a bond or other security furnished by reason of a statute, court order or rule;

(6) the costs, at the reporter's standard rate, of the original and one copy of any deposition noticed by the prevailing party, and of one copy of any deposition noticed by any other party, if the deposition was used on the record, at a hearing or trial;

(7) the cost, at the reporter's standard rate, of the original and one copy of the reporter's transcript of a hearing or trial if the transcript: (i) is alleged by the prevailing party to have been necessary for the determination of an appeal within the meaning of Rule 39(e), Federal Rules of Appellate Procedure, or (ii) was required by the court to be transcribed;

(8) costs of copying those exhibits which are introduced into evidence, are used for impeachment, or are filed with the Clerk;

(9) other costs of copying up to $300.00;

(10) witness fees pursuant to 28 U.S.C. § 1821(b), and travel and subsistence costs pursuant to 28 U.S.C. § 1821(c), paid to each witness who testified at a hearing or trial;

(11) costs of service of a subpoena on a witness who testified at a deposition, hearing or trial;

(12) fees of court-appointed experts, fees of interpreters used at a trial or hearing, and fees and expenses of special interpretation services under 28 U.S.C. § 1828; and

(13) any costs of the kind enumerated in this Rule which were incurred in the District of Columbia courts prior to removal which are recoverable under the rules of the District of Columbia Court of Appeals and the Superior Court of the District of Columbia;

(14) costs as shown on the mandate of the court of appeals.

(e) MOTION TO RETAX.

A review of the decision of the Clerk in the taxation of costs may be taken to the court on motion to retax by any party in accordance with Rule 54(d), Federal Rules of Civil Procedure. The court, on a motion to retax, for good cause shown may tax additional costs or may deny costs allowed by the Clerk pursuant to Section (d). A motion to retax shall specify the ruling of the Clerk excepted to and no other costs will be considered, except that the opposing party may, within 14 days of service of the motion to retax, file an opposition and/or a cross-motion to retax.

(f) COSTS AND ATTORNEYS FEES.

In a case in which the court has, at the time of the entry of final judgment, entered an order pursuant to LCvR 54.2(a), and in which a party wishes to present its claim for costs at the same time as its claim for attorneys' fees under LCvR 54.2, the requirements of this Rule shall not apply.

LCvR 54.2

DETERMINATION OF ATTORNEYS FEES

(a) POST-JUDGEMENT CONFERENCE.

In any case in which a party may be entitled to an attorney's fee from another party, the court may, at the time of entry of final judgment, enter an order directing the parties to confer and to attempt to reach agreement on fee issues. The order shall provide an

extension of time for filing a motion under Rule 54(d)(2)(B). Such an order shall also set a status conference, ordinarily not more than 60 days thereafter, at which the court will (1) determine whether settlement of any and or all aspects of the fee matter has been reached, (2) enter judgment for any fee on which agreement has been reached, (3) make the determination required by paragraph (b) of this Rule, and (4) set an appropriate schedule for completion of the fee litigation. If the court does not enter an order and schedule a status conference pursuant to this Rule, the parties are to proceed with motions for attorneys fees pursuant to Rule 54(d)(2), Federal Rules of Civil Procedure.

(b) DETERMINATION OF ATTORNEYS FEES PENDING APPEAL.

If a status conference described in paragraph (a) is held, the court shall ascertain whether an appeal is being taken by either party, and if so, whether the appeal is on all or fewer than all issues. If a party has not finally decided whether to appeal, the court may allow the party reasonable additional time to reach such a decision. After a decision has been made that there will be an appeal, the court shall make a specific determination as to whether, in the interest of justice, the fee issues, in whole or in part, should be considered or be held in abeyance pending the outcome of the appeal.

(c) INTERIM AWARDS.

Nothing in this Rule precludes interim applications for attorneys fees prior to final judgment, nor does this Rule apply to attorneys fees sought as sanctions under Rules 11, 16, 26, or 27, Federal Rules of Civil Procedure.

LCvR 56.1

MOTIONS FOR SUMMARY JUDGMENT

COMMENT TO LCvR 56.1: *This rule is deleted as it repeats verbatim current LcvR 7(h).*

LCvR 65.1

TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS

(a) APPLICATIONS FOR TEMPORARY RESTRAINING ORDERS.

An application for a temporary restraining order shall be made in a motion separate from the complaint. The application shall be accompanied by a certificate of counsel, or other proof satisfactory to the court, stating (1) that actual notice of the time of making the application, and copies of all pleadings and papers filed in the action to date or to be presented to the court at the hearing, have been furnished to the adverse party;

or (2) the efforts made by the applicant to give such notice and furnish such copies. Except in an emergency, the court will not consider an *ex parte* application for a temporary restraining order.

(b) EMERGENCY APPLICATIONS OUTSIDE BUSINESS HOURS.

If an application for a temporary restraining order is to be made to a judge outside regular business hours, the party seeking relief shall, if possible, notify the Clerk of such a forthcoming application during business hours so that proper arrangements can be made to handle the matter. If notice is not given to the Clerk as provided herein, the party shall file with its application an affidavit stating why such notice was not given. The court may decline to hear an application on an emergency basis if the affidavit fails to state sufficient reason for failure to give notice as provided herein.

(c) APPLICATIONS FOR PRELIMINARY INJUNCTIONS.

An application for a preliminary injunction shall be made in a document separate from the complaint. The application shall be supported by all affidavits on which the plaintiff intends to rely. The opposition shall be served and filed within seven days after service of the application for preliminary injunction, and shall be accompanied by all affidavits on which the defendant intends to rely. Supplemental affidavits either to the application or the opposition may be filed only with permission of the court.

(d) HEARINGS ON APPLICATIONS FOR PRELIMINARY INJUNCTION.

On request of the moving party together with a statement of the facts which make expedition essential, a hearing on an application for preliminary injunction shall be set by the court no later than 21 days after its filing, unless the court earlier decides the motion on the papers or makes a finding that a later hearing date will not prejudice the parties. The practice in this jurisdiction is to decide preliminary injunction motions without live testimony where possible. Accordingly, any party who wishes to offer live testimony or cross-examine an affiant at the hearing shall so request in writing 72 hours before the hearing and shall provide the court and all other parties a list of the witnesses to be examined and an estimate of the time required. The court may decline to hear witnesses at the hearing where the need for live testimony is outweighed by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. If practicable, the court shall notify all parties of its ruling on the request to adduce live testimony one business day before the hearing.

COMMENT TO LCvR 65.1: *Paragraph (a), is applicable to temporary restraining orders. Paragraph (b) is designed to prevent "judge-shopping" by making application to the Emergency Judge rather than to a judge chosen at random through the Clerk's normal procedures. The Committee believes that a rule is needed to regulate the use of affidavits and live testimony on applications for preliminary injunctions and to entitle the applicant to a prompt hearing where necessary. The grounds for exclusion of live testimony are taken from Rule 403, Federal Rules of Evidence.*

LCvR 65.1.1

BONDS AND SURETIES

Any bond or undertaking required in a proceeding must be set by an order or by consent. The bond or undertaking may be in the form of a surety, cash or check. A surety holding authority from the Secretary of the Treasury to do business in the District of Columbia and having an agent for service of process therein may be approved by the Clerk and filed. In all other cases, the person seeking approval of the bond shall serve on all parties to be secured two days written notice of the application, stating the name and address of the surety. Court approval is required. No officer of the court or member of the bar in active practice will be accepted as a surety.

LCvR 67.1

COURT REGISTRY INVESTMENT SYSTEM

The following procedure shall govern deposits into the registry of the Court in all civil actions.

(a) RECEIPT OF FUNDS.

(1) Unless the statute requires the deposit of funds without leave of Court, no money shall be sent to the court or its officers for deposit into the Court's registry without a court order signed by the presiding Judge in the case or proceeding.

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

(3) The party making the deposit or transferring funds to the court's registry shall serve the order permitting the deposit or transfer on the Clerk.

(b) INVESTMENT OF REGISTRY FUNDS.

(1) All funds deposited into the registry of the court will be placed in some form of interest bearing account. Unless otherwise ordered, the Court Registry Investment System (CRIS), administered through the United States District Court for the Southern District of Texas, shall be the investment mechanism authorized.

(2) Under CRIS, monies deposited in each case under (a)(1) will be "pooled" together with those on deposit with the Treasury to the credit of other courts in

the Court Registry Investment System and used to purchase Treasury Securities which will be held at the Federal Reserve Bank of the Dallas/Houston Branch, in a Safekeeping account in the name and to the credit of the Clerk, United States Court for the Southern District of Texas, hereby designated custodian for the Court Registry Investment System.

(3) An account for each case will be established in the CRIS titled in the name of the case giving rise to the investment in the system. Income received from fund investments will be distributed to each case based on the ratio each account's principal and income has to the aggregate principal and income total in the fund each week. Weekly reports showing the income earned and the principal amounts contributed in each case will be prepared and distributed to each court participating in CRIS and made available to litigants and /or their counsel.

(c) REGISTRY INVESTMENT FEE.

(1) The custodian is authorized and directed by this Rule to deduct, for maintaining accounts in the Fund, a fee equal to 10% of the income earned.

(2) No additional fee shall be assessed with respect to investments for which a fee has already been deducted prior to the establishment of CRIS in this district.

LCvR 72.1

DUTIES AND POWERS OF MAGISTRATE JUDGES

(a) GENERAL DUTIES.

The United States Magistrate Judges appointed by this Court pursuant to 28 U.S.C. § 631 shall have the duty and the power to:

(1) Administer oaths and affirmations and take acknowledgments, affidavits and depositions.

(2) Order the return or the forfeiture of collateral or surety bonds.

(3) 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.

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

(5) Conduct proceedings and enter orders as described in LCvR 73.1.

(6) Conduct hearings and enter orders regarding persons believed to be mentally ill found in certain federal reservations, in accordance with 21 D.C. Code §§ 901-909.

(7) Consider petitions by adopted persons to open adoption records of the Court.

(b) POWERS EXERCISED AT THE REQUEST OF A DISTRICT JUDGE.

At the request of the district judge to whom the case is assigned, a magistrate judge shall have the duty and power to:

(1) Conduct proceedings and enter orders or recommendations as described in LCvR 72.2 and LCvR 72.3 of these Rules.

(2) Enter scheduling orders and exercise other powers provided in Rules 16 and 26(f), Federal Rules of Civil Procedure, and LCvR 16.4 and LCvR 16.5 of these Rules.

(3) Serve as a special master in civil actions pursuant to Rule 53, Federal Rules of Civil Procedure.

(4) Conduct *voir dire* and select petit juries in civil cases with the consent of the parties.

(5) Accept petit jury verdicts in civil cases in the absence of a district judge.

(6) Conduct examinations of judgment debtors and other persons in accordance with Rule 69, Federal Rules of Civil Procedure.

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

COMMENT TO LCvR 72.1: *The Rule has been revised to remove any references to criminal procedure. Section (a)(7) has been added to preserve the responsibility that was originally located in Section 8(B) of the Civil Justice Expense and Delay Reduction Plan, which has been eliminated. Section (b)(7) has been moved from section (a) to make clear that the stated duties may be performed only at the request of a district judge.*

LCvR 72.2

REFERRAL OF MOTIONS AND PRETRIAL MATTERS TO MAGISTRATE JUDGES

(a) MATTERS DETERMINABLE BY A MAGISTRATE JUDGE.

At the request of the district judge to whom the case is assigned, a magistrate judge may hear and determine any pretrial motion or matter other than those specified in LCvR 72.3 of these Rules, and may conduct proceedings and enter orders pursuant to LCvR 16.4 of these Rules.

(b) OBJECTIONS TO MAGISTRATE JUDGE'S RULING.

Any party may file written objections to a magistrate judge's ruling under paragraph (a) within 14 days after being served with the order of the magistrate judge, unless a different time is prescribed by the magistrate judge or the district judge. The objections shall specifically designate the order or part thereof to which objection is made, and the basis for the objection. The filing of oppositions and replies shall be governed by LcvR 7(b) and (d).

(c) DETERMINATION OF OBJECTIONS.

Upon consideration of objections filed in accordance with this Rule, a district judge may modify or set aside any portion of a magistrate judge's order under this Rule found to be clearly erroneous or contrary to law. A district judge may modify or set aside any portion of a magistrate judge's order pursuant to LCvR 16.5 of these Rules whenever the district judge deems such a modification necessary or appropriate.

COMMENT TO LCvR 72.2: *The Rule is intended to make clear that objections to the magistrate judge's proposed findings and recommendations should not be called motions for reconsideration and are to be directed to the district judge.*

LCvR 72.3

REFERRAL OF MATTERS FOR REPORT AND RECOMMENDATION BY MAGISTRATE JUDGES

(a) MATTERS REFERABLE TO A MAGISTRATE JUDGE FOR REPORT AND RECOMMENDATION.

At the request of the district judge to whom the case is assigned, a magistrate judge may conduct hearings, including evidentiary hearings, and submit to the district judge proposed findings of fact and recommendations for the disposition of:

(1) prisoner petitions challenging conditions of confinement.

(2) motions for injunctive relief (including temporary restraining orders and preliminary injunctions);

(3) motions for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, or otherwise to dismiss an action involuntarily;

(4) motions to set aside default judgments;

(5) petitions for judicial review of administrative determinations; and

(6) petitions for civil commitment arising under Title III of the Narcotic Addict Rehabilitation Act of 1966, 18 U.S.C. § 4251, *et.seq*.

(b) OBJECTIONS TO RECOMMENDATIONS OF THE MAGISTRATE JUDGE.

Any party may file for consideration by the district judge written objections to the magistrate judge's proposed findings and recommendations issued under paragraph (a) within 14 days after being served with a copy thereof. The objections shall be denominated "Objections to the Magistrate Judge's Proposed Findings and Recommendations." The objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for the objection. The filing of oppositions and replies shall be governed by LcvR 7(b) and (d).

Failure to file timely objections may waive appellate review of a District Court order adopting the magistrate judge's report. All magistrate judge's reports shall contain a notice substantially as follows:

> Failure to file timely objections to the findings and recommendations set forth in this report may waive your right of appeal from an order of the District Court adopting such findings and recommendations. See *Thomas v. Arn*, 474 U.S. 140 (1985).

(c) DETERMINATION BY THE COURT.

A district judge shall make a *de novo* determination of those portions of a magistrate judge's findings and recommendations to which objection is made as provided in paragraph (b). A district judge may make a determination based solely on the record developed before the magistrate judge, or may conduct a new hearing, receive further evidence, and recall witnesses. A district judge may accept, reject, or modify, in whole

or in part, the findings and recommendations of the magistrate judge, or may recommit the matter to the magistrate judge with instructions.

COMMENT TO LCvR 72.3: *The Rule has been revised to remove any references to criminal procedure. Moreover, the Rule is intended to make clear that objections to the magistrate judge's proposed findings and recommendations should not be called motions for reconsideration and are to be directed to the district judge.*

LCvR 73.1

REFERRAL OF CIVIL CASES TO MAGISTRATE JUDGES FOR ALL PURPOSES

(a) CONSENT TO ASSIGNMENT.

By consent of all parties, a magistrate judge may conduct any and all proceedings in a civil case, including trials (with or without a jury), and may thereafter order entry of judgment, in accordance with 28 U.S.C. § 636(c).

(b) PROCEDURE FOR CONSENT.

The Clerk shall notify the parties of their voluntary right to consent to assignment of a civil case to a magistrate judge as soon as practicable after the action is filed. If the parties consent to such an assignment, a notice of consent signed by the parties or their attorneys shall be filed with the Clerk. The notice of consent should be filed prior to entry of a pretrial order under LCvR 16.5 of these Rules. Thereafter, either the district judge or the magistrate judge may again advise the parties of the availability of the magistrate judge, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences.

(c) APPEAL TO THE UNITED STATES COURT OF APPEALS.

An appeal from a judgment of a magistrate judge, entered in proceedings under this Rule, shall be taken to the United States Court of Appeals for the District of Columbia Circuit, in the same manner as an appeal from any other judgment of the district court in a civil case.

COMMENT TO LCvR 73.1: *The Rule has been amended to make clear that if all parties consent to the assignment to a magistrate judge, then the district judge need not formally approve that decision.*

LCvR 77.1

CLERK'S OFFICE

The Clerk's Office shall remain open for the transaction of business from 9:00 A.M. until 4:30 P.M. daily except Saturdays, Sundays and legal holidays. Papers, except for sealed material, that must be filed on a given date may be delivered after 4:30 P.M. to the security desk at the Third Street entrance to the courthouse. Papers found to be in compliance with these Rules will be filed as of the date they were delivered to the security desk. Documents that are being filed under seal pursuant to a protective order must be filed in the Clerk's Office during business hours because the Security Officers are not authorized to accept this material.

LCvR 78.1

ORAL HEARINGS

A party may in a motion or opposition request an oral hearing, but its allowance shall be within the discretion of the court. If at the time of the hearing the moving party fails to appear, the court may treat the motion as withdrawn; if the opposing party fails to appear, the court may treat the motion as conceded.

LCvR 79.1

CUSTODY AND REMOVAL OF RECORDS

REMOVAL OF RECORDS.

No original paper, document or record in any case shall be removed from its place of filing or custody, except under the following conditions:

(a) The Clerk or one of the Clerk's deputies, any attorney or party to the case, or any person designated by a judge, may remove any paper, document or record, when required or ordered for use before a judge or a person to whom the case has been referred for consideration, for the use required or ordered.

(b) No paper, document or record shall be taken from the courthouse by any person other than the Clerk or one of the Clerk's deputies except by permission of the court.

(c) Where a paper, document or record is removed by a person other than the Clerk or one of the Clerk's deputies, a receipt shall be given to the Clerk.

(d) Any person removing a record shall return it immediately upon completion of the purpose for which it was removed.

LCvR 79.2

CUSTODY OF EXHIBITS IN CIVIL CASES

All exhibits offered by a party in a civil proceeding whether or not received as evidence, shall be retained after trial by the party or the attorney offering the exhibit, unless otherwise ordered by the court. In the event an appeal is prosecuted, each party to the action in this court, upon notification from the Clerk that the record is to be transmitted and upon request of a party to the appeal, shall file with the Clerk any exhibits to be transmitted as part of the record on appeal. Those exhibits not transmitted as part of the record on appeal shall be retained by the parties, who shall make them available for use by the appellate court upon request. Within thirty days after final disposition of the case by the appellate court, the exhibits shall be removed by the parties who offered them. If any party, having received notice from the Clerk to remove exhibit as provided herein, fails to do so within thirty days of the date of such notice, the Clerk may destroy or otherwise dispose of those exhibits.

LCvR 83.1

PHOTOGRAPH, TAPE RECORDING, BROADCASTING IN THE COURTHOUSE

The taking of photographs and operation of tape recorders inside the United States Courthouse and radio or television broadcasting from inside the courthouse during the progress of or in connection with judicial proceedings, including proceedings before a United States Magistrate Judge, whether or not court is actually in session, are prohibited. A judge may, however, permit (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, (2) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings, and (3) the videotaping or audio taping of educational programs with prior approval of the Chief Judge and under such conditions as he or she may prescribe. The use of the above equipment is permissible within a judge's chambers at the discretion of the judge. Contents of official tapes that are made as part of the record in a case will be treated in the same manner as official stenographic notes.

LCvR 83.2

PRACTICE BY ATTORNEYS

(a) PRACTICE BY MEMBERS OF THE BAR OF THIS COURT.

An attorney who is a member in good standing of the Bar of this Court may appear, file papers and practice in this Court, provided that the attorney complies with section (b) of this Rule.

(b) APPEARANCE AS SOLE OR LEAD COUNSEL IN A CONTESTED EVIDENTIARY HEARING OR TRIAL ON THE MERITS.

Each attorney who acts as sole or lead counsel in any contested evidentiary hearing or trial on the merits, civil or criminal, must have on file with the Clerk's Office a certificate, in a form prescribed by the Clerk, that the attorney

(1) has previously acted as sole or lead counsel in a federal district court or the Superior Court of the District of Columbia or a state trial court of general jurisdiction in a contested jury or bench trial or other contested evidentiary hearing in which testimony was taken in open court and an order or other appealable judgment was entered; or

(2) has participated in a junior capacity in an entire contested jury or bench trial in a federal district court or the Superior Court of the District of Columbia or a state trial court of general jurisdiction; or

(3) has satisfactorily completed a continuing legal education trial advocacy course of at least 30 hours sponsored by the District of Columbia Bar or accredited by a state bar.

(c) PRACTICE BY NON-MEMBERS OF THE BAR OF THIS COURT.

(1) An attorney who is a member in good standing of the bar of any United States Court or of the highest court of any State, but who is not a member of the Bar of this Court, may file papers in this Court only if such attorney joins of record a member in good standing of the Bar of this Court. All papers submitted by non-members of the Bar of this Court must be signed by such counsel and by a member of the Bar of this Court joined in compliance with this Rule.

(2) Paragraph (1) above is not applicable to an attorney who engages in the practice of law from an office located in the District of Columbia. An attorney who engages in the practice of law from an office located in the District of Columbia must be a member of the District of Columbia Bar and the Bar of this Court to file papers in this Court.

(d) PARTICIPATION BY NON-MEMBERS OF THIS COURT'S BAR IN COURT PROCEEDINGS.

An attorney who is not a member of the Bar of this Court may be heard in open court only by permission of the judge to whom the case is assigned. Any attorney seeking to appear *pro hac vice* must file a motion signed by a sponsoring member of the Bar of this Court, accompanied by a declaration by the non-member that sets forth: (1) the full name of the attorney; (2) the attorney's office address and telephone number; (3) a list of all bars to which the attorney has been admitted; (4) a certification that the attorney either has or has not been disciplined by any bar, and if the attorney has been disciplined by any bar, the circumstances and details of the discipline; (5) the number of times the attorney has been admitted *pro hac vice* in this Court within the last two

years; and (6) whether the attorney, if the attorney engages in the practice of law from an office located in the District of Columbia, is a member of the District of Columbia Bar or has an application for membership pending.

(e) ATTORNEYS EMPLOYED BY THE UNITED STATES

An attorney who is employed or retained by the United States or one of its agencies may appear, file papers and practice in this court in cases in which the United States or the agency is a party, irrespective of (c) and (d) above.

(f) ATTORNEYS EMPLOYED BY A STATE.

A State Attorney General or that official's designee, who is a member in good standing of the bar of the highest court in any State or of any United States Court, may appear and represent the State or any agency thereof, irrespective of (c) and (d) above.

(g) ATTORNEYS REPRESENTING INDIGENTS.

Notwithstanding (c) and (d) above, an attorney who is a member in good standing of the District of Columbia Bar or who is a member in good standing of the bar of any United States Court or of the highest court of any State may appear, file papers and practice in any case handled without a fee on behalf of indigents upon filing a certificate that the attorney is providing representation without compensation.

(h) ENTRY AND WITHDRAWAL OF APPEARANCE.

Attorneys may enter and withdraw appearances in civil actions as provided in LCvR 83.6 of these Rules, and in criminal actions as provided in LCrR 44.5 of these Rules.

(i) STRIKING APPEARANCE FOR NONATTENDANCE AT COURT PROCEEDINGS.

The court may, upon notice and after affording an opportunity to be heard, strike the appearance of any attorney in a particular case for failure, without adequate cause, to attend any hearing, conference or other proceeding. The fact that an attorney's residence or office is located at a place distant from the District of Columbia does not constitute grounds for rescheduling or failing to attend court proceedings.

(j) CERTIFICATION BY NON-MEMBERS OF THE BAR OF THIS COURT.

An attorney who appears, files papers and practices in this Court pursuant to (e), (f) or (g) above, shall file certification of personal familiarity with the Local Rules of this Court and, as appropriate, the other materials set forth in Rules LcvR 83.8(b) and LcvR 83.9(a) simultaneously with each initial appearance by the attorney before a judge of this Court.

COMMENT TO LCvR 83.2(c)(2): *LCvR 83.2(c)(2) has been added to conform the Rules of this Court to the current practice of the District of Columbia Committee on*

Unauthorized Practice, and to recognize that, as a general matter, attorneys who engage in the practice of law from an office located in the District of Columbia and who file papers in this Court should be a member of the Bar of this Court and the District of Columbia Bar.

COMMENT TO LCvR 83.2(d): *The original intent of this rule was that the "submission"by non-members of the Bar seeking pro hac vice admission be provided in the form of a declaration or affidavit as is customary in such circumstances. This section has now been amended to clarify the responsibility of non-members of this Court's Bar.*

COMMENT TO LCvR 83.2(g): *The provision under LCvR 83.10 has been deleted to avoid any confusion between this rule and the deleted rule, and to make clear that attorneys can represent parties pro bono without being approved by the Court.*

LCvR 83.3

NUMBER OF COUNSEL

Except by permission of the court only one attorney on each side shall examine a witness, address the court on a question arising in a trial, or address the court or jury in final argument.

LCvR 83.4

PRACTICE BY LAW STUDENTS

(a) ACTIVITIES.

A law student certified pursuant to this Rule may:

(1) Enter an appearance in this court in any criminal or civil case if the client on whose behalf the law student is appearing has consented in writing to that appearance, and a "supervising lawyer", as hereinafter defined, has also indicated written approval of that appearance.

(2) Engage in activities on behalf of the client in all ways that a licensed attorney may, under the general supervision of the supervising lawyer; however, a student may make no binding commitments on behalf of a client absent prior client and supervisory approval; and in any matters, including depositions, in which testimony is taken the student must be accompanied by the supervising lawyer. Documents or papers filed with the court must be read, approved, and co-signed by the supervising lawyer.

(3) The court retains the authority to establish exceptions to such activities, and also to limit a student's participation in any individual case.

(b) STUDENT, PROGRAM and SUPERVISOR REQUIREMENTS.

(1) STUDENT REQUIREMENTS.

In order to be certified pursuant to this Rule a law student shall:

(i) Be a law student in good standing, enrolled in and attending a law school approved by the American Bar Association;

(ii) Have completed at least four semesters of legal studies, or the equivalent;

(iii) Have knowledge of the Federal Rules of Civil and Criminal Procedure, Evidence, and the Code of Professional Responsibility;

(iv) Be enrolled for credit in a law school clinical program which has been certified by this court;

(v) Be certified by the dean of the law school, or the dean's designee, as being of good character and sufficient legal ability, and as being adequately trained, in accordance with paragraphs (i)-(iv) above, to fulfill the responsibilities as a legal intern to both the client and the court;

(vi) Be certified by this court to practice pursuant to this Rule;

(vii) Neither ask for nor receive any fee or compensation of any kind from the client on whose behalf service is rendered, nor under the Criminal Justice Act, under this Rule; but this shall not prevent a lawyer, legal aid bureau, law school, public defender agency or the government from paying compensation to the eligible law student nor shall it prevent any agency from making such charges for its services as it may otherwise properly require.

(2) PROGRAM REQUIREMENTS.

The program:

(i) Must be a law school clinical practice program for credit, in which a law student obtains academic and practice advocacy training, utilizing attorneys certified by the dean of the law school for practice supervision;

(ii) Must be certified by this court;

(iii) Must be conducted in such a manner as not to conflict with normal court schedules;

(iv) May accept compensation other than from a client such as Criminal Justice Act (CJA) payments;

(v) Must maintain malpractice insurance for its activities.

(3) SUPERVISOR REQUIREMENTS.

The person under whose supervision an eligible law student does any of the things permitted by this Rule shall:

(i) Be a member in good standing of the Bar of this court;

(ii) (a) Have faculty or adjunct faculty status at the responsible law school and be certified by the dean of the law school as being of good character and sufficient legal ability and as being adequately trained to fulfill the responsibilities of a supervisor; or

(b) Be a member of the Bar of this court for at least two years, who after the certification by the dean of the law school as being of good character and adequately trained to fulfill the responsibilities of a supervisor, is determined by the court to be competent to carry out the role of supervising attorney;

(iii) Be certified by this court as a student supervisor;

(iv) Be present with the student at all times in court, and at other proceedings in which testimony is taken;

(v) Co-sign all pleadings or other documents filed with the court;

(vi) Supervise concurrently no more than 10 students carrying clinical practice as their entire academic program, with a proportionate increase in the number of students as their percentage of time devoted to clinical practice may be less;

(vii) Assume full personal professional responsibility for student's guidance in any work undertaken and for the quality of a student's work, and be available for consultation with represented clients;

(viii) Assist and counsel the student in activities mentioned in this Rule, and review such activities with the student, all to the extent required for the proper practical training of the student and the protection of the client;

(ix) Be responsible to supplement oral or written work of the student as necessary to ensure proper representation of the client

(c) CERTIFICATION OF STUDENT, PROGRAM AND SUPERVISOR.

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

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

(2) PROGRAM:

(i) Certification of a program by the court shall be filed with the Clerk and shall remain in effect indefinitely unless withdrawn by the court;

(ii) Certification of a program may be withdrawn by the court at the end of any academic year without cause, or at any time, provided notice stating the cause for such withdrawal is furnished to the law school dean and supervisor.

(3) SUPERVISOR:

(i) Certification of a supervisor must be filed with the Clerk, and shall remain in effect indefinitely unless withdrawn by the court;

(ii) Certification of a supervisor may be withdrawn by the court at the end of any academic year without cause, or at any time upon notice and a showing of cause;

(iii) Certification of a supervisor may be withdrawn by the dean by mailing a notice to that effect to the Clerk.

LCvR 83.5

PRACTICE BY LAW CLERKS AND COURT EMPLOYEES

Law clerks and secretaries to judges of this court, and all other persons employed in any capacity by this court, shall not engage in the practice of law while so employed. A law clerk or secretary to a particular judge of this court shall not, at any time after separating from that position, engage in any activity as an attorney or advisor, nor permit his or her name to appear as an attorney on any paper filed in this court, in connection with any case that was pending on

that judge's docket during his or her term of service. Any other person employed in any capacity by this court shall not, for a period of two years after separating from that position, engage in any activity as an attorney or advisor in connection with any case that was pending in this court during his or her term of service. Each former law clerk, secretary or other employee of this court, as well as persons employing or associating with them in the practice of law before this court, shall have the responsibility of enforcing the provisions of this Rule. Evidence of a failure to comply with this Rule shall be referred to this court's Committee on Grievances.

LCvR 83.6

ENTRY AND WITHDRAWAL OF APPEARANCES BY ATTORNEYS IN CIVIL ACTIONS

(a) ENTRY OF APPEARANCE.

An attorney eligible to appear may enter an appearance in a civil action by signing any pleading described in Rule 7(a), Federal Rules of Civil Procedure, or by filing a written notice of entry of an appearance listing the attorney's correct address, telephone number and bar identification number

(b) WITHDRAWAL OF APPEARANCE BY NOTICE.

If no trial date has been set, an attorney may withdraw an appearance in a civil action by filing a notice of withdrawal signed by the attorney and the party represented, if another attorney has previously entered an appearance on behalf of the party.

(c) WITHDRAWAL OF APPEARANCE BY MOTION.

If a trial date has been set, or if a party's written consent is not obtained, or if the party is not represented by another attorney, an attorney may withdraw an appearance for a party only by order of the court upon motion by the attorney served upon all parties to the case. Unless the party is represented by another attorney or the motion is made in open court in the party's presence, a motion to withdraw an appearance shall be accompanied by a certificate of service listing the party's last known address and stating that the attorney has served upon the party a copy of the motion and a notice advising the party to obtain other counsel, or, if the party intends to conduct the case *pro se* or to object to the withdrawal, to so notify the Clerk in writing within seven days of service of the motion.

(d) RULING ON MOTION TO WITHDRAW APPEARANCE

The court may deny an attorney's motion for leave to withdraw if the withdrawal would unduly delay trial of the case, or be unfairly prejudicial to any party, or otherwise not

be in the interest of justice. The Clerk shall mail to the affected party a copy of the order granting or denying the motion for leave to withdraw.

COMMENT TO LCvR 83.6: *This Rule requires, as in LCvR 5.1, that an attorney's appearance notice contain the attorney's District of Columbia Bar identification number.*

LCvR 83.7

REVIEW OF ORDERS AS TO ADMISSION OR EXCLUSION OF PRACTITIONERS BEFORE THE PATENT OFFICE

A person refused recognition to practice or suspended or excluded from practice before the Patent Office may file a petition in this court against the Commissioner of Patents for review of such action within 30 days after the date of the order recording the Commissioner's action. The Commissioner shall answer the petition within 21 days after receiving service of the summons. Within 14 days after filing of the answer, the petitioner shall file a certified copy of the record and proceedings before the Patent Office, which shall constitute the sole basis for the court's review.

LCvR 83.8

ADMISSION TO THE BAR

(a) WHO MAY BE ADMITTED.

Admission to and continuing membership in the Bar of this Court are limited to attorneys who are (1) active members in good standing in the District of Columbia Bar; or (2) active members in good standing of the highest court of any state in which the attorney maintains his/her principal law office and is a member in good standing of a United States District Court that provides for reciprocal admission to members of the Bar of this Court.

(b) PETITION FOR ADMISSION.

Each applicant for admission shall file with the Clerk at least 14 days prior to hearing thereon (unless for good cause shown the judge shall shorten the time) a written petition for admission on a form supplied by the Clerk stating:

(1) applicant's residence and office addresses and office telephone number;

(2) the court where and date when admitted;

(3) applicant's legal training and experience;

(4) whether the applicant has ever been held in contempt of court and, if so, the nature of the contempt and the final disposition thereof;

(5) whether the applicant has ever been convicted of any crime (other than minor traffic offenses) or publicly reprimanded, publicly censured, suspended, disciplined or disbarred by any court, and, if so, the facts and circumstances connected therewith; and

(6) that the applicant is familiar with:

(i) the provisions of the Judicial Code (Title 28 U.S.C.) which pertain to the jurisdiction of and practice in the United States District Courts;

(ii) the Federal Rules of Civil or Criminal Procedure;

(iii) the Rules of the United States District Court for the District of Columbia;

(iv) the *Rules of Professional Conduct* as adopted by the District of Columbia Court of Appeals except as otherwise provided by specific rule of this Court, and that he/she will faithfully adhere thereto; and

(v) D.C. Bar Voluntary Standards for Civility in Professional Conduct, adopted by the Bar on June 18, 1996 (attached as Appendix C).

(c) AFFIDAVIT OF A MEMBER OF THE BAR.

The petition shall be accompanied by an affidavit or declaration of an attorney who is a member in good standing of the Bar of this Court who has known the applicant for at least one year stating when the affiant was admitted to practice in this Court and how long and under what circumstances the attorney has known the applicant and a statement of the applicant's character and experience at the bar. The affidavit shall be on a form supplied by the Clerk.

(d) HEARING ON THE PETITION.

The petition for admission shall be placed on the calendar of the Motions Judge and shall be heard on the first Monday of each month. If the first Monday is a holiday, the petition shall be heard on the following Monday. If the petition is granted, the applicant shall take the oath of office.

(e) OATH.

The oath which each applicant for admission to the Bar of this Court shall take shall be as follows:

I do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will respect courts of justice and judicial officers; that I will well and faithfully discharge my duties as an attorney and as an officer of the court; and in the performance of those duties I will conduct myself with dignity and according to both the law and the recognized standards of ethics of our profession.

(f) ADMISSION FEE.

Each petition shall be accompanied by payment in such amount and form as determined by the Court, which the Clerk shall deposit to the credit of a fund to be used for such purposes as inure to the benefit of the members of the bench and the Bar in the administration of justice which are determined to be appropriate by the Court from time to time. This fee shall be in addition to the statutory fee for administering the oath of office and issuing the certificate of admission.

(g) CLERK AS AGENT FOR SERVICE.

By being admitted to the Bar of this Court or by being permitted to practice in this Court under Local Rule 83.2 and 83.12 or in fact practicing in this Court, the attorney shall be deemed to have designated the Clerk of the Court as agent for service of process in any disciplinary proceeding before this Court.

COMMENT TO LCvR 83.8: *This Rule clarifies the intention that continuing membership in the bar is premised on a continuing duty to meet the requirements of this Rule. Section (a) parallels revised LCvR 83.2 regarding practice by attorneys.*

COMMENT TO LCvR 83.8(b)(6)(ii): *Section (v) was added to LCvR 83.8(b)(6) to stress the importance that the Court places on the need for civility among lawyers who practice in the Court.*

LCvR 83.9

RENEWAL OF MEMBERSHIP

(a) RENEWAL OF MEMBERSHIP EVERY THREE YEARS.

Each member of the Bar of this Court shall renew his or her membership every three years by filing with the Clerk of the Court, on or before July 1st of every third year, a certificate in a form prescribed by the Clerk that the member is familiar with the then-current version of the Federal Rules of Civil Procedure, Federal Rules of Evidence, the Local Rules of this Court, *Rules of Professional Conduct* and the D.C. Bar Voluntary Standards for Civility in Professional Conduct. If the attorney appears in criminal cases, he or she must also certify familiarity with the then-current version of the Federal Rules of Criminal Procedure and the Sentencing Guidelines. (See LCrR 44.5(b)). Members of the Bar of this Court on the effective date of this Rule shall file certificates

by March 1, 1990, and by July 1 of every third calendar year thereafter. Subsequently admitted members shall file certificates by July 1st of every third calendar year after the year in which they were admitted. The Clerk shall notify members of this certification requirement at least 60 days before the date for filing such certificates and renewals.

(b) RENEWAL FEE.

Each certificate required by (a) above shall be accompanied by a payment of $25 in a form determined by the Clerk. The fee shall be $10 for the initial certificate filed by any person admitted to the Bar of this Court after July 1, 1986. The Clerk shall deposit the fees received to the credit of the fund described in LCvR 83.8(f) to be used for the purposes specified in that Rule, including the defraying of expenses of maintaining a current register of members in good standing and to administer the counseling program outlined in LCvR 83.21.

(c) FAILURE TO RENEW.

An attorney who fails to file the required certifications and pay the renewal fee shall be provisionally removed from the list of members in good standing and pursuant to LCrR44.1(a) shall not be permitted to practice before this Court until restored as a member in good standing. The name of the attorney shall be restored to the list of members in good standing upon filing of the required certificates and payment of the delinquent fee within five years after the due date. At the end of five years from the due date, the name will be permanently removed from the roll, without prejudice to an application for admission as a new member.

COMMENT TO LCvR 83.9(a): *This amendment brings the rule in compliance with LcvR 83.8(b)(6)(v).*

LCvR 83.10

COURT APPOINTED REPRESENTATION

(a) Attorneys who are members in good standing of the Bar of this Court shall be required to assist or represent the needy in civil matters before this Court whenever requested by the Court and, if necessary, without compensation and to accept appointments under the Criminal Justice Act unless exempted by rule or statute.

COMMENT TO LCvR 83.10(b): *LCvR 83.10(b) has been deleted to avoid confusion with LcvR 83.2(g), and to make clear that attorneys can represent parties pro bono without being appointed by the courts.*

LCvR 83.11

CIVIL PRO BONO PANEL

(a) Attorneys who are members in good standing of the Bar of this Court are required under Rule 83.10(a) to assist or represent the needy in civil matters before this Court whenever requested by the Court, and, if necessary, without compensation. As one way to assist attorneys in meeting this requirement, and in light of the need for attorneys to represent indigent *pro se* litigants in civil matters before this Court, the Court hereby establishes a Civil Pro Bono Panel ("Panel") of attorneys who are members in good standing of the Bar of this Court and who have agreed to accept *pro bono* appointments to represent indigent *pro se* litigants in civil cases before this Court. Members of the Bar of this Court are urged to volunteer to serve on this Panel.

(b) The following procedures shall govern the appointment of attorneys from the Civil Pro Bono Panel to represent *pro se* parties who are proceeding *in forma pauperis* in civil actions and cannot obtain counsel by any other means.

(1) COMMITTEE ON *PRO SE* LITIGATION.

The Chief Judge shall appoint a Committee on *Pro Se* Litigation, which shall include private practitioners and of government attorneys who are members of the District of Columbia Bar and who practice in this Court, to oversee the Civil Pro Bono Panel established herein and annually report to the Court on the operation of the Panel.

(2) CIVIL PRO BONO PANEL.

(i) Attorneys, law firms, and clinical legal education programs ("Clinics") at law schools accredited by the American Bar Association that are willing to accept appointment to represent indigent *pro se* parties in civil actions may apply to join the Panel. Appropriate forms shall be available from the Clerk of Court ("Clerk"). Each application shall set forth, among other things:

(aa) in the case of a law firm, the name of a member of the firm designated as the Panel Liaison, to whom orders of appointment may be directed; and

(bb) that the individual attorney, Panel Liaison, or supervisor of the Clinic is a member in good standing of the Bar of this Court or is in compliance with Rule 83.10(b) of the Rules of this Court;

(cc) the attorney's prior civil trial experience or trial advocacy training;

(dd) whether the attorney, law firm or Clinic has the ability to consult and advise in languages other than English;

(ee) the number of cases per calendar year the applicant is willing to accept;

(ff) any particular experience or interest in specific types of civil cases to which attorneys from the Panel are most often appointed (*e.g.* FOIA cases, *habeas corpus* petitions, social security claims, section 1983 actions, and employment discrimination cases) and any types of civil cases to which the applicant desires not to be assigned.

(ii) Information on an application may be amended at any time by letter to the Clerk. An attorney, law firm or Clinic may by letter withdraw from the Panel at any time.

(3) APPOINTMENT OF COUNSEL.

When leave has been granted pursuant to 28 U.S.C. § 1915 for a *pro se* litigant to proceed *in forma pauperis*, the judge to whom the case is assigned may, on application by the *pro se* party or otherwise, appoint an attorney from the Panel to represent such party. The appointment should be made taking into account:

(i) the nature and complexity of the action;

(ii) the potential merit of the *pro se* party's claims;

(iii) the demonstrated inability of the *pro se* party to retain counsel by other means; and

(iv) the degree to which the interests of justice will be served by appointment of counsel, including the benefit the Court may derive from the assistance of the appointed counsel.

(4) APPOINTMENT PROCEDURE.

(i) The judge shall not direct the appointment of a specific attorney from the Panel but may advise the Clerk to attempt to select an attorney with particular expertise. If service of the summons and complaint has not yet been made, the judge may direct that service be made by the Marshal or by other appropriate method.

(ii) Upon receiving the Appointment Order, the Clerk shall select a member of the Panel. In making the selection, the Clerk shall take into consideration the experience and preferences of Panel members regarding specific types of cases and the equitable distribution of cases among Panel members.

(iii) Before selecting any attorney, the Clerk shall determine whether the litigant has any other case pending before the Court and whether an attorney has been retained or appointed in such case. If so, such retained or appointed counsel shall be contacted by the Clerk and encouraged, but not required, to accept appointment to represent the litigant in the new action. If such counsel declines, the Clerk shall select another attorney in accordance with this Rule.

(iv) The Clerk shall send a copy of the Appointment Order, this Rule, any pleadings, and any relevant correspondence or other documents to the appointed attorney.

(5) RESPONSIBILITIES OF THE APPOINTED ATTORNEY.

(i) Upon receiving the Appointment Order, and unless a conflict of interest is apparent from the materials sent by the Clerk under subparagraph (b)(4) above, the appointed attorney shall promptly communicate with the *pro se* party regarding the action. Such communication shall include exploration of any actual or potential conflicts of interest and whether the dispute could be resolved more appropriately in other forums or by other means.

(ii) After any such consultation with the *pro se* party, the appointed attorney shall, within 30 days of receiving notice of the appointment or within such additional time permitted by the assigned judge for good cause show, file either:

(aa) a notice of appearance pursuant to Local Civil Rule 83.6(a); or

(bb) a notice of withdrawal or a motion for withdrawal from the appointment pursuant to paragraph (b)(6) of this Rule.

(iii) If a notice of appearance is filed by the appointed attorney, the appointed attorney shall represent the party in the action from the date he or she files an appearance until (1) he or she has been relieved of the appointment by the Court according to the provisions of this Rule, (2) the case has been dismissed, (3) the case has been transferred to another Court, or (4) a final judgment has been entered in the action by this Court.

(iv) The appointed attorney accepting the appointment shall not be required to represent the client in any other matter.

(v) If an order of appointment has been directed to a participating law firm or Clinic, the action shall remain the responsibility of the firm or of the

Clinic, notwithstanding the firm's or the program's assignment of the case to one of its attorneys.

(vi) An attorney appointed under this Rule may, but is not required to, represent the *pro se* party.

(aa) in any appeal taken either by the *pro se* party or an opposing party from a final judgment entered by this Court, provided, however, that if the appointed attorney elects not to represent the *pro se* party on such appeal, he or she shall advise the party of the requirements for filing a notice of appeal or cross-appeal within sufficient time for the party to file such a notice *pro se.*

(bb) in any proceeding, in any forum, that is related or collateral to the action in this Court or that may ensue upon an order of dismissal or remand of the action in this Court.

(6) RELIEF FROM APPOINTMENT.

(i) An appointed attorney may be relieved of an order of appointment only on the following grounds:

(aa) a conflict of interest precludes the attorney from representing the party in the action; or

(bb) a substantial disagreement exists between the attorney and the party on litigation strategy; or

(cc) in the attorney's opinion, formed after reasonable inquiry, the claim or defense is not well grounded in fact; or is not warranted under existing law and cannot be supported by good faith argument for extension, modification, or reversal of existing law; or the party is proceeding for purposes of harassment or other improper purpose; or

(dd) because of the temporary burden of other professional commitments, the attorney lacks the time necessary to represent the party; or

(ee) the client has refused to enter into a reasonable fee agreement pursuant to subparagraphs (b)(9)(i)(aa) or (bb); or

(ff) on such other grounds acceptable to the Court for good cause shown.

(ii) An attorney seeking to be relieved from appointment for the reasons set forth in subparagraph (b)(6)(i)(aa), (bb), or (cc) above shall file a notice

of withdrawal with the Court, with proof of service on the *pro se* litigant, stating without identification of reasons, that "grounds for relief from appointment under subparagraph (b)(6)(i)(aa), (bb), or (cc) exist." Such notice will effect withdrawal without any Court action.

(iii) An attorney wishing to be relieved for the reasons set forth in subparagraph (b)(6)(i)(dd) or (ff) shall file a motion for withdrawal setting forth the circumstances constituting cause for withdrawal, with proof of service on the *pro se* litigant. A motion citing (b)(6)(i)(ee) shall include the fee agreement that the *pro se* litigant would not accept. This motion shall be filed under seal and shall not be served upon or otherwise made available to the opposing party. A withdrawal on motion will require Court approval, distribution of which shall be given to all parties if the withdrawing attorney had filed a notice of appearance.

(iv) An attorney wishing to be relieved for the reasons set forth in subparagraph (b)(6)(i)(ee) shall file a motion for withdrawal prior to entering an appearance, and shall submit with the motion a copy of the proposed fee agreement which the client has refused to sign.

(v) If an appointed attorney is relieved from an order of appointment, the judge may issue an order directing appointment of another attorney to represent the party, or may issue such other orders as may be deemed appropriate.

(7) DISCHARGE.

(i) A party for whom an attorney has been appointed shall be permitted to request the judge to discharge the attorney from the representation and either to appoint another attorney or let the party proceed *pro se.*

(ii) When such a request is made, the judge shall forthwith issue an order discharging the appointed attorney from further representation of the party in the action and may, in his or her discretion, order appointment of another attorney to undertake the representation pursuant to paragraph (b4). Where a party requests discharge of a second appointed attorney, no additional appointments shall ordinarily be made.

(8) EXPENSES.

(i) The Indigent Civil Litigation Fund, Inc. ("Fund") is a private, non-profit organization established to defray some reasonable expenses incurred in the course of representations pursuant to appointments under this Rule. A description of this Fund, its requirements, and application forms for reimbursement are available from the Clerk's Office. Because the Fund's assets are limited, and because no public funds are available

to defray expenses, the appointed attorney or the law firm or Clinic with which he or she is affiliated should be prepared to advance the reasonable expenses of the litigation but may seek reimbursement from the Fund.

(ii) The appointed attorney shall not condition the representation upon the client's advancing the cost of the litigation expenses. The appointed attorney may enter into an agreement with the client wherein the client agrees:

(aa) to reimburse the attorney for reasonable litigation expenses from any monetary recovery that may be obtained through the representation, and/or

(bb) to assign to the attorney any amounts awarded to the client as reasonable litigation expenses pursuant to law, including case law, authorizing the award of such expenses.

(iii) For purpose of this Rule, reasonable litigation expenses shall include but not be limited to, filing fees, witness fees (including consultant and expert witness fees), travel expenses, reproduction and printing costs, computerized legal research, long distance telephone charges and the cost of deposition and trial transcripts. Reasonable litigation expenses shall not include the attorney's normal office and overhead expenses, such as secretarial services and local telephone charges.

(iv) The appointed attorney may waive, at any time, his or her entitlement to reimbursement for expenses under this Rule; such waiver must be in writing.

(9) ATTORNEY FEES.

(i) The appointed attorney shall represent the client without receiving a fee, except that in cases where the client may be entitled to recover attorney fees or a monetary award or monetary settlement, the appointed attorney shall advise the client of the possibility of such recovery and may:

(aa) condition the representation on the client's entering into a written agreement assigning to the attorney any amounts recovered by the client as attorney fees pursuant to laws, including case law, authorizing the award of attorney fees; and/or

(bb) propose to the client a contingent fee arrangement providing for the payment of a reasonable fee out of any funds recovered by the client as a result of the representation. A contingent fee arrangement shall provide that the amount of any payment

received by the attorney pursuant to an assignment agreement under subparagraph (i) above shall be credited against the client's fee obligations under such a contingent fee arrangement. Any such contingent fee arrangement shall be in writing, executed by both the attorney and the client, and submitted to the Court ex parte for its approval; or

(cc) seek to assist the client in retaining other counsel on a compensated basis, subject to the client's consent to such a change in representation and to the Court's approval of a request for relief from appointment under subparagraph (6)(i)(ff) on the ground that the party no longer requires appointed counsel for the purpose of pursuing claim, but, if the appointed attorney is unable to obtain such the counsel for the client, he or she shall then continue the representation to its conclusion unless relieved by the Court, either without receiving a fee, or pursuant to an assignment or contingent fee arrangement as provided in subparagraphs (i) and (ii) above.

(ii) Any attorney fee agreement permitted under subparagraphs (i)(aa) and (ii) shall be entered into prior to the entry of the attorney's notice of appearance pursuant to paragraph 5(ii).

(iii) In cases in which the applicable statute authorizes the award of attorneys' fees to be paid out of the amounts awarded to the plaintiff, the appointed attorney shall advise the client of the possibility of such an award.

(10) TRAINING SESSIONS.

The Committee on *Pro Se* Litigation shall, in cooperation with the District of Columbia Bar, organize and conduct educational programs to train and advise attorneys on the Panel in the preparation and trial of the most common types of civil actions involving *pro se* parties brought before this Court.

(11) APPOINTMENT OF NON-PANEL ATTORNEYS OR LEGAL ORGANIZATIONS.

Nothing in this Rule shall be interpreted as preventing a judge from requesting an attorney, law firm or legal organization that is not on the Panel to represent a litigant who is otherwise proceeding *pro se* in this Court. In addition, nothing in this Rule shall be interpreted as preventing an attorney who is not a member of the Bar of this Court, but who qualifies under Local Civil Rule 83.2(g) to practice before this Court, from representing an indigent litigant under Local Civil Rule 83.10 subject to the conditions of Local Civil Rule 83.2(g)

COMMENT TO LCvR 83.11: *This Rule, promulgated in 1991, created the Court's Civil Pro Bono Panel and an Advisory Committee on Pro Se Litigation to oversee the operation of the Panel. The Rule was amended in 2001 to reflect the Court's experience with appointments from the Panel. Because the Rule applies to cases filed by both prisoners and non-prisoners, no amendments expressly address changes made by the Prison Litigation Reform Act. The Court notes, however, that the calculation of any contingent fee agreement with a prisoner-plaintiff under subparagraph (b)(9)(i)(bb) should be reduced by the amount of any judgment that has been used to pay a portion of attorney fees under 42 U.S.C. § 1997e(d)(2).*

The 2001 amendments to LCvR 83.11 were published with the following comments.

LCvR 83.11 (a): *This amendment moves material previously in Paragraph (2) reminding lawyers of their obligation to provide representation to the needy in civil matters are requested by the Court and recites the establishment and purposes of the Civil Pro Bono Panel.*

LCvR 83.11(b)(1): *This amendment alters the criteria for membership on the Committee on Pro Se Litigation from D.C. Bar members "who practice primarily in federal courts" to members "practicing in this Court."*

LCvR 83.11(b)(2): *This amendment consolidates the requirements for membership on the Panel, but the requirements are not substantively changed. Applicants for participation in the Panel will be invited to identify types of cases they do not want, in addition to types of cases they do want.*

LCvR 83.11(b)(3): *The amendment consolidates three subsections into one to improve readability. The section retains the requirement that the party be granted leave to proceed in forma pauperis before being appointed counsel from the Panel. In (ii), the provision limiting the Court to only the pleadings in deciding the "merit" of a pro se litigant's case was removed and in (iii) added "demonstrated" to the "inability to pay" criterion.*

LCvR 83.11(b)(4): *This amendment changes paragraph (i) to allow a judge to ask the Clerk for the appointment of an attorney with particular expertise, but still does not allow a judge to request a Panel member by name. In addition, the requirement that Panel members be selected randomly was removed from Paragraph (ii) in favor of a more considered approach by the Clerk to allow for a Panel member's preferences and the equitable distribution of cases among Panel members.*

LCvR 83.11(b)(5): *This paragraph was rewritten to include in one place all of the responsibilities of appointed counsel, including material that was listed in former paragraphs (5)(v), (5)(vi) and (11). In addition, the amendment clarifies that the responsibility of an attorney to represent the litigant commences when*

a notice of appearance is filed and continues until the matter is concluded at the District Court or until the attorney is otherwise relieved. The amendment also clarifies that the appointed attorney has no obligation to represent the client in any other case or in an appeal or in any collateral action following a dismissal or remand.

LCvR 83.11(b)(6): *This amendment clarifies the procedures for filing a notice of withdrawal and a motion for withdrawal and adds a provision (i)(ee) permitting withdrawal on motion in the event the appointed attorney and the litigant are unable to come to terms on an a contingent fee agreement, pursuant to paragraph (b)(9).*

LCvR 83.11(b)(7): *This amendment makes no substantive changes.*

LCvR 83.11(b)(8): *This amendment reminds Panel members of the potential for recovery of some expenses under the Indigent Civil Litigation Fund. It also limits reimbursement to reasonable litigation expenses and clarifies what constitutes reasonable litigation expenses.*

LCvR 83.11(b)(9): *This amendment allows a Panel member to condition their entry of an appearance upon the client entering into a contingent fee agreement approved by the Court. Because the Rule applies to case filed by both prisoners and non-prisoners, no amendment expressly addresses changes made by the Prison Litigation Reform Act. However, the calculation of any contingent fee agreement with a prisoner-plaintiff under subparagraph (b)(9)(i)(aa) should be reduced by the amount of any judgment that has been used to pay a portion of attorney fees under 42 U.S.C. § 1997e(d)(2).*

LCVR 83.11(b)(11): *This amendment makes no substantive changes, but clarifies that attorney who are not members of the Bar of this Court may be members of the Panel if they comply with the conditions of Local Civil Rule 83.2(g), involving attorneys representing indigents.*

LCvR 83.12

RULES OF DISCIPLINARY ENFORCEMENT

(a) PROMULGATION OF RULES.

This Court, in furtherance of its inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it under LCvR 83.2 or 83.8 of these Rules, or who are admitted for the purpose of a particular proceeding *(pro hac vice)*, or who otherwise appear before the Court, promulgates the following Rules of Disciplinary Enforcement superseding all of its other Rules pertaining to disciplinary enforcement heretofore promulgated. These Rules shall become effective on May 1,

1987, provided however, that any formal disciplinary proceeding then pending before this Court shall be concluded under the procedure existing prior to the effective date of these Rules.

(b) ATTORNEY SUBJECT TO RULES.

These Rules shall apply to all attorneys admitted to membership in the Bar of this Court, to all attorneys permitted to practice before this Court under LCvR 83.2, and to all attorneys who appear before this Court or who participate in proceedings, whether admitted or not. All attorneys to whom these Rules apply shall be subject to the disciplinary jurisdiction of this Court for any alleged misconduct arising in connection with such proceeding. All such attorneys shall also be deemed thereby to have designated the Clerk of the Court as agent for service of process under these Rules governing discipline and disciplinary proceedings.

COMMENT TO LCvR 83.12: *Section (a) incorporates the former Preamble to the Rules of Disciplinary Enforcement. Section (b) was added to make clear that the Court has authority to discipline all attorneys who appear before it, whether admitted or not. Because this Rule is broader in its application than either LCvR 83.2 or 83.8, it restates the provision that all attorneys subject to these Rules shall be deemed to have designated the Clerk of the Court as agent for service of process for purpose of the disciplinary rules.*

LCvR 83.13

DISCIPLINARY PANEL

(a) APPOINTMENT.

The Chief Judge shall appoint three judges of the Court to be known as the Disciplinary Panel and shall appoint two additional judges to serve as alternate members. The Disciplinary Panel shall have jurisdiction over all judicial proceedings involving the disbarment, suspension, censure or other discipline of attorneys subject to these Rules.

(b) POWERS OF INDIVIDUAL JUDGES.

Nothing contained in these Rules shall be construed to deny to this Court or to any individual judge or Untied States Magistrate Judge thereof or to the United States Bankruptcy Judge such powers as are necessary for the Court to maintain control over proceedings conducted before it, such proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure, or to deprive any judge or magistrate judge of his/her inherent power of discipline for conduct committed in the presence of the Court.

COMMENT TO LCvR 83.13: *Section (b) makes clear the power of an individual judge, Bankruptcy Judge or Magistrate Judge, to maintain control over proceedings through the contempt power or otherwise to discipline for conduct in the presence of the Court.*

LCvR 83.14

COMMITTEE ON GRIEVANCES

(a) APPOINTMENT.

There shall be established a standing committee appointed by the Court to be known as the Committee on Grievances (the "Committee") consisting of six or more members of the Bar of this Court appointed for terms of three years and until their successors have been appointed. The terms of the members shall be staggered so as to provide continuity. No member of the committee on Grievances shall serve more than two consecutive terms.

The Court shall designate a Chairman of the Committee and a Vice Chairman who shall act in the absence or disability of the Chairman. Members of the Committee shall serve without compensation except that the Court may authorize payments in lieu of expenses from fees collected by the Clerk pursuant to Rule LCvR 83.8(f).

(b) DUTIES.

The Committee shall be charged with receiving, investigating, considering and acting upon complaints against all attorneys subject to these Rules, LCvR 83.12(b) relating to disbarment, suspension, censure, reprimand or other disciplinary action, and petitions for reinstatement of attorneys.

(c) CLERK.

The Clerk shall with approval of the Court, appoint a Clerk to the Committee who shall have all powers vested in a Deputy Clerk of the Court. The Clerk to the Committee shall assist the Committee, maintain records of its proceedings, investigations and prosecutions, and proceed as otherwise set forth in these Rules.

(d) CONFIDENTIALITY AND IMMUNITY.

All proceedings before the Committee involving allegations of misconduct of an attorney and all documents and charges presented to the Committee shall remain confidential and privileged. All formal charges prepared by the Committee and directed to be filed by the Court, attorney or grievance cases filed with the Clerk of the

Court, court orders, and subsequent pleadings, answers or responses filed therein shall be matters of public records.

All meetings and hearings of the Committee shall be held *in camera* and the business conducted therein shall remain confidential and privileged. The Committee's Chairman or, in the Chairman's absence or disability, the Vice Chairman shall have discretion in determining the manner and extent of cooperating with disciplinary agencies from other jurisdictions. All records and minutes of the Committee shall be maintained under seal and shall not be disclosed except by order or direction of the Chief Judge (or the designee of the Chief Judge).

When exercising the power delegated by the Court, Committee members shall be absolutely immune from suit for any conduct in connection with their duties. Complaints submitted to the Committee on Grievances pursuant to LCvR 83.16 shall be absolutely privileged and no claim or action predicated thereon may be instituted or maintained.

COMMENT TO LCvR 83.14: *Section (c) governs the responsibilities of the Clerk to the Committee. The most important change is section (d) which is added to describe the practice of the Committee on Grievances and the Court relating to confidentiality and disclosure of disciplinary proceedings. It clarifies existing practice by explicitly stating which proceedings are confidential and which are not. The Rule does not bar disclosure of information by order of the Chief Judge or his/her designee in connection with judicial appointments. In addition, consistent with rules of other courts and case law, the Rule provides that Committee members shall be immune from suit for conduct in the course of their duties in exercising the power delegated to the Committee members by the Court.*

LCvR 83.15

OBLIGATIONS OF ATTORNEYS

(a) RULES OF PROFESSIONAL CONDUCT.

Violations of the *Rules of Professional Conduct* (as adopted by the District of Columbia Court of Appeals except as otherwise provided by specific Rule of this Court) by attorneys subject to these Rules shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

(b) DUTY TO NOTIFY THE COURT.

It shall be the duty of each attorney subject to these Rules to notify promptly the Clerk of this Court of:

(1) conviction of any crime other than minor traffic offenses, giving the name of the court in which the attorney was convicted, the date of conviction, docket number, the offense for which the attorney was convicted and the sentence;

(2) any disbarment, suspension or other public discipline imposed by any federal, state or local court, giving the name of the court, the date of such disbarment, suspension or other public discipline, the docket number, and a description of the discipline imposed and the offense committed in connection therewith; or any disbarment by consent or resignation while an investigation into allegations of misconduct is pending;

(3) whether the attorney has ever been held in contempt of court and if so, the nature of the contempt and the final disposition thereof; and

(4) any change in the attorney's office address or telephone number as provided for in (c) below.

Failure to provide the notice required by this paragraph may constitute a separate ground for discipline.

(c) CHANGES IN ADDRESS

Notice to the Clerk of any change in the attorney's address or telephone number (see (b)(4) above) shall be filed in writing within 14 days of the change. The attorney shall also within 14 days file a *praecipe* reflecting such change in each case which the attorney has pending before this Court, serving a copy upon each of the attorneys in these cases.

(d) DUTIES OF THE CLERK UPON NOTIFICATION.

Upon being informed that an attorney subject to these Rules has been convicted of any crime, disciplined by any court, held in contempt by any court, disbarred by consent, or resigned from any Bar pending an investigation into allegations of misconduct, the Clerk shall promptly obtain a certified or exemplified copy of such conviction, disciplinary judgment or other court order and present it to the Committee which shall proceed in accordance with these Rules.

COMMENT TO LCvR 83.15: *Section (b) combines several former Rules relating to an attorney's obligations under these Rules to notify the Court of certain facts: (1) conviction of crime; (2) disbarment, suspension or public discipline; (3) citation for contempt; (4) change in address or telephone number. The duty of notification in LCvR 83.15(b) regarding public discipline does not include sanctions imposed under civil rules other than contempt as specified in subsection (b)(3). Failure to provide notice may constitute grounds for disciplinary action.*

Section (c) has been added to impose on the Clerk to the Grievance Committee the duty to obtain a certified or exemplified copy of such conviction, disciplinary judgment or court order.

LCvR 83.16

GROUNDS AND PROCEDURES FOR DISCIPLINE

(a) SERVICE OF PROCESS.

Service of process under these Rules shall be made by certified mail addressed to the attorney (hereinafter attorney or respondent) at the last known address or at the last recorded address filed with the Clerk of the Court as required pursuant to LCvR 83.8(g). If service cannot be so made, service shall be sufficient when served on the Clerk of this Court and all time periods specified in these Rules shall run from the time of such service. If service is made by serving the Clerk, a courtesy copy shall be mailed to the respondent by first class mail at his/her last known address.

(b) ATTORNEYS CONVICTED OF CRIMES.

(1) FELONIES.

Upon presentation to the Disciplinary Panel of a certified copy of a court record demonstrating that an attorney subject to these Rules has been found guilty of a felony in any court, the attorney shall be immediately suspended from practicing before this court by order of the Disciplinary Panel, whether the finding resulted from a plea of guilty or *nolo contendere* or from a verdict after trial or otherwise, and regardless of the pendency of an appeal. The Disciplinary Panel may defer entry of the order or set aside an order of suspension when it appears to the Panel in the interest of justice to do so.

Upon presentation of proof that the conviction is final, and regardless of the pendency of an appeal or other review of the conviction or of a Petition for *Writ of Certiorari*, the respondent shall be disbarred and the attorney's name shall be struck from the roll of members of the Bar of this Court by order of the Disciplinary Panel, unless within a period of 30 days from the date of the order, the respondent shows cause why disbarment would not be in the interest of justice.

(2) MISDEMEANORS.

An attorney subject to these Rules who shall be convicted in any court of a misdemeanor may be disciplined in such manner and to such extent as the Disciplinary Panel may determine and may upon petition of the Committee and

for good cause shown, be temporarily suspended pending a final decision of the Disciplinary Panel.

Upon receipt of a certified copy of such judgment of conviction, the Committee shall obtain an order from the Disciplinary Panel requiring the respondent to show cause within thirty days after service in accordance with LCvR 83.16(a) why the attorney should not be disciplined. If the respondent files a timely Answer, the Committee shall have 30 days within which to file a response thereto if it so desires. The Committee shall serve a copy of its response, if any, upon the respondent or respondent's counsel of record by first class mail or, failing that, in accordance with LCvR 83.16(a).

Upon the filing of the respondent's Answer to the Order to Show Cause and any response thereto by the Committee, or if no answer has been filed, upon the filing of a recommendation by the Committee, the matter shall be promptly submitted to the Disciplinary Panel for its consideration. The Disciplinary Panel may, in its discretion, schedule a hearing. If a hearing is scheduled, the Chairman or designated member(s) of the Committee shall appear at the hearing and offer proof or arguments pertinent to the issues. After the hearing or, if no hearing is scheduled, upon a review of the papers submitted, the Disciplinary Panel shall take such action as these Rules and justice may require. In all proceedings hereunder the certified copy of judgment of conviction shall constitute conclusive proof of the respondent's guilt of the conduct for which the respondent was convicted. The pendency of an appeal or other review of the conviction or of a petition for *writ of certiorari* will not constitute a ground for failing to proceed in accordance with this Rule absent extraordinary circumstances and for good cause shown.

(3) REINSTATEMENT FOLLOWING SUSPENSION.

An attorney suspended under LCvR 83.16(b)(1) or (2) will be reinstated immediately upon the filing of a certificate demonstrating that the conviction has been reversed, vacated, or set aside, but the reinstatement will not terminate any formal disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Committee on the basis of the available evidence.

(c) DISCIPLINE IMPOSED BY OTHER COURTS.

(1) POLICY OF RECIPROCAL DISCIPLINE.

An attorney subject to these Rules who has been suspended for more than 30 days or disbarred by another court shall be automatically suspended from practice in this Court. The suspension shall be effective upon service of a Temporary Suspension and Show Cause Order in accordance with these Rules. An attorney who has been suspended for 30 days or less by another court shall have the fact of that discipline noted by the Clerk on the Lawyer's Register

maintained by this Court, and no further proceedings shall be had thereon, unless the Committee on Grievances shall determine that the facts underlying the discipline warrant a proceeding for the imposition of discipline by this Court. Notations on the Lawyers' Register do not constitute discipline imposed by the Court and they shall be available only to the Court and to the Committee and shall not be matters of public record.

(2) ISSUANCE OF TEMPORARY SUSPENSION AND SHOW CAUSE ORDER.

Upon receipt of a certified or exemplified copy of a judgment or order from another court suspending or disbarring an attorney subject to these Rules the Disciplinary Panel of this Court shall issue a Temporary Suspension and, Show Cause Order, suspending the attorney from practice before this Court pending a final disposition under these Rules, except where it finds extraordinary circumstances. Respondent may answer and show cause within 30 days after service of the Order why the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.

(3) DUTIES OF THE CLERK.

The Clerk to the Committee thereupon shall cause to be served on the attorney the following documents: a copy of the judgment or order of discipline imposed by the other court; a certified copy of this Court's Temporary Suspension and Show Cause Order; and a copy of LCvR 83.16.

(4) PROCEDURES WHEN RESPONDENT FAILS TO ANSWER.

If a respondent fails to answer to show cause within 30 days from service of the Temporary Suspension and Show Cause Order, this Court shall issue an Order vacating the Temporary Suspension and Show Cause Order and imposing the identical discipline or such other discipline it deems appropriate, unless it finds that upon the face of the record on which the discipline by the other court is predicated it clearly appears:

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

(ii) that proof establishing the misconduct gives rise to a reasonable doubt that this Court could not, consistent with its duty, accept as final the conclusion of the disciplining court; or

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

(iv) that the misconduct established is deemed by this Court to warrant substantially different discipline; or

(v) that the misconduct on which the discipline was imposed by the other court does not constitute misconduct in the District of Columbia

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

(5) PROCEDURES WHEN RESPONDENT ANSWERS.

If the respondent files a timely Answer, the Committee shall have 30 days within which to file a response and make a recommendation to the Court. Upon consideration of the papers submitted by the respondent and by the Committee, the Court shall either (1) enter an Order vacating the Temporary Suspension and Show Cause Order and imposing the identical discipline or such other discipline it might find appropriate, or (2) if the Court finds that, upon the face of the record on which the discipline in another jurisdiction is predicated it clearly appears that one or more of the factors listed in subparagraphs (4)(i)-(v) exists, it shall enter such other order as it deems appropriate.

(6) CENSURE OR REPRIMAND.

Where discipline imposed by the other court is a public censure or reprimand, the Clerk shall note the fact of that discipline on the Lawyers' Register maintained by this Court, and no further proceedings shall be had thereon. Notations on the Lawyers' Register do not constitute discipline imposed by this Court and they shall be available only to the Court and to the Committee and shall not be matters of public record.

(7) STAYS.

If the discipline imposed by another court has been stayed, any reciprocal discipline proceeding in this Court may, upon motion of the respondent, be deferred by order of this Court until the stay expires and until further order of this Court. In the absence of a stay of discipline imposed by such other court, neither a motion for reconsideration or motion for rehearing or rehearing *en banc* filed in the other court or petition for a *writ of certiorari* will be the basis for a deferral of the proceedings in this Court absent good cause shown.

(d) COMPLAINTS OF MISCONDUCT FILED IN THIS COURT.

(1) COMPLAINTS GENERALLY.

Any person seeking to charge an attorney subject to the Rules with any act or omission which may justify disbarment, suspension, censure, reprimand or other discipline shall do so by a clear and concise written statement of facts in support of the allegations, subscribed and under oath or affirmed under the penalty of perjury pursuant to the United States Code, Title 28, Section 1746. The

Complaint shall be presented to the Committee by lodging it with the Clerk to the Committee. The Committee shall have the inherent power without any formal Complaint to inquire into misconduct of attorneys subject to these Rules.

(2) COMPLAINTS BY A COURT OR A JUDGE.

Any court, judge or United States magistrate judge in the District of Columbia may refer to the Committee the name of any attorney subject to these Rules on a Complaint that such attorney has engaged in conduct which, if substantiated, would warrant the imposition of discipline.

(3) INVESTIGATION.

Complaints received by the Committee shall be reviewed to determine if the Complaint is appropriate for action. If the Complaint is insufficient on its face to warrant investigation, the Committee may discharge the Complaint and advise the complainant that no action will be taken. If the Committee decides that the Complaint or information otherwise received by the Committee requires action, the Committee is authorized to (1) investigate the matter itself; (2) refer the matter to the Office of Bar Counsel, the Board on Professional Responsibility, District of Columbia Court of Appeals; (3) informally seek information from the respondent; or (4) require a formal Answer from the respondent in accordance with subsection (d)(4). To further any investigation, the Chairman, or in his absence, the Vice Chairman is authorized to issue subpoenas commanding the production of books, papers, documents, records or tangible items. If following any of these actions the Committee decides no further action is warranted, the Committee may, if its investigation was based on receipt of a complaint, discharge the Complaint and so inform the complainant and the respondent. If the Committee's investigation was based on information otherwise received and the respondent was made aware by the Committee of its investigation, the Committee shall notify the respondent that it has decided that no further action is warranted. The Committee may, as part of its notice to the respondent discharging the Complaint, provide an informal, non-reportable cautionary or educational statement, which shall not be considered discipline.

(4) SERVICE OF COMPLAINT; ANSWER.

If the Committee determines that a formal Answer is required from the respondent, a copy of the Complaint as received by the Committee or as prepared by it based on information otherwise received shall be served upon the respondent and he/she shall be required to answer within 30 days after the date of service. An Answer to a Complaint shall be in writing, subscribed and under oath or affirmed under the penalty of perjury in a form prescribed by the provisions of the United States Code, Title 28, Section 1746 and shall be accompanied by a list of all courts before which the respondent is admitted to practice. Upon receipt of the Answer, the Clerk to the Committee shall mail a

copy thereof to the complainant, if there is one, who may reply to the Answer within 14 days of the date of the transmittal letter from the Clerk of the Committee. A copy of any reply to the Answer to the Complaint shall be served upon the respondent. If a respondent is served with a copy of a Complaint by the Committee and fails to answer within the time allowed by these Rules, the matters shall be certified to the Disciplinary Panel for its appropriate action.

(5) SUBCOMMITTEE OF INQUIRY.

The Chairman may designate three members of the Committee to sit as a Subcommittee of Inquiry and shall designate one as Chairman of the Subcommittee. The Chairman of the Subcommittee of Inquiry is hereby designated and appointed a Master with authority to cause subpoenas to be issued commanding the attendance of witnesses and /or parties at any hearings, as well as commanding the production of books, papers, documents, records or tangible things designated therein at such hearing. The Chairman of the Subcommittee as such Master is further authorized to administer oaths to the parties and witnesses. Should any witness and /or party fail or refuse to attend or to testify under oath, the witness' or party's name may be certified to the Disciplinary Panel of the Court, whereupon the Disciplinary Panel may refer the matter to the United States Attorney or the U.S. Department of Justice to bring formal criminal contempt charges against such witness and/or party for so refusing. If the witness or party is found guilty of contempt, the Court shall administer such punishment as may be appropriate.

(6) RIGHT TO COUNSEL IN DISCIPLINARY PROCEEDINGS.

The respondent shall be entitled to be represented by counsel who may appear on the respondent's behalf at any time during the investigation or after a Complaint has been served upon respondent.

(7) SUBMISSION OF CHARGES.

If following investigation the Subcommittee of Inquiry recommends, and a majority of the Committee concurs, the Committee shall prepare charges and submit them to the Disciplinary Panel of the Court or, in its discretion with or without preparing charges refer the matter to the Office of Bar Counsel, the Board on Professional Responsibility, District of Columbia Court of Appeals with a request that that Office take whatever action it deems appropriate. If submitted to the Disciplinary Panel and the Panel orders the charges to be filed, the Clerk shall file them and issue a summons directed to the respondent, commanding respondent to answer. The summons and a copy of the charges shall be served in accordance with these Rules. The respondent shall answer the charges within 30 days after the effective date of service and shall file with the Answer a list of all courts before which the attorney is admitted to practice. If no Answer is received within 30 days or such additional time as the Disciplinary Panel may allow, the charges may be taken as admitted and the

Disciplinary Panel may reprimand, censure, suspend, disbar or otherwise discipline the respondent by entering an appropriate order.

(8) HEARINGS AND ORDERS OF THE DISCIPLINARY PANEL OF THE COURT.

When the respondent has filed an Answer, the case shall be set down for hearing before the Disciplinary Panel and a member of the Committee designated by the Chairman shall appear at the hearing to offer proof or arguments pertinent to the issues. If the charges are sustained by clear and convincing evidence, the Disciplinary Panel may reprimand, censure, suspend, disbar or otherwise discipline the respondent by entering an appropriate order. Any knowing violation of the order of judgment shall be deemed a contempt of court.

(e) DISBARMENT ON CONSENT.

(1) BY THIS COURT.

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 not resign from this bar, but may consent to disbarment. The attorney must deliver to this Court an affidavit stating that the attorney desires to consent to disbarment and that:

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

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

Upon receipt of the required affidavit, the Disciplinary Panel shall enter an order disbarring the attorney. The order disbarring the attorney on consent shall be a matter of public record, but the affidavit shall be sealed and not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

(2) BY OTHER COURTS.

An attorney admitted to practice before this Court who shall be disbarred on consent or who shall resign from the bar of any court of the United States or from the bar of any State, Territory, District, Commonwealth or Possession of the United States while an investigation into allegations of misconduct is pending, shall so advise this Court and submit a certified or exemplified copy

of the judgment or order accepting such disbarment on consent or resignation. If no such order or judgment is submitted, the Clerk shall obtain it from the other court. The Disciplinary Panel thereupon shall enter an order disbarring the attorney and directing that the attorney's name be stricken from the roll of attorneys admitted to practice before this Court unless the attorney shows why it would not be in the interest of justice to do so. A certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation is conclusive proof of such disbarment on consent or resignation.

COMMENT TO LCvR 83.16: *LCvR 83.16 outlines the grounds and procedures for discipline of: attorneys convicted of crimes; attorneys disciplined by other courts; attorneys who are the subject of complaints of misconduct filed in this Court; and attorneys disbarred on consent.*

Section (a) governs service of process in disciplinary proceedings. It makes clear that the primary method of service is by mail and the alternative method is by service on the Clerk of the Court.

Section (b) provides for immediate suspension upon proof of a felony conviction. The Disciplinary Panel may defer or set aside entry of the order in the interest of justice. This provision is to be invoked only in extraordinary circumstances. The Rule further provides for disbarment upon final conviction, regardless of the pendency of an appeal or other review, unless respondent shows cause within 30 days why disbarment would not be in the interest of justice.

With respect to misdemeanors, the Rule essentially maintains the show cause procedures in effect under former Rule 4-3(I)(b). With respect to both felonies and misdemeanors, the Rule makes clear that the pendency of an appeal or other review of conviction or of a petition for writ of certiorari does not affect the imposition of discipline. This provision was added to solve the recurring problem of a year or more delay attendant on petitions for certiorari, during which time the attorney might be permitted to practice before this Court.

Subsection (b)(3) has been added to provide for reinstatement after suspension upon proof that the underlying conviction has been reversed, vacated or set aside.

Section (c) governs discipline imposed by other courts and is a significant change from former Rule 4-3(II). The Rule provides that an attorney subject to these Rules who is suspended or disbarred by another court shall be suspended from practice in this court during the pendency of disciplinary proceedings. The procedures adopted are consistent with the practice in the United States Supreme Court, many United States Court of Appeals and a number of other district courts. By providing the attorney an opportunity to show cause why reciprocal discipline should not be imposed, the Rule satisfies the due process requirements of the relevant Supreme Court cases. See, e.g., In Re Ruffalo, 390

U.S. 544 (1968); Theard v. United States, 354 U.S. 278 (1957); Selling v. Radford, 243 U.S. 46 (1917). The Rule corrects the inadequacies of the former show cause procedures that permitted a respondent to continue to practice during the pendency of disciplinary proceedings. The revised procedure requiring immediate temporary suspension followed by a show cause order, shifts the burden of going forward to the respondent to show cause why identical reciprocal discipline should not be imposed.

The provision for suspension eliminates the procedure of noting short-term suspensions imposed by other courts on this Court's records, rather than imposing reciprocal discipline. Those procedures were unworkable and caused inequities. Under the new procedures, censures and reprimands will be noted, but reciprocal discipline proceedings will be followed in the case of all suspensions or disbarments.

Subsection (c)(7) makes clear that if discipline imposed by another court has been stayed, reciprocal discipline in this Court may be deferred. However, in the absence of a stay, neither a motion for reconsideration nor a motion for rehearing or rehearing en banc nor a petition for writ of certiorari serves to defer disciplinary proceedings in this Court absent good cause shown.

Subsection (d) sets forth in one section all the procedures relating to Complaints filed in this Court. Subsection (d)(1) This rule was modified to require that written complaints of misconduct contain a clear and concise statement of facts supporting the allegations made again attorneys. Subsection (d)(3) was amended to clarify that the Committee on Grievances may include an informal, non-reportable cautionary or educational statement as a part of a notice discharging a Complaint without further action.

Subsection (d)(7) provides that if a respondent fails to respond after a formal complaint is filed, the Disciplinary Panel has the power to take the allegations as admitted and impose appropriate discipline. Subsection (d)(8) sets forth the clear and convincing standard of proof for the imposition of discipline.

Section (e) governs disbarment on consent. It makes clear that there can be disbarment on consent in this Court or reciprocal disbarment for disbarment on consent by another court. It changes the former Rule by providing that an attorney under investigation or subject to pending proceedings involving allegations of misconduct may not resign from the Bar of this Court, but may only consent to disbarment.

Revised subsection (e)(1) governing disbarment on consent by this Court makes two substantive changes. First it permits the attorney affidavit, which is the predicate for disbarment on consent, to be filed under seal. Second, it eliminates the former requirement that an affidavit filed by an attorney seeking disbarment on consent contain an acknowledgment that the material facts

alleged are true. This revision was adopted because it was felt that it was in the public interest to encourage consent disbarments.

With respect to disbarment on consent or resignation in other courts, subsection (e)(2) is changed only to the extent of providing the attorney an opportunity to show cause why such disbarment would not be in the interest of justice.

COMMENT TO LCvR 83.16(c)(1): *Typically, an order of suspension entered by the District of Columbia Court of Appeals by its terms is effective 30 days from the date of its entry. The Disciplinary Panel of this Court signs its Temporary Suspension and Show Cause Order afer the effective date of suspension order in the other court.*

Since a respondent has 30 days within which to answer an order to show cause in this Court, a short-term suspension by another court has often expired and a respondent automatically reinstated in the other court before the time an answer is due in this Court. Thus, no useful purpose is served by initiating reciprocal disciplinary proceedings in cases involving suspensions of 30 days or less.

LCvR 83.17

NOTIFICATION TO DISCIPLINARY AUTHORITIES

(a) NOTIFICATION TO OTHER COURTS.

When any person subject to these Rules has been convicted of any crime or disbarred, suspended, reprimanded, censured or disbarred on consent by this Court, the Clerk shall within ten days transmit to the disciplinary authorities in any other jurisdictions or courts in which the attorney is admitted to practice, a certified copy of the conviction or a certified copy of the judgment or order of disbarment, suspension, reprimand, censure or disbarment on consent. The Clerk shall also serve a certified copy of such judgment or order and a copy of such notice upon the respondent in accordance with LCvR 83.16(a).

(b) NOTIFICATION TO NATIONAL DISCIPLINE DATA BANK.

The Clerk 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.

COMMENT TO LCvR 83.17: *LCvR 83.17 has been adopted from the Model Rules of Disciplinary Enforcement. The purpose is to foster cooperation in reporting disciplinary actions.*

LCvR 83.18

REINSTATEMENT

(a) AFTER DISBARMENT OR SUSPENSION.

An attorney suspended for a specific period shall be automatically reinstated at the end of the period upon the filing with the Court of an affidavit of compliance with the provisions of the order of suspension (including, in the case of reciprocal discipline, proof that the attorney has been reinstated by the court in which the attorney was disciplined.) An attorney suspended for an indefinite period may not resume practice until the suspension is terminated by an order of the Disciplinary Panel. A disbarred attorney may not resume practice until reinstated by order of the Disciplinary Panel.

(b) TIME OF APPLICATION FOLLOWING DISBARMENT OR SUSPENSION FOR INDEFINITE PERIOD.

A person who has been disbarred may not apply for reinstatement until the expiration of at least five years from the effective date of the order of disbarment. A person who has been suspended for an indefinite period may not apply for termination of the suspension until after the expiration of the minimum period fixed by the order of suspension or, if no minimum period is fixed, for a period of three years, or in the case of reciprocal discipline, upon proof that the attorney has been reinstated by the court in which the attorney was disciplined.

(c) HEARING OF APPLICATION.

Petitions for reinstatement under this Rule shall be filed with the Clerk to the Committee. The Committee shall have 30 days within which to respond. The attorney shall have the burden of demonstrating by clear and convincing evidence that he/she has met the conditions of reinstatement or termination of suspension as provided for under these Rules. The Disciplinary Panel may hold a hearing on the application or, in its discretion, decide the matter on the basis of the papers filed.

(d) CONDITIONS OF REINSTATEMENT OR TERMINATION BY SUSPENSION.

If the Disciplinary Panel finds the attorney unfit to resume the practice of law, the petition for reinstatement shall be denied. If the Disciplinary Panel finds the attorney fit to resume the practice of law, it shall issue an order reinstating the attorney or terminating the suspension. The order may make reinstatement or termination of the suspension 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 attorney's misconduct which led to the suspension or disbarment. In the discretion of the Disciplinary Panel, reinstatement or termination of suspension may also be conditioned 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 indefinite suspension or disbarment.

(e) SUCCESSIVE PETITIONS.

No petition for reinstatement or for termination of suspension under this Rule shall be filed within one year following an order denying a petition for reinstatement or termination of suspension filed by or on behalf of the same person.

(f) NOTIFICATION OF REINSTATEMENT.

Upon entry of an Order of Reinstatement or an Order Terminating Suspension, the Clerk shall promptly notify the same persons who notified of the disciplinary order.

COMMENT TO LCvR 83.18: *Section (a) provides that to apply for reinstatement in the case of reciprocal discipline, the attorney must submit proof of reinstatement by the court in which the attorney was disciplined. Section (c) provides that the Committee will have 30 days to respond to a petition for reinstatement. The provision outlining the respondent's burden in obtaining reinstatement requires proof that the respondent has met the conditions of reinstatement under these Rules.*

Section (d) sets forth the conditions for reinstatement. It provides that the Disciplinary Panel has the discretion to condition reinstatement or termination of suspension upon proof of competency and learning in the law, eliminating the provision that such proof would only be required if the disbarment or suspension lasted for five years or more. Section (f) provides for notification of reinstatement to the attorney.

LCvR 83.19

PROCEEDINGS WHERE AN ATTORNEY IS DECLARED TO BE MENTALLY INCOMPETENT OR IS ALLEGED TO BE INCAPACITATED

(a) ATTORNEYS DECLARED INCOMPETENT OR PHYSICALLY INFIRM.

If an attorney who is subject to these Rules has been judicially declared incompetent or involuntarily committed to a mental hospital, or has resigned from the bar of any court or been suspended from such a bar on the basis of such mental incompetence or incapacity or on the basis of physical infirmity or illness, the Disciplinary Panel, upon proper proof of the fact, shall enter an order suspending such attorney from the practice of law effective immediately and for an indefinite period until further order of the Court. A copy of such order shall be served upon such attorney, his/her guardian and the administrator of any hospital or other institution if the Court is informed such attorney is a patient thereof in such manner as the Disciplinary Panel may direct.

(b) ATTORNEYS ALLEGED TO BE INCAPACITATED.

Whenever the Committee shall petition the Disciplinary Panel to determine whether an attorney who is subject to these Rules is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of the use of drugs or intoxicants, the Disciplinary Panel may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Disciplinary Panel shall designate. Failure or refusal to submit to such examination shall be *prima facie* evidence of incapacity. If upon due consideration of the matter the Disciplinary Panel concludes that the attorney is incapacitated from continuing to practice law it shall enter an order suspending the attorney on the ground of such disability for an indefinite period and until further order of the Court.

The Disciplinary Panel may provide for such notice to the attorney or proceedings in the matter as it deems proper and advisable and may appoint an attorney to represent the attorney if the attorney is without representation.

(c) CLAIM OF DISABILITY DURING DISCIPLINARY PROCEEDINGS.

If during the course of a disciplinary proceeding the attorney contends that he/she is suffering from a disability by reason of mental or physical infirmity or illness or because of the use of drugs or intoxicants which makes it impossible for the attorney to defend adequately, the Disciplinary Panel shall enter an order immediately suspending the attorney from continuing to practice law until a determination is made of the attorney's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of paragraph (b) above.

(d) APPLICATION FOR REINSTATEMENT.

Any attorney suspended under this Rule for incompetency, mental illness, physical infirmity or because of the use of drugs or intoxicants may apply to the Disciplinary Panel for reinstatement immediately and thereafter once a year or at such shorter intervals as the Disciplinary Panel may direct in the order of suspension. The application shall be granted by the Disciplinary Panel upon a showing by clear and convincing evidence that the attorney's disability has been removed and that the attorney is fit to resume the practice of law provided, however, that if the suspension was based on resignation from the bar of another court the attorney must provide proof that the attorney has been reinstated in the other court, or that, if the suspension from practice before this Court was based on a finding of incompetence or incapacity by another court, it clearly appears on the face of the record that any of the five elements set forth in LCvR 83.16(c)(4) exist. The Disciplinary Panel may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed including a direction for an examination of the attorney. The Disciplinary Panel may direct that the expenses of such an examination shall be paid for by the attorney.

If an attorney has been suspended because of a judicial declaration of incompetence or involuntary commitment to a mental hospital and has thereafter been judicially declared to be competent, the Disciplinary Panel may dispense with further evidence and direct the reinstatement of the attorney upon such terms as it deems proper and advisable.

(e) EVIDENTIARY HEARING.

If the Disciplinary Panel holds an evidentiary hearing to determine whether an attorney is incapacitated or on an attorney's application for reinstatement under this Rule, the Chairman of the Committee shall appoint one or more members of the Committee to appear for the purpose of examining and cross-examining witnesses and/or offering proof or argument pertinent to the issues.

(f) WAIVER OF PHYSICIAN-PATIENT PRIVILEGE.

The filing of an application for reinstatement by an attorney who has been suspended for disability shall constitute a waiver of any physical patient privilege with respect to any treatment of the attorney during the period of the attorney's disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital by whom or in which the attorney has been examined or treated since the attorney's suspension and the attorney shall furnish the Disciplinary Panel with written consents for such psychiatrists, psychologists, physicians or hospital to disclose such information or records as may be requested by the medical experts designated by the Disciplinary Panel.

LCvR 83.20

LAWYER COUNSELING PANEL

(a) REFERRAL OF ATTORNEYS FOR COUNSELING.

Judges or the Committee on Grievances may refer to the Lawyer Counseling Panel established by this Rule any member of the Bar of this Court who exhibits a deficiency in performance and who, in the judge's or the Committee's opinion, would likely benefit from counseling by other trial attorneys on matters of litigation practice, ethics, or apparent abuse of alcohol or drugs. The judge or the Committee will notify both the panel and the attorney of the referral and the basis therefor. The referral shall be confidential.

(b) THE COUNSELING PANEL.

The counseling panel shall be composed of experienced litigation practitioners appointed by the Court, one of whose members shall be designated chairperson.

(c) PANEL PROCEEDINGS.

The chairperson of the Lawyer Counseling Panel shall receive references from judges or the Committee on Grievances and assign the referred member to a particular panel member for counseling. Participation in the counseling program by referred attorneys shall be voluntary. Any conversations between the referred attorney and members of the panel shall be confidential and shall not waive any attorney client privilege. The panel will make no findings or report of its action as to any referred attorney, other than a report to the referring judge, or the Committee on Grievances as to whether the attorney did or did not participate in counseling.

(d) CONFIDENTIALITY AND IMMUNITY.

All documents and communications relating or referring to the Panel's referrals shall remain confidential and privileged.

All meetings and discussions of the Lawyer Counseling Panel shall be held *in camera* and the business conducted therein shall remain confidential and privileged. All records, reports, correspondence and minutes of the Panel shall be maintained by the Chairperson of the Lawyer Counseling Panel and shall not be disclosed except by order or direction of the Chief Judge (or the designee of the Chief Judge).

When exercising the power relegated by the Court, Panel members shall be absolutely immune from suit for any conduct in connection with their duties. Referrals and counseling with respect thereto shall be absolutely privileged and no claim or action predicated thereon may be instituted or maintained.

COMMENT TO LCvR 83.20(a) and (c): *This rule was modified to permit the Committee on Grievances to refer attorneys to the Lawyer Counseling Panel and receive reports from the Panel concerning whether the referred attorney participated in counseling.*

LCvR 83.21

PUBLICATION OF AMENDMENTS

Any amendment to these Rules shall be published in The Daily Washington Law Reporter before its adoption. The notice shall state that the proposed amendment will be adopted unless modified or withdrawn after receiving comments from organized bar associations, members of the bar, and the public. Such comments shall be submitted in writing within 45 days of publication to the Chairman of the Advisory Committee on District Court Rules. If the Court determines there is an immediate need for a particular local rule or amendment to an existing local rule, it may proceed without public notice and opportunity for comment, but the Court shall promptly thereafter afford such notice and opportunity for comment.

LCvR 83.22

PUBLICATION AND PROOF THEREOF

A notice relating to a proceeding that requires publication shall be published in the Daily Washington Law Reporter for the time fixed by statute or directed by the Court, in addition to any newspaper or periodical specifically designated by the Court. Publication shall be proved by affidavit of an officer or agent of the publisher, stating the dates of publication with an attached copy of the notice as published.

LCvR 83.23

DISMISSAL FOR FAILURE TO PROSECUTE

A dismissal for failure to prosecute may be ordered by the Court upon motion by an adverse party, or upon the Court's own motion. An order dismissing a claim for failure to prosecute shall specify that the dismissal is without prejudice, unless the Court determines that the delay in prosecution of the claim has resulted in prejudice to an opposing party.

LCvR 84

MEDIATION

PURPOSE AND SCOPE OF RULES

(a) These Rules govern the administration of the United States District Mediation Program. The Mediation Program was designed to give litigants an opportunity to discuss settlement of their claims with the help of a trained, neutral third party. Mediation, while not appropriate in all cases, can benefit many litigants. It can, for example, lead to resolutions more quickly, with less expense and with results that are more satisfying to the litigants than those that result from judicial disposition of a claim. The Court makes mediation services available to litigants on a *pro bono* basis.

(b) These Rules apply only to mediation proceedings that are formally conducted through the United States District Court's Mediation Program. Nothing in these Rules shall preclude litigants from independently retaining a private mediator or other ADR professional to facilitate negotiations in their case.

LCvR 84.1

ADMINISTRATION OF MEDIATION PROGRAM

(a) The United States District Court Mediation Program is administered by the Office of the Circuit Executive for the United States Courts for the District of Columbia Circuit. The mediation staff consists of a Director and Deputy Director of Dispute Resolution, who are responsible for assigning cases to qualified volunteer mediators and providing parties with the proper notification and instructions. They also oversee volunteer training, monitor the progress of mediated cases, collect pertinent statistical information and serve as a resource for program mediators as they work on cases.

(b) The Director and Deputy Director of Dispute Resolution may be reached at the following address and phone numbers:

Office of the Circuit Executive
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001
(202) 216-7350
fax: (202) 273-0331

The Court encourages litigants and counsel to contact these officials to secure general information about the Mediation Program, to discuss the suitability of mediation for a particular case, or to raise any concerns they may have about the operation of the Program.

LCvR 84.2

DESCRIPTION OF THE MEDIATION PROCESS

(a) DESCRIPTION.

Mediation is a flexible, non-binding, confidential process in which a neutral lawyer-mediator facilitates settlement negotiations. The mediator improves communication across party lines, helps parties articulate their interests and understand those of their opponent, probes the strengths and weaknesses of each party's legal position, helps identify key legal and factual issues, identifies common interests and areas of agreement and helps generate options for a mutually agreeable resolution of the dispute. If appropriate, the mediator may provide an evaluation of the merits of the case. A hallmark of mediation is its capacity to expand traditional settlement discussion and broaden resolution options, often by exploring litigant needs and interests that may be independent of the legal issues in controversy.

(b) LIMITS ON ROLE OF MEDIATOR.

The mediator has no authority to render a decision or to dictate a settlement.

LCvR 84.3

MEDIATORS

(a) PANEL.

The Court shall maintain a panel of mediators serving in the Mediation Program. Mediators will be selected from time to time by the Court from applications submitted by lawyers willing to serve on a volunteer basis. The Director and Deputy Director of Dispute Resolution may also serve as mediators.

(b) QUALIFICATIONS AND TRAINING.

Each lawyer serving as a mediator in the Court's Mediation Program shall be a member of the Bar of this Court and shall successfully complete training as required by the Court. Additional minimum requirements for serving on the Court's panel of mediators, which the Court may modify in individual circumstances, are as follows:

(1) Mediators shall have been admitted to the practice of law for at least ten years and shall be knowledgeable about civil litigation in federal court.

(2) Mediators shall have strong mediation process skills and the temperament and training to listen well, facilitate communication across party lines and assist the parties with settlement negotiations.

(c) MEDIATOR IMMUNITY.

All lawyers serving as mediators in the Court's Mediation Program are performing quasi-judicial functions and shall be entitled to absolute quasi-judicial immunity for acts performed within the scope of their official duties.

(d) COMPLAINTS AGAINST MEDIATORS.

Complaints against a mediator or concerns about a mediator's performance shall be brought to the attention of the Director of Dispute Resolution. The parties shall not bring such complaints to the attention of the assigned judge.

LCvR 84.4

REFERRAL TO MEDIATION

(a) METHOD OF REFERRAL.

District judges may refer civil cases to mediation, subject to the availability of qualified mediators:

(1) by encouraging litigants to submit to mediation voluntarily and entering a consent order referring the case to the Circuit Executive's Office, or

(2) by requiring litigants to participate after giving them an opportunity, in response to an order to show cause, to explain why mediation would not be appropriate in their case.

Cross Reference

Local Civil Rule 16.3 requires counsel to meet, within 14 days after defendant enters an appearance in a case, to discuss whether mediation might be appropriate and to submit their views to the Court within 14 days after the meeting. Counsel must also indicate whether they discussed mediation with their clients before filing their report.

(b) TIMING OF REFERRAL.

Cases may be referred to mediation, with the consent of the assigned judge, at any point during the course of the litigation.

Cross Reference

Local Civil Rule 16.3 requires counsel to discuss the question of timing. Litigants may refer to the Court's brochure, "Mediation in the United States District Court for the District of Columbia," for a discussion of timing considerations..

(c) *PRO SE* CASES.

Cases in which one of the parties is proceeding *pro se* are generally considered ineligible for mediation, unless the *pro se* party is represented by counsel for the purpose of mediation.

(d) MAGISTRATE JUDGES CONSENT CASES.

In cases in which the parties have consented to jurisdiction by a magistrate judge under 28 U.S.C. § 636(c), the magistrate judge shall have the same authority to refer cases to the Mediation Program as do district judges under Local Rule 84.1(b) above.

(e) BANKRUPTCY PROCEEDINGS.

Mediation is also available to litigants in bankruptcy proceedings.

LCvR 84.5

APPOINTMENT OF MEDIATOR

(a) APPOINTMENT BY CIRCUIT EXECUTIVE.

After entry of an order referring a case to mediation, the mediation staff will appoint from the Court's panel a mediator who is available during the appropriate period and who has confirmed, following such inquiry as may be appropriate, that no personal or professional conflict precludes his/her participation as mediator. The Circuit Executive's Office will notify the parties of the appointment.

(b) OBJECTIONS TO APPOINTMENT.

Litigants who object to the appointment of a particular mediator for any reason shall make their concerns known to the Director of Dispute Resolution, who will make every reasonable effort to substitute a new mediator who is acceptable to all parties. Such concerns may be brought to the Director's attention at any point during the course of the mediation.

LCvR 84.6

MEDIATION STATEMENTS

(a) CONTENT AND TIMING.

No later than seven days prior to the first mediation session, each party shall submit directly to the mediator a confidential mediation statement. The mediation statement shall not exceed ten pages and shall outline the underlying facts of the dispute, the key legal issues in the case, possible areas of agreement and options for settlement, and the settlement history of the dispute, if any. The mediation statement shall also identify, by name and title or status:

(1) the person(s) with decision-making authority, who in addition to counsel, will attend the mediation as representative(s) of the party; and

(2) persons connected with either party (including insurer representatives) whose presence might substantially improve the utility of the mediation or the prospects for settlement.

(b) CONFIDENTIAL NATURE OF STATEMENT.

Mediation statements shall not be filed with the Court or served upon other parties to the lawsuit.

LCvR 84.7

THE MEDIATION PROCESS

(a) SCHEDULING.

Promptly after being appointed to a case, the mediator shall fix the date and time of the first mediation session, which shall be held within three weeks of the date of the mediator's appointment.

(b) DISCRETION OF MEDIATOR.

The mediation shall be informal. Mediators shall have discretion to structure the mediation so as to maximize prospects for settling all or part of the case.

(c) JOINT AND SEPARATE MEETINGS.

The mediator typically begins with a joint mediation session, to be attended by all counsel and parties. S/he may hold separate, private caucuses with each side or each lawyer or, if the parties agree, with the clients only. The mediator may choose to conduct any joint session or private caucus by telephone or e-mail.

(d) COMPLETION OF PROCESS.

(1) The mediation ends when one of the following events occurs:

(i) the parties settle the dispute;

(ii) the mediator and the parties conclude that further discussion would be fruitless; or

(iii) the *mediation deadline* - a date established in the assigned judge's order of referral - is reached.

(2) If a settlement is reached, counsel shall notify the Court by filing a stipulation of dismissal or other appropriate document.

(3) Mediators shall notify the Court of the outcome of a mediation by promptly completing a Mediator Evaluation Form and returning it to the Circuit Executive's Office.

(e) EXTENSION OF MEDIATION DEADLINE.

The assigned judge may alter or extend the mediation deadline *sua sponte* or at the parties' request.

(f) AGREEMENTS TO BE REDUCED TO WRITING.

Agreements reached during mediation shall not bind the parties unless they are reduced to writing and signed by counsel and the parties. In cases involving government or corporate parties, an authorized representative of the governmental or corporate entity may sign.

LCvR 84.8

ATTENDANCE REQUIREMENTS

(a) IN GENERAL.

The Court requires counsel and parties with settlement authority to attend mediation sessions.

(b) CORPORATION OR OTHER ENTITY.

A party other than a natural person (e.g., a corporation or an association) satisfies this attendance requirement if it sends a representative (other than outside counsel) who possesses authority to settle, or if it makes such a person immediately available to the mediator by telephone.

(c) GOVERNMENT ENTITIES.

A party that is a government or governmental agency, in addition to counsel, shall send a representative with settlement authority or, alternatively, a representative who is knowledgeable about the facts of the case and will play a major role in submitting a recommendation to the person or body with decision-making authority.

(d) EXCEPTION.

Notwithstanding (b) or (c) above mediators may require the presence of or participation by telephone of the ultimate governmental or corporate decision-maker, or other appropriate senior manager, if they conclude, with the concurrence of the Director of Dispute Resolution, that such participation is advisable.

LCvR 84.9

CONFIDENTIALITY

(a) CONFIDENTIAL TREATMENT.

(1) The Court hereby prohibits the mediator, all counsel and parties and any other persons attending the mediation from disclosing any written or oral communications made in connection with or during any mediation session.

(2) There shall be no communication between the mediator and the assigned judge regarding a case that has been referred to mediation. Disputes and complaints of any kind, the resolution of which may require the disclosure of information acquired through a mediation, shall not be heard by the assigned judge but shall be brought to the attention of the Compliance Judge as outlined in Local Rule 84.10 below.

(3) Information acquired through mediation shall not be used for any purpose, including impeachment, in any pending or future proceeding in this or any other court or forum. Mediators shall not respond to subpoenas or requests for such information or disclose such information voluntarily. Mediators who are served with a subpoena or otherwise asked for information about any mediation in which they have participated shall immediately inform the Director of Dispute Resolution of the request.

(b) CONFIDENTIALITY AGREEMENT.

The mediator may ask the parties and all persons attending the mediation to sign a confidentiality agreement on a form provided by the Court, but the confidentiality requirements of this section apply regardless of whether a confidentiality agreement is signed.

(c) EXCEPTIONS.

(1) Nothing in this Rule shall be construed to prohibit disclosures to persons not directly participating in a mediation (such as corporate or government officials) whose possession of mediation-related information counsel believe to be necessary to further the progress of the talks in the case; or to help the institution respond to the mediation program generally. Persons not attending a mediation who are given information on this "need to know" basis shall also be bound by this Rule regarding confidentiality.

(2) This Rule shall not be construed to prohibit parties from entering written agreements resolving some or all of the case or from entering and filing procedural or factual stipulations based on suggestions or agreements made in connection with a mediation.

(3) Information which is obtained through discovery or other means outside the mediation process shall not be rendered inadmissable or non-discoverable because it is used or presented in mediation.

(4) This Rule does not preclude a report to or an inquiry by the Compliance Judge pursuant to Local Rule 84.10 below regarding a possible violation of these Rules.

(5) Nothing in this Rule shall be construed to prohibit the mediator, counsel or litigants from discussing, with the Court's ADR staff, the progress of a mediation or the specific facts and ideas discussed in the course of mediated negotiations. Such communications are encouraged to permit the staff to monitor the quality of the mediation services being provided.

(6) This Rule does not preclude dissemination of information about the types of cases going through the Mediation Program or about overall program results. Generic information about the program and cases entering mediation is available, and reports are generated for analysis and evaluation. Individual cases that have been resolved through mediation may be publicly identified, discussed or brought to the Court's attention if the parties consent to such a disclosure.

LCvR 84.10

DISPUTE RESOLUTION COMPLIANCE JUDGE

The Court has designated a district judge to serve as the Dispute Resolution Compliance Judge. Complaints alleging a material violation of these mediation local rules or of a judicial order referring a case to mediation must be made to the Director of Dispute Resolutions, who may then refer them to the Compliance Judge for appropriate action. If the Compliance Judge believes judicial intervention is necessary, s/he will so inform the parties and will ask them to address the matter. The Compliance Judge will have the authority to impose sanctions as s/he deems appropriate. *Litigants and mediators may not bring compliance issues directly to the attention of the Compliance Judge or to the attention of the judge who is assigned to the lawsuit.*

LCvR 85

FILINGS UNDER THE DODD-FRANK WALL STREET REFORM & CONSUMER PROTECTION ACT

This rule governs petitions by the Secretary of the Treasury ("Secretary") under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Act"), Pub.L. No. 111-203, 124 Stat.

1376, 1444 (Jul. 21, 2010), 12 U.S.C. § 5382(a)(1), for orders authorizing the Secretary to appoint the Federal Deposit Insurance Corporation as receiver for financial companies.

(a) FILING OF THE PETITION

A petition under this Act must contain all relevant findings and recommendations under the Act, and must be filed under seal. The original and one copy of the petition and a PDF version on a CD-ROM shall be tendered to the Clerk. The original and copy of the petition and all related documents shall be submitted securely in an envelope/box appropriate to accommodate the documents. The envelope/box containing such documents shall have a conspicuous notation as follows: "DOCUMENT UNDER SEAL."

(b) NOTICE TO THE COURT

The Secretary shall provide written notice under seal to the Clerk of the Court that a petition will likely be filed with the Court, and to the extent feasible, the notice will be provided at least 48 hours prior to filing the petition.

(c) NOTICE TO THE FINANCIAL COMPANY

A petition shall be accompanied by a certificate of counsel or other proof satisfactory to the Court, stating (1) that actual notice of the time of filing the petition, and copies of all papers filed to date or to be presented to the Court at any hearing, have been or are being furnished to the financial company; or (2) the efforts made by the Secretary to give such notice and furnish such copies. The certificate shall also contain the name and contact information of the individual at the financial company to whom notice was given and upon whom service was effected.

(d) OPPOSITION TO THE PETITION

The financial company named in the petition may file an opposition to the petition under seal and may appear at a hearing to oppose the petition. The opposition shall be served on the Secretary by the most expeditious means available.

(e) PROPOSED ORDER

Each petition and opposition shall be accompanied by a proposed order.

(f) ASSIGNMENT OF THE PETITION

The petition shall be assigned to the Chief Judge or Acting Chief Judge .

(g) CONSIDERATION OF PETITION: NOTIFICATION OF DECISION

In considering a petition, the Court shall, on a confidential basis and without public disclosure, determine whether the Secretary's decision that the covered financial

company (1) is in default or in danger of default and (2) satisfies the definition of a financial company under the Act is arbitrary and capricious.

(1) Upon a finding that the Secretary's determination is not arbitrary and capricious, the Court shall issue an order immediately authorizing the Secretary to appoint the Corporation as receiver of the covered financial company.

(2) Upon a finding that the Secretary's determination is arbitrary and capricious, the Court shall provide immediately for the record a written statement of each reason supporting the determination of the Court, and shall provide copies thereof to the Secretary and the covered financial company, and must afford the Secretary an immediate opportunity to amend and refile the petition.

(h) TIMING OF DECISION

The Court shall attempt to rule on a properly filed petition within twenty-four (24) hours of receipt of the petition. In the event that the Court does not do so, the petition is deemed granted by operation of law under the Act.

(i) MAINTAINING PETITIONS AND SUBSEQUENT FILINGS UNDER SEAL

The petition and subsequent filings must be maintained under seal pending further order of the Court. Upon the granting of a petition, the Secretary shall promptly notify the Court of the appointment of the receiver. The Court shall then issue an Order to Show Cause to the Secretary as to why the proceedings, or any part thereof, shall not be unsealed.

(j) STAY PENDING APPEAL

The decision of the Court on a petition shall not be subject to a stay or injunction pending appeal.

(j) EFFECT OF FRCP 6

The time periods found in subsections (b) and (h) of this Rule are not subject to Rule 6 of the Federal Rules of Civil Procedure.

APPENDIX A

DISPUTE RESOLUTION PROGRAMS

"THE DISTRICT COURT IS COMMITTED TO MAKING DISPUTE RESOLUTION AN EFFECTIVE AND INTEGRAL PART OF THE ADMINISTRATION OF JUSTICE IN THIS JURISDICTION..."

Thomas F. Hogan
Chief Judge

INTRODUCTION

This introduction is provided to litigants and attorneys as an overview of the Mediation Program of the United States District Court for the District of Columbia. The Mediation Program was created in 1989 to give litigants an opportunity to discuss – with a trained, neutral third person – the possibility of settling their dispute consensually, without trying the case in court. Mediation, while not appropriate in all cases can offer numerous advantages over both formal litigation and direct negotiations in many situations. Mediation may, for example, lead to resolutions that are:

- faster
- less expensive
- more creative
- better able to address the underlying interests of all parties

This introduction has a two-fold purpose: (1) to explain mediation to litigants and their counsel; and (2) to help counsel meet their obligations under Local Rule 16.3 to "meet and confer" early in the litigation process about whether mediation would be appropriate in particular case.

WHAT IS MEDIATION?

Mediation is an informal process in which a specially-trained neutral third person helps the parties in a lawsuit attempt to reach a mutually agreeable settlement. The mediation process involves one or more sessions in which counsel, litigants and the mediator participate and may continue over a period of time. *The mediator has no power to render a decision or dictate a settlement.* She or he can, however, help the parties improve communication, clarify interests and prove the strengths and weaknesses of their own and their opponents' positions. The mediator can also identify areas of agreement and help generate options that lead to a settlement.

HOW DOES A CASE GET INTO THE MEDIATION PROGRAM?

Voluntary participation: Participation in the District Court's Mediation Program is voluntary. Parties may request mediation or the presiding judge may suggest it at a status conference. If all parties consent, the judge issues an order referring the case to the Office of the Circuit Executive, where the program is administered. The referral may take place at any time while the case is pending.

Local Rule LCvR 16.3(a) Local Rule 16.3 (a) requires counsel to meet, within 21 days after the defendant enters an appearance in a case to discuss – among other things – whether mediation might be appropriate. In assessing the possibility of mediation, counsel must consider:

- their clients' goals and objectives;
- the status of any prior settlement talks;
- the potential timing of any referral to mediation;
- whether their clients might benefit from a neutral evaluation of the merits of the case; and
- whether mediation might result in cost savings or any other practical benefits.

Within 14 days following this meeting, the parties must submit a joint report to the Court describing their views on the application of mediation to their case and outlining the steps that might be taken to facilitate that process. The report must also tell the Court whether counsel discussed mediation with their clients before filing the report.

Thus, even if the presiding judge does not suggest that counsel consider mediation, *LCvR 16.3(a*) requires them to do so.

WHICH CASES ARE ELIGIBLE FOR MEDIATION?

All civil cases in which parties are represented by counsel are eligible for mediation. Each case should be assessed on an individual basis to determine whether a referral would be appropriate.

WHAT MAKES A PARTICULAR CASE APPROPRIATE FOR MEDIATION?

Deciding whether a particular case has "mediation potential" is an art, not a science. Thinking about the factors listed below should help you make that determination.

Relationship between parties. Do the parties in your case have a business or other ongoing relationship? If so, is this an incentive to try to resolve the problems that generate the lawsuit? Are emotions so high that the intervention of a third person might help the parties communicate?

Receptivity of the lawyers. Are the lawyers in the case receptive to the mediation process?

Reluctance to exchange information in direct negotiation. Can a mediator help the parties identify and exchange information that will enable them to begin serious settlement discussions?

Adequacy of a judicial remedy. Will a judicial ruling give the parties what they really want and need? In certain kinds of lawsuits, for example, the plaintiff may want an apology in addition to money damages. Courts generally do not order litigants to apologize. But some form of apology might be available through a mediation.

Divergent views about the value of the case. Do the parties have widely divergent views about the *value* of a case; that is, about what will happen if the case goes to trial? Would they benefit from a neutral evaluation of their case by a Court mediator who is an expert in this type of litigation?

Need for a precedent. Do one or more of the parties seek to establish a legal precedent and therefore require a judicial ruling? Government or institutional litigants may frequently be in this position. In such a case, mediation might *not* be appropriate.

Need for privacy. Do the parties want to avoid a public airing of their dispute? A case involving the break-up of a law firm or claims of sexual harassment might be examples.

Difficulty in fashioning a remedy. Has liability been established, leaving the Court with the sometimes more difficult problem of fashioning a remedy? Could a mediator help the parties in this task? Class-action employment discrimination cases often present this problem. In such cases the Court may have decided that the institution's past practices are unlawful but left it to the parties to craft injunctive relief for the future.

Need for mediation to resolve continuing disputes. Can a mediator help the parties agree upon a dispute resolution mechanism they can use *after* the lawsuit is settled to resolve disputes that flow from the lawsuit? For example, can a mediator help litigants in a class-action discrimination case devise a mechanism to be used to decide the monetary value of each class member's claims, once class-wide liability is established?

WHEN SHOULD MEDIATION OCCUR?

Cases can be referred to mediation at any point during the litigation process. There are no hard-and-fast rules about when intervention might be most useful. As with case selection, the best way to think about the *timing* of a referral is to consider a series of questions:

- Do the parties have *enough information* to engage in serious conversations about settlement?

- Are there *outstanding legal issues* that the Court must resolve before settlement talks can take place?

- Have *the parties' circumstances changed* in a way that would make settlement talks more productive than in the past?

- Has the *imminence of trial*, with its attendant costs, anxieties and potential for publicity, heightened the parties' interest in settlement?

- Has liability been decided? Could a mediator assist the parties in *devising a proposal for injunctive relief?*

Your answers to these questions should help you confirm whether mediation is appropriate and, if so, when it should take place.

WHO ARE THE MEDIATORS?

The mediators are members of the United States District Court Bar who are selected by the Court and trained by professional trainers to provide mediation services to litigants on a *pro bono* basis. The Court typically maintains a roster of approximately 150 mediators.

HOW IS A MEDIATOR ASSIGNED TO A CASE?

When a case enters the program, a member of the dispute resolution staff in the Circuit Executive's Office appoints a qualified mediator from the Court's roster. The staff welcome any suggestions or ideas counsel may have about the *type* of mediator who is likely to be most helpful.

Mediators with particular expertise in the subject-matter of the lawsuit are available if the judge and the parties believe a neutral evaluation of the case is needed. In such a case the mediator would not only assist the parties in identifying their interests and the options for settlement, she or he would also give them an informal, non-binding assessment of the merits of the action. That assessment may be given to each side privately or to all parties in a joint mediation session.

WHAT TAKES PLACE IN A MEDIATION?

A mediation typically begins with a joint meeting of all parties and their counsel and the mediator, held within three weeks of the mediator's appointment. During that session, each participant has the opportunity to voice his or her perception of the dispute and to ask questions. The mediator then meets with each party separately to explore the issues further and to suggest settlement options. Mediation may continue over a period of time; with additional joint or individual sessions. The mediator may also confer with the parties by telephone. The process ends when one of the following events occur:

- the parties settle their dispute

- the mediator and the parties conclude that further discussions would be fruitless; or

- the *mediation deadline* – a date that is established by the judge's order of referral – is reached.

KEY POINTS ABOUT THE MEDIATION PROCESS

Mediation in the U.S. District Court is based on the following principles:

- All mediation proceedings are *confidential*. Documents generated for the mediation are also confidential and may not be introduced during a subsequent trial should the case not settle. The judge who is assigned to the case is not told the identity of the mediator or given any information about the transpires during the mediation process.

- Counsel and parties with *settlement authority* must attend mediation sessions. Certain exceptions may be granted for institutional parties or if a party is a unit of government.

- At least seven days prior to the first mediation session, each party must give the mediator a mediation statement that outlines the key facts and legal issues in the case. *Mediation statements are not briefs and are not filed with the Court.*

- Unless the presiding judge indicates otherwise, referral of a case to mediation *does not stay* other proceedings in the case or alter applicable litigation deadlines.

- The parties may seek an extension of the Court-imposed *mediation deadline* by filing an appropriate motion. The motion may represent the mediator's views about whether an extension is advisable, but may not disclose the mediator's identity.

- The Office of the Circuit Executive monitors the progress of mediated cases on a confidential basis. *Questions or problems* arising during the course of a mediation may be brought to the attention of the dispute resolution staff by any party.

COMPLIANCE JUDGE

Information about the mediation is confidential and may not be disclosed to the presiding judge in any referred action. To protect confidentiality while at the same time preserving the Court's ability to ensure compliance with its dispute resolution policies and orders, the Court has designated one judge to serve as the Dispute Resolution Compliance Judge. Complaints that litigants have not complied in good faith with the Court's mediation guidelines or with a judicial order referring a case to the program must be brought to the attention of the Director of Dispute Resolution, who may then

refer them to the Compliance Judge for appropriate action. *Litigants may not bring such matters to the attention of the Compliance Judge directly or to the attention of the judge who is presiding in the lawsuit.*

PROGRAM ADMINISTRATION

The District Court's Mediation Program as well as the Appellate Mediation Program in the United States Court of Appeals for the District of Columbia Circuit are administered by the Office of the Circuit Executive. The Office is responsible for assigning cases to qualified neutrals and providing parties with the proper notification and instructions. Attorneys in the Circuit Executive's Office also monitor the progress of cases, collect pertinent statistical information and serve as a resource for program mediators as they handle cases.

WHERE CAN I GET MORE INFORMATION:

CLERK'S OFFICE

The District Court Clerk's Office supplies copies of:

- The *Rules of the United States District Court for the District of Columbia*, including Local Rule 16.3 and the Court's mediation procedure.

- *Mediation in the United States District Court for the District of Columbia*

OFFICE OF THE CIRCUIT EXECUTIVE

For information about using the Court's Mediation Program or about the procedures that apply once a case is referred, or for other information about dispute resolution, contact:

Director of Dispute Resolution
Office of the Circuit Executive
United Sates Courts for the
District of Columbia Circuit
333 Constitution Avenue, N.W.
Washington, D.C. 20001
(202) 216-7350

APPENDIX B

D.C. BAR VOLUNTARY STANDARDS FOR CIVILITY IN PROFESSIONAL CONDUCT

PREAMBLE

Civility in professional conduct is the responsibility of every lawyer. While lawyers have an obligation to represent clients zealously, we must also be mindful of our obligations to the administration of justice. Incivility to opposing counsel, adverse parties, judges, court personnel, and other participants in the legal process demeans the legal profession, undermines the administration of justice, and diminishes respect for both the legal process and the results of our system of justice.

Our judicial system is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner and designed to be perceived as producing fair and just results. We must be careful to avoid actions or statements which undermine the system or the public's confidence in it.

The organized bar and the judiciary, in partnership with each other, have a responsibility to promote civility in the practice of law and the administration of justice. Uncivil conduct of lawyers or judges impedes the fundamental goal of resolving disputes rationally, peacefully and efficiently. Such conduct may delay or deny justice and diminish the respect of law, which is a cornerstone of our society and our profession.

Civility and professionalism are hallmarks of a learned profession dedicated to public service. These standards are designed to encourage us, as lawyers and judges, to meet our obligations of civility and professionalism, to each other, to litigants, and to the system of justice. The goal is to ensure that lawyers and judges will conduct themselves at all times, in both litigated and nonlitigated matters, with personal courtesy and professionalism in the fullest sense of those terms.

While these standards are voluntary and are not intended by the D.C. Bar Board of Governors to be used as a basis of litigation or sanctions, we expect that lawyers and judges in the District of Columbia will make a commitment to adhere to these standards in all aspects of their dealings with one another and with other participants in the legal process.

Finally, we believe these standards should be incorporated as an integral component of the teaching of professionalism to law students and practicing lawyers alike. We therefore believe that it is important for law schools in our community to incorporate these standards in their

curricula and for the District of Columbia Bar, the voluntary bar associations, law firms, government agencies, and other legal institutions in our community to teach and promote these standards as part of their continuing legal education programs.

Adopted by the D.C. Bar
Board of Governors
June 18, 1996;
Amended March 11, 1997

PRINCIPLES OF GENERAL APPLICABILITY:
LAWYERS DUTIES TO OTHER COUNSEL, PARTIES AND THE JUDICIARY

GENERAL PRINCIPLES:

1. In carrying out our professional responsibilities, we will treat all participants in the legal process, including counsel and their staff, parties, witnesses, judges, and court personnel, in a civil, professional, and courteous manner, at all times and in all communications, whether oral or written. We will refrain from acting upon or manifesting racial, gender, or other bias or prejudice toward any participant in the legal process. We will treat all participants in the legal process with respect.

2. Except within the bounds of fair argument in pleadings or in formal proceedings, we will not reflect in our conduct, attitude, or demeanor our clients' ill feelings, if any, toward other participants in the legal process.

3. We will not, even if called upon by a client to do so, engage in offensive conduct directed toward other participants in the legal process nor will we abuse other such participants in the legal process. Except within the bounds of fair argument in pleadings or in formal proceedings, we will abstain from disparaging personal remarks or acrimony toward such participants and treat adverse witnesses and parties with fair consideration. We will encourage our clients to act civilly and respectfully to all participants in the legal process.

4. We will not encourage or authorize any person under our control to engage in conduct that would be inappropriate under these standards if we were to engage in such conduct.

5. We will not bring the profession into disrepute by making unfounded accusations of impropriety or making ad hominem attacks on counsel, and, absent good cause, we will not attribute bad motives or improper conduct to other counsel.

6. While we owe our highest loyalty to our clients, we will discharge that obligation in the framework of the judicial system in which we apply our learning, skill, and industry in accordance with professional norms. In this context, we will strive for orderly, efficient, ethical, fair, and just disposition of litigation as well as disputed matters that are not, or not yet, the subject of litigation, and for the efficient, ethical and fair negotiation and consummation of business transactions.

7. The foregoing General Principles apply to all aspects of legal proceedings, both in the presence and outside the presence of a court or tribunal.

SCHEDULING MATTERS:

8. We will endeavor to schedule dates for trials, hearings, depositions, meetings, negotiations, conferences, vacations, seminars, and other functions to avoid creating calendar conflicts for other participants in the legal process, provided our clients' interests will not be adversely affected.

9. We will notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings, or conferences need to be canceled or postponed. Early notice avoids unnecessary travel and expense and may enable the court and the other participants in the legal process to use the previously reserved time for other matters.

10. We will agree to reasonable requests for extensions of time and for waiver of procedural formalities provided our clients' interests will not be adversely affected.

11. We will not request an extension of time for the purpose of unjustified delay.

PRINCIPLES PARTICULARLY APPLICABLE TO LITIGATION

PROCEDURAL AGREEMENTS:

12. We will confer with opposing counsel about procedural issues that arise during the course of litigation, such as requests for extensions of time, discovery matters, pre-trial matters, and the scheduling of meetings, depositions, hearings, and trial. We will seek to resolve by agreement such procedural issues that do not require court order. For those that do, we will seek to reach agreement with opposing counsel before presenting the matter to court.

13. We accept primary responsibility, after consultation with the client, for making decisions about procedural agreements. We will explain to our clients that cooperation between counsel in such matters is the professional norm and may be in the client's interest. We will explain the nature of the matter at issue in any such proposed agreements and explain how such agreements do not compromise the client's interests.

DISCOVERY:

14. We will not use any form of discovery or discovery scheduling for harassment, unjustified delay, to increase litigation expenses, or any other improper purpose.

15. We will make good faith efforts to resolve by agreement any disputes with respect to matters contained in pleadings and discovery requests and objections.

16. We will not engage in any conduct during a deposition that would not be appropriate if a judge were present. Accordingly, we will not obstruct questioning during a deposition or object to deposition questions, unless permitted by the applicable rules to preserve an objection or privilege and we will ask only those questions we reasonably believe are appropriate in discovery under the applicable rules.

17. We will carefully craft document production requests so they are limited to those documents we reasonably believe are appropriate under the applicable rules. We will not design production requests for the purpose of placing an undue burden or expense on a party.

18. We will respond to document requests reasonably. We will not interpret the request in an artificially restrictive manner to avoid disclosure of relevant and non-privileged documents. We will not produce documents in a manner designed to hide or obscure the existence of particular documents.

19. We will carefully craft interrogatories so they are limited to those matters we reasonably believe are appropriate under the applicable rules, and we will not design them for the purpose of placing an undue burden or expense on a party.

20. We will respond to interrogatories reasonably. We will not interpret interrogatories in an artificially restrictive manner to avoid disclosure of relevant and non-privileged information.

21. We will base our discovery objections on a good faith belief in their merit. We will not object solely for the purpose of withholding or delaying the disclosure of properly discoverable information.

22. During discovery, we will not engage in acrimonious conversations or exchanges with opposing counsel, parties, or witnesses. We will advise our clients to conduct themselves in accordance with these provisions. We will not engage in undignified or discourteous conduct which degrades the legal proceeding.

SANCTIONS:

23. We will not seek court sanctions or disqualification of counsel unless reasonably justified by the circumstances after conducting a reasonable investigation, which includes attempting to confer with opposing counsel.

LAWYERS' DUTIES TO THE COURT:

24. We recognize that the public's perception of our system of justice is influenced by the relationship between lawyers and judges, and that judges perform a symbolic role. At the same time, lawyers have the right and, at times, the duty to be critical of judges and

their rulings. Thus, in all communications with the court, we will speak and write civilly. In expressing criticism of the court, we shall seek to use language that minimizes disrespect for courts and the system of justice.

25. We will not engage in conduct that offends the dignity and decorum of judicial proceedings, brings disorder or disruption to the courtroom, or undermines the image of the legal profession.

26. We will advise clients and witnesses to act civilly and respectfully toward the court, educate them about proper courtroom decorum, and, to the best of our ability, prevent them from creating disorder or disruption in the courtroom.

27. We will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities.

28. We will not degrade the intelligence, ethics, morals, integrity or personal behavior of others, unless such matters are legitimately at issue in the proceeding.

29. We will act and speak civilly and respectfully to the judge's staff, the courtroom staff, and other court personnel with an awareness that they, too, are an integral part of the judicial system. We will also advise clients and witnesses to act civilly and respectfully toward these participants in the legal process.

30. We recognize that judicial resources are scarce, that court dockets are crowded, and that justice is undermined when cases are delayed and/or disputes remain unresolved. Therefore, we will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.

31. We recognize that tardiness and neglect show disrespect to the court and the judicial system. Therefore, we will be punctual and prepared for all court appearances so that all hearings, conferences, and trials may commence on time and proceed efficiently. We will also educate clients and witnesses concerning the need to be punctual and prepared. If delayed, we will promptly notify the court and counsel, if at all possible.

32. Before dates for hearing or trials are set, or, if that is not feasible, immediately after such a date has been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the court of any likely problems.

33. We will avoid *ex parte* communications with the court, including the judge's staff, on pending matters in person (whether in social, professional, or other contexts), by telephone, and in letters and other forms of written communication, unless such communications relate solely to scheduling or other non-substantive administrative matters, or are made with the consent of all parties, or are otherwise expressly authorized by law or court rule.

JUDGES' DUTIES TO LAWYERS:

34. We will be courteous, respectful, and civil to lawyers, parties, and witnesses. We will maintain control of the proceedings, recognizing that judges have both the obligation and the authority to ensure that judicial proceedings are conducted with dignity, decorum, and courtesy.

35. We will not employ hostile, demeaning, or humiliating words in opinions or in written or oral communications with lawyers, parties, or witnesses.

36. We will be punctual in convening hearings, meetings, and conferences; if delayed, we will notify counsel as promptly as possible.

37. In scheduling hearings, meetings, and conferences, we will be considerate of time schedules of lawyers, parties, and witnesses and of other courts and tribunals. We will inform counsel promptly of any rescheduling, postponement, or cancellation of hearings, meetings, or conferences.

38. While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice. We will make all reasonable efforts promptly to decide matters presented to us for decision.

39. We recognize that a lawyer has a right and duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments, to make a complete and accurate record, and to present a case free from unreasonable or unnecessary judicial interruption.

40. We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which a lawyer represents.

41. We will do our best to ensure that court personnel act civilly toward lawyers, parties and witnesses.

42. At an appropriate time and in an appropriate manner, we will bring to a lawyer's attention conduct which we observe that is inconsistent with these standards.

JUDGES' DUTIES TO EACH OTHER:

43. We will treat other judges with courtesy and respect.

44. In written opinions and oral remarks, we will refrain from personally attacking, disparaging, or demeaning other judges.

45. We will endeavor to work cooperatively with other judges with respect to the availability of lawyers, witnesses, parties, and court resources.

PRINCIPLES PARTICULARLY APPLICABLE TO REPRESENTATION INVOLVING BUSINESS TRANSACTIONS AND OTHER NEGOTIATIONS

46. We will not knowingly misrepresent or mischaracterize facts or authorities or affirmatively mislead another party or its counsel in negotiations.

47. We will not engage in personal vilification or other abusive or discourteous conduct in negotiations. We will not engage in acrimonious exchanges with opposing counsel or parties at the negotiating table. We will encourage our clients to conduct themselves in accordance with these principles.

48. We will honor all understandings with, and commitments we have made to, other attorneys. We will stand by proposals we have made in negotiations unless newly received information or unforeseen circumstances provide a good faith basis for rescinding them, and we will encourage our clients to conduct themselves in accordance with this principle.

49. We will not make changes to written documents under negotiation in a manner calculated to cause the opposing party or counsel to overlook or fail to appreciate the changes. We will clearly and accurately identify for other counsel and parties all changes that we have made in documents submitted to us for review.

50. In memorializing oral agreements the parties have reached, we will do so without making changes in substance and will strive in good faith to state the oral understandings accurately and completely. In drafting proposed agreements based on letters of intent, we will strive to draft documents that fairly reflect the agreements of the parties.

CRIMINAL

LCrR 1.1

SCOPE AND CONSTRUCTION

These Rules govern all proceedings in the United State District Court for the District of Columbia. These Rules supplement the Federal Rules of Civil and Criminal Procedure and shall be construed in harmony thereafter.

LCrR 6.1

GRAND JURY MATTERS

A motion or application filed in connection with a grand jury subpoena or other matter occurring before a grand jury, all other papers filed in support of or in opposition to such a motion or application, and all orders entered by the Court in connection therewith, shall be filed under seal. Such a motion or application shall be assigned a Miscellaneous case number. All hearings on matters affecting a grand jury proceeding shall be closed, except for contempt proceedings in which the alleged contemnor requests a public hearing. Papers, orders and transcripts of hearings subject to this Rule, or portions thereof, may be made public by the Court on its own motion or on motion of any person upon a finding that continued secrecy is not necessary to prevent disclosure of matters occurring before the grand jury.

LCrR 16.1

DISCOVERY

Defense counsel shall consult with the attorney for the United States prior to the first status conference in a criminal case and shall attempt to obtain voluntary discovery of all materials and information to which the defense may be entitled. No discovery motion shall be heard unless it states that defense counsel has previously requested that the information sought from the attorney for the United States and that such attorney has not complied with the request.

LCrR 17.1

ISSUANCE OF SUBPOENAS FOR APPOINTED COUNSEL

Defense counsel appointed under the Criminal Justice Act and staff attorneys of the Public Defender Service may apply to the Clerk for witness subpoenas where the witness will be served within a 25 mile radius of the boundaries of this district. The Clerk shall issue such subpoenas signed and sealed and designated *in forma pauperis*, but otherwise in blank. By filling in such a subpoena, defense counsel certifies that in counsel's opinion, the presence of the witness is necessary to an adequate defense. No subpoena so issued in blank may be served at a place more than 25 miles from the district. Where a witness to be subpoenaed will be served at a place more than 25 miles from the district, an application for the issuance of a subpoena *in forma pauperis* shall be made to the Court. The application may be made *ex parte*.

LCrR 17.2

CLOSURE OF PRETRIAL PROCEEDINGS

(a) GENERAL RULE.

Unless otherwise provided by law or by this Rule, all criminal proceedings, including preliminary examinations and hearings on pretrial motions, shall be held in open court and shall be available for attendance and observation by the public. This Rule does not apply to bench conferences, conferences in chambers, and other matters normally handled *in camera*.

(b) MOTION FOR CLOSURE.

Upon motion made or agreed to by the defendant, the Court may in the exercise of its discretion order a pretrial proceeding to be closed to the public in whole or in part, on the grounds:

(1) that there is a substantial probability that the dissemination of information disclosed at the proceeding would impair the defendant's right to a fair trial or another overriding public interest; and

(2) that no reasonable alternative to closure will adequately protect the defendant's right to a fair trial or another overriding public interest.

If the Court enters such an order, it shall state the specific findings which require closure.

(c) OPPOSITION BY NON-PARTIES

Any news organization or other interested person may be heard orally or in writing in opposition to a closure motion by a party. When any papers are filed by a non-party opposing closure, the matter shall be assigned a Miscellaneous docket number and shall be governed by LCrR 57.6. A non-party seeking to appeal from an order of closure shall be responsible for filing in the Miscellaneous proceeding the order from which the appeal is taken, and such other parts of the record of the criminal case as may be necessary to determination of the appeal.

COMMENT TO LCvR 16.1*: The changes to this rule correct a referencing error.*

LCrR 24.1

JURY

SELECTION AND ASSIGNMENT.

Grand and petit jurors shall be selected at random in accordance with a plan adopted by the Court and available from the Jury Office. Petit jurors shall be assigned to a single jury pool and reassigned for service upon the requisition of each trial judge.

LCrR 24.2

COMMUNICATION WITH A JUROR

(a) DURING TRIAL.

No party, attorney for a party, or person acting on behalf of a party or attorney, shall communicate directly or indirectly with a juror or an excused juror or a member of a juror's, or an excused juror's, family during the trial.

(b) AFTER TRIAL.

After a verdict is rendered or a mistrial is declared but before the jury is discharged, an attorney or party may request leave of court to speak with members of the jury after their discharge. Upon receiving such a request, the Court shall inform the jury that no juror is required to speak to anyone but that a juror may do so if the juror wishes. If no request to speak with jurors is made before discharge of the jury, no party or attorney shall speak with a juror concerning the case except when permitted by the Court for good cause shown

in writing. The Court may grant permission to speak with a juror upon such conditions as it deems appropriate, including but not limited to a requirement that the juror be examined only in the presence of the Court.

COMMENT TO LCrR 24.2: *This Rule gives the Court greater flexibility by stating that where the request to converse with jurors is made after their discharge, the Court may impose such conditions as it deems appropriate.*

LCrR 32.1

PROBATION AND REVOCATION OF PROBATION

(a) ASSIGNMENT TO A PROBATION OFFICER

Immediately following a sentence of probation or a split sentence, the defendant shall be assigned to a probation officer.

(b) CONDITIONS OF PROBATION.

The Court shall impose such conditions of probation as are necessary to provide a benefit to the probationer and protection to the public and may modify or enlarge such conditions at any time prior to the expiration or termination of the sentence as deemed advisable. The probationer shall be provided by the probation office with a written statement and an explanation of the conditions imposed. If the matter cannot be resolved by the probation office, the probationer may request clarification of any condition from the sentencing judge and may petition the sentencing judge for a modification of the conditions imposed.

(c) HEARING ON ALLEGED VIOLATIONS OF PROBATION.

(1) Unless waived by the probationer after due notification of rights, a hearing shall be held on all alleged violations of probation where revocation is a possibility to determine whether a violation has occurred and, if so, the appropriate disposition. Prior to the hearing, the probationer shall be provided by the probation office with written notice of all alleged violations, and notice of the rights guaranteed by subsection (2), including the right to counsel and the right to appointed counsel if indigent.

(2) At the probation revocation hearing, which shall be held on the record in open court, the probationer shall be afforded:

(i) access to records regarding the probation violation;

(ii) the right to be represented by counsel, including the right to appointed counsel if indigent;

(iii) the right to subpoena and present witnesses and documentary evidence; and

(iv) the right to confront and cross-examine witnesses against the probationer.

(3) The government shall be represented by counsel at the probation revocation hearing.

(4) Before probation is revoked the Court, in cases where the facts of violation are contested, shall make findings of fact and shall find that the government has established by a preponderance of evidence that the probationer has violated a condition of probation.

(d) VIOLATION OF A PROBATION CONDITION; RESENTENCING.

Upon finding a violation of a condition of probation the Court may: continue the existence with or without modification; enlarge the conditions of probation; revoke the probation and require the probationer to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed. In resentencing a probation violator the procedures governing initial sentencing decisions shall apply.

(e) HEARINGS DELEGATED TO THE MAGISTRATE JUDGE.

A hearing on an alleged violation of probation as provided in sub-section (c)(2) may be delegated by the Court to the magistrate judge. Following a hearing before the magistrate judge, the magistrate judge shall file written findings and recommendations. The Court shall make a *de novo* determination of those portions of the magistrate judge's report to which objections are made and may accept, reject, or modify in whole or in part, the findings and recommendations made by the magistrate judge. The Court, however, need not conduct a new hearing and may make a determination based on the record, evidence, recall witnesses, or recommit the matter to the magistrate judge. The Court may also receive further evidence, recall witnesses, or recommit the matter to the magistrate judge with instructions. While the matter is pending before the magistrate judge, the magistrate judge shall have the authority to issue a bench warrant for the apprehension of the probationer for failure to appear before the magistrate judge as directed, or for failure to comply with any release conditions imposed by the magistrate judge.

LCrR 32.2

SENTENCING GUIDELINES

(a) Not less than 28 days prior to the date set for the sentencing, the probation officer shall disclose the initial presentence report to the defendant and the prosecution. Within 14 days thereafter, counsel shall communicate to the probation officer any objections they may have as to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the report. Such communication may be oral or written, but the probation officer may require that any oral objection be promptly confirmed in writing.

(b) After receiving counsels' objections, the probation officer shall conduct any further investigation and make any revisions to the presentence report that may be necessary. The officer may require counsel for both parties to meet with the officer to discuss unresolved factual and legal issues.

(c) Not less than 7 days prior to the date of the sentencing, the probation officer shall submit the final presentence report to the sentencing judge. The report shall be accompanied by an addendum setting forth any objections counsel may have made that have not been resolved in the report, together with the officer's comments thereon. The probation officer shall certify that the contents of the final presentence report have been disclosed to the defendant and to counsel for the defendant and prosecution, that the addendum has been communicated to counsel, and the addendum fairly states any remaining objections.

(d) A hearing shall be held not more than 7 days prior to the date of sentencing to resolve any disputed issues of fact, and to gather any other information the Court finds to be relevant to the sentencing guideline calculation. The Court may consider any reliable information presented by the probation officer, the defendant, or the prosecution.

(e) When necessary to make consistent findings as to the role of each defendant in a multiple defendant case, the Court may, in lieu of or in addition to the evidentiary hearing authorized for by subsection (d), convene a joint evidentiary hearing on the same or other appropriate date.

(f) To the extent that the final presentence investigation report is undisputed by the parties, it may be accepted by the Court as accurate. The Court, however, for good cause shown, may allow a new objection to be raised any time before the imposition of sentence. The Court shall ensure that the probation officer and the other party has ample notice of the objection and an opportunity fairly to rebut or support the assertion.

(g) Any of the time periods set forth in this Rule may be modified by the Court on its own motion, or at the request of a party or the probation officer for good cause shown, and the Court may direct that the evidentiary hearing provided for in subsection (d) shall be held on the sentencing date. However, the 14-day period set forth in subsection (a) may be diminished only with the consent of the defendant.

(h) Nothing in this Rule requires the disclosure of any portions of the presentence report that are not disclosable under Rule 32 of the Federal Ruses of Criminal Procedure.

(i) The presentence report shall be deemed to have been disclosed (1) when a copy of the report is physically delivered, (2) one day after the report's availability for inspection is orally communicated, or (3) three days after a copy of the report or notice of its availability is mailed.

LCrR 44.1

PRACTICE BY ATTORNEYS

(a) PRACTICE BY MEMBERS OF THE BAR OF THIS COURT.

An attorney who is a member in good standing of the Bar of this Court may appear, file papers and practice in this Court, provided that the attorney complies with section (b) of this Rule.

(b) APPEARANCE AS SOLE OR LEAD COUNSEL IN A CONTESTED EVIDENTIARY HEARING OR TRIAL ON THE MERITS.

Each attorney who acts as sole or lead counsel in any contested evidentiary hearing or trial on the merits, civil or criminal, must have on file with the Clerk's office a certificate, in a form prescribed by the Clerk, that the attorney

(1) has previously acted as sole or lead counsel in a federal district court or the Superior Court of the District of Columbia or a state trial court of general jurisdiction in a contested jury or bench trial or other contested evidentiary hearing in which testimony was taken in open court and an order or other appealable judgment was entered; or

(2) has participated in a junior capacity in an entire contested jury or bench trial in a federal district court or the Superior Court of the District of Columbia or a state trial court of general jurisdiction; or

(3) has satisfactorily completed a continuing legal education trial advocacy course of at least 30 hours sponsored by the District of Columbia Bar or accredited by a State Bar.

(c) PRACTICE BY NON-MEMBERS OF THE BAR OF THIS COURT.

(1) An attorney who is a member in good standing of the bar of any United States Court or of the highest court of any State, but who is not a member of the Bar of this Court, may file papers in this Court only if such attorney joins of record a member in good standing of the Bar of this Court. All papers submitted by non-members of the Bar of this Court must be signed by such counsel and by a member of the Bar of this Court joined in compliance with this Rule.

(2) Paragraph (1) above is not applicable to an attorney who engages in the practice of law from an office located in the District of Columbia. An attorney who engages in the practice of law from an office located in the District of Columbia must be a member of the District of Columbia Bar and the Bar of this Court to file papers in this Court.

(d) PARTICIPATION BY NON-MEMBERS OF THIS COURT'S BAR IN COURT PROCEEDINGS.

An attorney who is not a member of the Bar of this Court may be heard in open court only by permission of the judge to whom the case is assigned. Any attorney seeking to appear *pro hac vice* must file a motion signed by a sponsoring member of the Bar of this Court, accompanied by a declaration by the non-member that sets forth: (1) the full name of the attorney; (2) the attorney's office address and telephone number; (3) a list of all bars to which the attorney has been admitted; (4) a certification that the attorney either has or has not been disciplined by any bar, and if the attorney has been disciplined by any bar, the circumstances and details of the discipline; (5) the number of times the attorney has been admitted *pro hac vice* in this Court within the last two years; and (6) whether the attorney, if the attorney engages in the practice of law from an office located in the District of Columbia, is a member of the District of Columbia Bar or has an application for membership pending.

(e) ATTORNEYS EMPLOYED BY THE UNITED STATES.

An attorney who is employed or retained by the United States or one of its agencies may appear, file papers and practice in this Court in cases in which the United States or the agency is a party, irrespective of (c) and (d) above.

(f) ENTRY AND WITHDRAWAL OF APPEARANCE.

Attorneys may enter and withdraw appearances in civil actions as provided in LCvR 83.6 of these Rules, and in criminal actions as provided in LCrR 44.5 of these Rules.

(g) STRIKING APPEARANCE FOR NONATTENDANCE AT COURT PROCEEDINGS.

The Court may, upon notice and after affording an opportunity to be heard, strike the appearance of any attorney in a particular case for failure, without adequate cause, to attend any hearing, conference or other proceeding. The fact that an attorney's residence or office is located at a place distant from the District of Columbia does not constitute grounds for rescheduling or failing to attend court proceedings.

(h) CERTIFICATION BY NON-MEMBERS OF THE BAR OF THIS COURT.

An attorney who appears, files papers and practices in this Court pursuant to (e), (f) or (g) above, shall file certification of personal familiarity with the Local Rules of this Court and, as appropriate, the other materials set forth in LCrR 57.21 (b) and LCrR) simultaneously with each initial appearance by the attorney before a judge of this Court.

COMMENT TO RULE LCrR 44.1(c)(2)**:** *LCrR 44.1(c)(2) has been added to conform the Rule of this Court to the current practice of the District of Columbia Committee on Unauthorized Practice, and to recognize that, as a general matter, attorneys who engage in the practice of law from an office located in the District of Columbia and who file papers in Court should be a member of the Bar of this Court and the District of Columbia Bar.*

COMMENT TO LCrR 44.1(d): *The original intent of this rule was that the "submission"by non-members of the Bar seeking pro hac vice admission be provided in the form of a declaration or affidavit as is customary in such circumstances. This section has now been amended to clarify the responsibility of non-members of this Court's Bar.*

LCrR 44.2

NUMBER OF COUNSEL

Except by permission of the Court only one attorney on each side shall examine a witness, address the Court on a question arising in a trial, or address the Court or jury in final argument.

LCrR 44.3

COMMENT TO LCrR 44.3: *This rule is being deleted because law students have not been certified to practice criminal law in recent years and we do not anticipate beginning such a program.*

LCrR 44.4

PRACTICE BY LAW CLERKS AND COURT EMPLOYEES

Law clerks and secretaries to judges of this Court, and all other persons employed in any capacity by this Court, shall not engage in the practice of law while so employed. A law clerk or secretary to a particular judge of this Court shall not, at any time after separating from that position, engage in any activity as an attorney or advisor, nor permit his or her name to appear as an attorney on any paper filed in this Court, in connection with any case that was pending on that judge's docket during his or her term of service. Any other person employed in any capacity by this Court shall not, for a period of two years after separating from that position, engage in any activity as an attorney or advisor in connection with any case that was pending in this Court during his or her term of service. Each former law clerk, secretary or other employee of this Court, as well as persons employing or associating with them in the practice of law before this Court, shall have the responsibility of enforcing the provisions of this Rule. Evidence of a failure to comply with this Rule shall be referred to this Court's Committee on Grievances.

LCrR 44.5

ENTRY AND WITHDRAWAL OF APPEARANCES BY ATTORNEYS IN CRIMINAL ACTION

(a) ENTRY OF APPEARANCE.

An attorney appearing for a defendant in a criminal case, whether appointed or retained, shall file with the Clerk a notice of appearance on a court-approved form. If a defendant appears without counsel at arraignment, the Court shall set a date and time by which counsel shall enter an appearance or the defendant, after being fully advised of his right to counsel, shall waive such right and elect to proceed *pro se.*

(b) CERTIFICATE OF FAMILIARITY WITH SENTENCING GUIDELINES.

Every attorney who appears as sole or lead counsel in a criminal case must have on file with the Clerk's Office a certificate, in a form prescribed by the Clerk, in which the attorney states that he or she is familiar with the Federal Sentencing Guidelines. If the attorney has filed such a certificate during the previous three years (see Rule 701.1), a new certificate is not necessary.

(c) CONTINUING DUTY OF REPRESENTATION.

An attorney who enters an appearance shall continue to represent the defendant until the case is dismissed, the defendant is acquitted, or the time for filing post-trial motions and a notice of appeal has expired, unless the attorney is granted leave to withdraw by the Court.

(d) WITHDRAWAL OF COUNSEL.

An attorney who has appeared in a criminal case may thereafter withdraw only by written motion served upon the defendant personally or at the defendant's last-known address, and upon all other parties. The Court may deny a motion to withdraw if the attorney's withdrawal would unduly delay trial of the case or be unfairly prejudicial to any party, or otherwise not be in the interests of justice.

(e) COUNSEL FOR THE GOVERNMENT.

Upon the return of an indictment or bill of information, the United States shall designate an Assistant United States Attorney or other attorney of the Department of Justice as its representative. The United States Attorney shall advise the Clerk and the judge to whom the case is assigned regarding any change in the attorney for the United States responsible for the prosecution.

LCrR 44.6

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTERESTS

In all criminal cases where a corporation is a party, counsel of record for that party shall file a certificate listing any parent, subsidiary, affiliate, or any company which, to the knowledge of counsel, has any outstanding securities in the hands of the public. Such certificate shall be filed at the time counsel first enters his or her appearance in the case. The purpose of this certificate is to enable the judges of this Court to determine the need for recusal. Counsel shall have the continuing obligation to advise the Court of any change. The form of the certificate is:

"Number and Title of Case"

Certificate required by LCrR 44.6 of the Local Rules of the United States District Court for the District of Columbia:

I, the undersigned, counsel of record for _____, certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of _____ which have any outstanding securities in the hands of the public.

(Here list all such parent companies, subsidiaries and affiliates of the corporation.)

These representations are made in order that judges of this Court may determine the need for recusal.

Attorney of Record for _____.

COMMENT TO RULE LCrR 44.6: *LCrR 44.6 has been added to make clear that attorneys in criminal cases are under a duty to disclose any corporate parent, subsidiary or affiliate when a corporation is a defendant so that judges will be able to determine whether there is a need for recusal. Although LCvR 7.1 purports to cover criminal cases, placing this provision in the criminal rules will insure it is not overlooked by criminal law practitioners.*

LCrR 45.1

SPEEDY TRIAL

Pursuant to the requirements of Rule 50(b) of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974 (18 U.S.C. Chapter 208), the Speedy Trial Amendment Act of 1979 (Pub. L. No. 96-43, 93 Stat. 327), and the Federal Juvenile Delinquency Act, as amended (18 U.S.C. §§ 5036, 5037), the judges of the United States District Court for the District of Columbia have adopted a Speedy Trial Plan to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings. A copy of the Speedy Trial Plan is available from the Clerk's Office.

COMMENT TO LCrR 45.1: *This Rule incorporates the Speedy Trial Plan but removes the full text from the Rule. Copies of the Plan are available upon request from the Clerk's office. Many federal courts utilize this procedure and do not restate the full Plan in the rules.*

LCrR 46.1

CONDITIONS OF RELEASE

(a) REPORT OF THE PRETRIAL SERVICES AGENCY

The District of Columbia Pretrial Services Agency shall make personnel available in the courthouse to interview arrested defendants at all times during which magistrate judges are available for presentments. The Pretrial Services Agency shall interview each arrested defendant, verify the information obtained and prepare a report. A copy of the report shall be provided to the court file, to the United States Attorney, and to the defendant's counsel. The Clerk shall notify the Pretrial Services Agency of the action taken by the magistrate judge or Court with regard to conditions of release.

(b) SETTING CONDITIONS OF RELEASE.

Condition of release shall be set by a magistrate judge or by the judge to whom the case is assigned. An application to the Court for review of conditions of release fixed by a magistrate judge shall be heard upon the record certified by the magistrate judge, together with additional information that may be presented.

(c) ADVICE TO THE DEFENDANT.

When a defendant is initially released on conditions, the defendant shall be specifically informed of the consequences of a failure to appear at subsequent court dates pursuant to 18 U.S.C. 3146.

LCrR 47

MOTIONS

(a) STATEMENT OF POINTS AND AUTHORITIES.

Each motion shall include or be accompanied by a statement of the specific points of law and authority that support the motion, including where appropriate a concise statement of facts. If a table of cases is provided, counsel shall place asterisks in the margin to the left of those cases or authorities on which counsel chiefly relies.

(b) OPPOSING POINTS AND AUTHORITIES.

Within 14 days of the date of service or at such other time as the Court may direct, an opposing party shall serve and file a memorandum of points and authorities in opposition to the motion. If such a memorandum is not filed within the prescribed time, the Court may treat the motion as conceded.

(c) PROPOSED ORDER.

Each motion shall be accompanied by a proposed order.

(d) REPLY MEMORANDUM.

Within seven days after service of the memorandum in opposition the moving party may serve and file a reply memorandum.

(e) PAGE LIMITATIONS.

A memorandum of points and authorities in support of or in opposition to a motion shall not exceed 45 pages and a reply memorandum shall not exceed 25 pages, without prior approval of the Court. Documents that fail to comply with this provision shall not be filed by the Clerk.

(f) ORAL HEARINGS.

A party may in a motion or opposition request an oral hearing, but its allowance shall be within the discretion of the Court. If at the time of the hearing the moving party fails to appear, the Court may treat the motion as withdrawn; if the opposing party fails to appear, the Court may treat the motion as conceded.

(g) MOTIONS TO AMEND PLEADINGS.

A motion for leave to file an amended pleading shall be accompanied by an original of the proposed pleading as amended. The amended pleading shall be deemed to have been filed and served by mail on the date on which the order granting the motion is entered.

(h) NAMES OF PERSONS TO BE SERVED WITH PROPOSED ORDERS, JUDGMENTS AND STIPULATIONS.

Each proposed order, judgment and stipulation shall have appended to it or endorsed upon it a list of the names and addresses of all attorneys entitled to be notified of its entry. If a party is not represented by an attorney, the name and address of the party shall be included.

LCrR 49.1

FORM AND FILING OF PLEADINGS AND OTHER PAPERS

(a) PLACE AND MANNER OF FILING.

All papers relating to pending action shall be filed with the Clerk unless otherwise directed by the Court.

(b) CORRESPONDENCE WITH COURT.

Except when requested by a judge, correspondence shall not be directed by the parties or their attorneys to a judge, nor shall papers be left with or mailed to a judge for filing.

(c) NUMBER OF COPIES.

The original and one copy of every pleading, motion or other paper shall be filed with the Clerk.

(d) ELECTRONIC TRANSMISSION.

No pleading, motion or other document shall be transmitted to the Clerk for filing by means of electronic facsimile transmission except with express leave of Court.

(e) NAME AND ADDRESS OF PARTIES AND ATTORNEYS

(1) All papers signed by an attorney shall contain the name, address, telephone number, and D.C. Bar identification number of the attorney if the attorney is a member of the D.C. Bar. All attorneys listed on any pleading or paper who are members of the D.C. Bar must include their D.C. Bar identification numbers regardless of whether they sign the pleading. Notice of a change in address or telephone number of an attorney or a party not represented by an attorney must be filed within 14 days of the change. Unless changed by notice filed with the Clerk, the address and telephone number of a party or an attorney noted on the first filing shall be conclusively taken as the last known address and telephone number of the party or attorney.

(2) By signing a pleading or paper that is presented to the Court, an attorney is certifying that the attorney, and all other attorneys appearing with the attorney on the pleading or paper, are members of, or have a pending application for admission to the Bar of this Court, or has complied with LCrR 44.1 (c) or (d), or is covered by LCrR 44.1(e) as counsel for the United States.

(f) FORM OF PAPERS.

All papers shall be typed (double spaced) or reproduced by any duplicating or copying process that produces a clear black image on opaque white paper 11 inches long and 8-1/2 inches wide, unfolded, without back or cover, fastened at the top. Every paper shall contain a heading under the caption describing the nature of the pleading, motion or other paper. Papers should also be punched at the top with two holes, 2 3/4 inches apart and 3/8 inch from the top, to facilitate insertion in the file jacket. The case number on every paper shall be followed by the initials of the judge to whom the case has been assigned. If the case has been referred to a magistrate judge, the magistrate judge's initials shall also be shown. All exhibits or attachments to papers should reflect the number of the case in which they are filed.

(g) VERIFICATION.

Whenever any matter is required or permitted by law or by rule to be supported by the sworn written statement of a person (other than a deposition, oath of office, or oath required to be taken before a specified official other than a notary public), the matter may, with the same force and effect, be supported by the unsworn declaration, certificate, verification, or statement , in writing of such person which is subscribed as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

(h) SEALED OR CONFIDENTIAL DOCUMENTS.

(1) Absent statutory authority, no cases or documents may be sealed without an order from the Court. Any pleading filed with the intention of being sealed shall be accompanied by a motion to seal. The document will be treated as sealed, pending the outcome of the ruling on the motion. Failure to file a motion to seal will result in the pleading being placed on the public record.

(2) Unless otherwise ordered or otherwise specifically provided in these Local Rules, all documents submitted for a confidential *in camera* inspection by the Court, which are the subject of a Protective Order, which are subject to an existing order that they be sealed, or which are the subject of a motion for such orders, shall be submitted to the Clerk securely sealed in an envelope/box needed to accommodate the documents. The envelope/box containing such documents shall contain a conspicuous notation that carries "DOCUMENTS UNDER SEAL" or "DOCUMENTS SUBJECT TO PROTECTIVE ORDER," or the equivalent.

(3) The face of the envelope/box shall also contain the case number, the title of the Court, a descriptive title of the document and the case caption unless such information is to be, or has been included among the information ordered sealed. The face of the envelope/box shall also contain the date of any order, or the reference to any statute permitting the item sealed.

(4) Filings of sealed materials must be made in the Clerk's Office during the business hours of 9:00 a.m. and 4:00 p.m., daily except Saturdays, Sundays and legal holidays. Filings at the security desk are prohibited because the Security Officers are not authorized to accept this material.

COMMENT TO LCrR 49.1(e) (1) and (2): *Section (e)(1) was amended to make clear that the reference to the requirement that all papers include "the Bar identification number of the attorney" requires a D.C. Bar identification number. Because members of the Bar of this Court are not assigned bar identification numbers, Section (e)(2) was added to assist the Clerk's Office in verifying the bar membership status of attorneys who appear in this Court.*

LCrR 49.2

PROOF OF SERVICE

Proof of service of papers required or permitted to be served, other than those for which a different method of proof is prescribed by the Federal Rules of Civil Procedure or by statute, shall be filed with such papers. The proof shall show the date and manner of service, and may be by certificate of an attorney of record or other proof satisfactory to the Court. Failure to make proof of service does not affect the validity of service. The Court may at any time allow the proof to be amended or supplied, unless to do so would unfairly prejudice a party.

LCrR 53.1.1

PHOTOGRAPH, TAPE RECORDING, AND BROADCASTING IN THE COURTHOUSE

The taking of photographs and operation of tape recorders inside the United States Courthouse and radio or television broadcasting from inside the courthouse during the progress of or in connection with judicial proceedings, including proceedings before a United States Magistrate Judge, whether or not court is actually in session, are prohibited. A judge may, however, permit (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, and (2) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings. Contents of official tapes that are made as part of the record in a case will be treated in the same manner as official stenographic notes.

LCrR 56.1

CLERK'S OFFICE

The Clerk's Office shall remain open for the transaction of business from 9:00 A.M. until 4:30 P.M. daily except Saturdays, Sundays and legal holidays. Papers, except for sealed material, that must be filed on a given date may be delivered after 4:30 P.M. to the security desk at the Third Street entrance to the courthouse. Papers found to be in compliance with these Rules will be filed as of the date they were delivered to the security desk. Documents that are being filed under seal pursuant to a protective order must be filed in the Clerk's Office during business hours because the Security Officers are not authorized to accept this material.

LCrR 56.2

CUSTODY OF EXHIBITS IN CRIMINAL CASES

(a) PRIOR TO VERDICT.

A party in a criminal proceeding shall retain its exhibits until they are marked for identification and received in evidence. All exhibits shall thereafter be retained by the Clerk until verdict except that exhibits consisting of narcotics, weapons, money or articles of high monetary value shall be retained by the United States Attorney during adjournment.

(b) AFTER VERDICT.

In cases where a verdict of not guilty or a judgment of acquittal is entered or a mistrial declared, each party shall immediately retake its exhibits from the Clerk unless otherwise ordered by the Court. In cases where a verdict of guilty is entered the Clerk shall retain all exhibits, except those exhibits described in

section (c) of this Rule. If no appeal is perfected, each party shall retake its exhibits from the Clerk within 30 days after the date of final disposition of the case in this Court. If an appeal is perfected, each party shall retake its exhibits from the Clerk within 30 days after final disposition of the case by the appellate courts.

(c) SPECIAL EXHIBITS.

Exhibits consisting of narcotics, weapons, money or articles of high monetary value shall be transmitted by the Clerk to the United States Attorney or a designee who shall receipt for them. Exhibits offered by any party which are large and unwieldy, such as diagrams, models, physical displays, etc., shall also be so transmitted unless otherwise ordered by the Court. The United States Attorney shall preserve and maintain in custody all exhibits so transmitted for the periods of time specified in section (b) of this Rule.

(d) DESTRUCTION OF EXHIBITS.

If any party, having received notice from the Clerk to retake exhibits as provided in section (b) of this Rule, fails to do so within 30 days of the date of such notice, the Clerk may destroy or otherwise dispose of those exhibits.

LCrR 57.1

PUBLICATION OF AMENDMENTS

Any amendment to these Rules shall be published in The Daily Washington Law Reporter before its adoption. The notice shall state that the proposed amendment will be adopted unless modified or withdrawn after receiving comments from organized bar associations, members of the bar, and the public. Such comments shall be submitted in writing within 45 days of publication to the Chairman of the Advisory Committee on District Court Rules. If the Court determines there is an immediate need for a particular local rule or amendment to an existing local rule, it may proceed without public notice and opportunity for comment, but the Court shall promptly thereafter afford such notice and opportunity for comment.

LCrR 57.2

SCHEDULING AND CONTINUANCES

(a) SCHEDULING.

All hearings, conferences and trials shall be scheduled by the judge to whom the case is assigned, except that matters referred to a magistrate judge shall be scheduled by the magistrate judge.

(b) CONTINUANCES.

No application for a continuance of a hearing, conference or trial shall be made unless notice of the application has been given to all other parties. An application for a continuance shall be ruled upon by the judge or magistrate judge before whom the hearing, conference or trial is to be held.

(c) NOTICE.

The Clerk shall give notice to counsel of every matter set by the Court, unless the matter is scheduled orally in open court in the presence of counsel for all parties, in which case further notice is not required.

LCrR 57.3

STIPULATIONS

A stipulation need not be considered by the Court unless it is in writing and signed by the parties thereto or their attorneys, or stenographically recorded in court or during a deposition.

LCrR 57.4

BONDS AND SURETIES

Any bond or undertaking required in a proceeding must be set by an order or by consent. The bond or undertaking may be in the form of a surety, cash or check. A surety holding authority from the Secretary of the Treasury to do business in the District of Columbia and having an agent for service of process therein may be approved by the Clerk and filed. No officer of the Court or member of the bar in active practice will be accepted as a surety.

LCrR 57.5

AVOIDANCE AND RESOLUTION OF CONFLICTS IN ENGAGEMENTS OF COUNSEL AMONG THE COURTS IN THE DISTRICT OF COLUMBIA

The following provisions, which implement the "Procedures for Avoiding and Resolving Conflicts in Engagements of Counsel to Appear Before the Courts in the District of Columbia" dated April 18, 1973, adopted by and applicable to the United States Court of Appeals for the District of Columbia Circuit, the United States District Court for the District of Columbia, the District of Columbia Court of Appeals and the Superior Court of the District of Columbia, shall apply to matters scheduled in this Court:

(a) PRIORITY TO BE ACCORDED APPELLATE COURTS.

Trial proceedings in this Court will yield, and if under way will be held in abeyance, during argument by trial counsel in an appellate court.

(b) PRIORITIES IN TRIAL COURTS.

Actual trials of civil or criminal cases in this Court or in the Superior Court will be accorded priority over any nontrial matters in either court. For the purpose of this Rule, a hearing on a preliminary injunction shall be regarded as a trial. A judge shall set a date for trial only after ascertaining that trial counsel have no conflicting trial or appellate engagement in any court within the District of Columbia. If, despite the foregoing and the obligations imposed on counsel by section (c) of this Rule, counsel should have more than one trial set on one day, the following priorities will be recognized:

(1) That case which is first set to commence trial on a specific day will receive priority over cases which are later set to commence trial on that day. A continued case shall be treated as set as of the last setting date.

(2) Any trial in progress, including a trial in progress from day to day, shall take precedence over trial or nontrial engagements of counsel which are set for times during which the trial is still in progress.

(3) If a scheduled trial conflicts with a previously set nontrial matter and, because of the urgency or complexity of the nontrial matter or the number of persons involved, it would be difficult to reschedule the nontrial matter, counsel shall immediately advise the court in which or the judge before whom the conflicting trial is scheduled. The court or the judges will be receptive to counsel's application for change of the trial date or an adjustment of the hours of trial, but shall retain discretion to grant or deny such an application.

(4) The judges of this Court insofar as practical, will attempt to adjust their schedules to enable an attorney to attend to brief nontrial matters such as pleas, sentences, or status and pretrial conferences pending in another court. It is recognized that emergency situations will arise and that certain types of cases may require special consideration. The judges of this Court will attempt to accommodate these situations by recognizing

the need to depart, on occasion, from rigid scheduling rules when such situations are brought to their attention by counsel.

(c) RESPONSIBILITIES OF COUNSEL.

It is the professional responsibility of attorneys to avoid the setting of conflicting engagements in the courts, to inform the courts of expected difficulties or conflicts which may arise, and to achieve the resolution of such conflicts or problems at the earliest possible time. The following particular obligations are imposed upon counsel:

(1) Attorneys are expected to carry with them at all times they are in court a calendar of their future court appearances.

(2) Attorneys shall appear personally before the judge when a case is being set, reset, or continued except as otherwise specified below. They shall in every case inform the Court fully as to any matters which may conflict with a setting, resetting, or continued date being considered by the Court. Counsel shall not schedule engagements which they cannot reasonably expect to attend at the time scheduled. They shall observe such limitations on the number of matters they schedule as are imposed herein, or are imposed by the individual courts of this jurisdiction, or which arise by reason of their professional obligations to their clients. The sole exception to the requirement that counsel appear personally before the judge when a case is being reset or continued arises when counsel is physically unable to be present. In such event counsel should leave three open dates with the judge in question, and the trial may be reset in counsel's absence. It shall, however, be the attorney's duty to appear personally as soon as possible before the judge who reset the case to confirm the reset date.

(3) Attorneys are obliged to take action immediately upon becoming aware of any conflict and specifically to call the conflicting engagements to the attention of the judge being asked to yield, and to pursue the matter until the conflict is resolved. Such matters may be presented to the judge in open court as a preliminary matter, with advance notice to other counsel.

(4) If counsel cannot avoid being unexpectedly late for, or absent from any scheduled appearance before any judge, they shall in advance of the scheduled appearance notify by telephone the judge's courtroom deputy of that fact, the reason therefore and the nature and duration of the conflicting engagements.

(5) If an attorney has a criminal felony case set for trial in any court on a given day, the attorney shall not schedule any other case for trial on that

day or for any date thereafter during with that felony trial may reasonably be expected to continue. If an attorney has a misdemeanor case set for jury trial on a given date, the attorney shall not schedule more than one other misdemeanor case for trial on that day. These restrictions do not apply to cases as to which an attorney is certain there will be a nontrial disposition.

(6) This Court will take appropriate disciplinary action when an attorney fails to conduct himself or herself in accordance with the requirements and obligations imposed by the Rule.

LCrR 57.6

APPLICATIONS FOR RELIEF IN A CRIMINAL CASE BY PERSONS NOT PARTIES TO THE CASE

Any news organization or other interested person, other than a party or a subpoenaed witness, who seeks relief relating to any aspect of the proceedings in a criminal case shall file an application for such relief in the Miscellaneous Docket of the Court. The application shall include a statement of the applicant's interest in the matter as to which relief is sought, a statement of facts and a specific prayer for relief. The application shall be served on the parties to the criminal case and shall be referred by the Clerk to the trial judge assigned to the criminal case for determination.

LCrR 57.7

RELEASE OF INFORMATION BY ATTORNEYS AND COURT PERSONNEL

(a) CONDUCT OF COURT PERSONNEL.

Courthouse supporting personnel, including, among others, marshals, court clerks, law clerks, messengers, court reporters and employees or subcontractors retained by the court-appointed official reporters, shall not disclose to any person without specific authorization by the Court, information relating to any pending criminal proceeding, including a grand jury proceeding, that is not part of the public records of the Court, nor shall any such personnel discuss the merits involved in any such proceeding with any members of the public.

(b) CONDUCT OF ATTORNEYS IN CRIMINAL CASES.

(1) 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 means of public communication, in connection with pending or imminent criminal litigation with which the lawyer or the law firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(2) 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 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.

(3) 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 means of public communication, relating to that matter and concerning:

(i) 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 apprehension of the accused or to warn the public of any dangers he or she may present;

(ii) 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;

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

(iv) 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 the law;

(v) The possibility of a plea of guilty to the offense charged or a lesser offense;

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

The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting 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.

(4) During a jury 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 means of public communication if there is a reasonable likelihood that such dissemination will interfere with a 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.

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

(c) ORDERS IN WIDELY PUBLICIZED OR SENSATIONAL CASES.

In a widely publicized or sensational criminal case, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties, witnesses and attorneys likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media

representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order.

LCrR 57.8

ASSIGNMENT SYSTEM

(a) CASES TO BE ASSIGNED TO A SINGLE JUDGE.

Unless otherwise provided in these Rules, each civil and criminal case shall be assigned to a single judge in the manner provided herein.

(b) CALENDAR AND CASE MANAGEMENT COMMITTEE.

The assignment of cases to judges of this Court shall be performed by the Clerk under the direction of the Calendar and Case Management Committee. The Committee shall be composed of no less than three and no more than five active judges appointed by the Chief Judge for two year terms. All matters dealing with the assignment of cases, including but not limited to any efforts to restrain or avoid the enforcement or application of rules under this Part shall be referred to the Chairman of the Calendar and Case Management Committee for resolution by the Committee.

(c) EMERGENCY JUDGE.

A judge of this Court will be available, in accordance with a schedule of assignments announced from time to time by the Chief Judge, to hear emergency civil or criminal matters on all legal holidays and weekends. The emergency judge's assignment starts at 4:30 p.m. on the day preceding the weekend and ends at 9:00 a.m. the next business day. The judge designated for emergency assignments will not be present in the Courthouse but will be reasonably available, on call, in the area.

(d) NOTICE OF TRANSFERS AND REASSIGNMENTS.

All case transfers and reassignments shall be accompanied by formal notice to the Chairman of the Calendar and Case Management Committee and to the Clerk's Office Liaison. The Clerk will notify each of the judges involved and all counsel in the case of the reassignment.

COMMENT : *The rule has been changed to reflect a change in scope and to provide the court with greater flexibility with respect to this Committee.*

LCrR 57.9

CLASSES OF CASES

(a) CLASSIFICATION.

In order to assure a more even distribution of each type of case among the judges of this Court, each civil and criminal case will be classified for assignment purposes in accordance with a set of categories established by the Court on the recommendation of the Calendar and Case Management Committee.

(b) DESIGNATION AT TIME OF FILING.

Upon filing the complaint in a civil action, the attorney for the plaintiff shall note the proper classification of the case on a form provided by the Clerk. In criminal cases the United States Attorney shall, at the time of the return of an indictment, note the proper classification of the case on a form provided by the Clerk.

LCrR 57.10

MANNER OF ASSIGNMENT

(a) RANDOM ASSIGNMENT.

Except as otherwise provided by these Rules, civil, criminal and miscellaneous cases shall be assigned to judges of this Court selected at random in the following manner:

(1) The Clerk shall create a separate assignment deck in the automated system for each subclassification of civil and criminal cases established by the Court pursuant to LCrR 57.9 of these Rules and a separate deck for miscellaneous cases[3]. The decks will be created by the Liaison to the Calendar and Case Management Committee or the Liaison's backup

[3] For the purpose of this Rule, miscellaneous cases that will be randomly assigned will include, but not be limited to, these proceedings: (a) actions to perpetuate testimony as in Rule 27, Federal Rules of Civil Procedure; (b) actions to enforce administrative subpoenas and summonses; (c proceeding ancillary to an action pending in another district; (d) supplementary proceedings brought in aid of execution; (e) motions for return of property in criminal proceedings; and (f) requests for judicial assistance. Grand Jury Miscellaneous cases will continue to be assigned to the Chief Judge and Pen Register Applications will continue to be assigned to magistrate judges.

and access to this function shall be restricted to these individuals to protect the integrity and confidentiality of the random assignment of cases. The Calendar and Case Management Committee will, from time to time determine and indicate by order the frequency with which each judge's name shall appear in each designated deck to effectuate an even distribution of cases among the active judges.

(2) At the time a civil complaint is filed or an indictment or information is returned in a criminal case, the case shall be assigned to the judge whose name appears on the screen when the appropriate deck is selected. The Clerk shall also stamp on the indictment, information, complaint or other initial pleading of each case, and on the file jacket, the number of the case and the name of the judge to whom it is assigned. The numbering and assignment of each case shall be completed before processing of the next case is begun. Notwithstanding the foregoing, a civil case, requiring an emergency hearing, which is filed after normal business hours, shall not be assigned to a judge until the next business day.

(b) ASSIGNMENT TO VISITING AND SENIOR JUDGES.

Cases may be assigned to visiting and senior judges in accordance with procedures adopted from time to time by the Calendar and Case Management Committee.

(c) PROCEEDINGS AFTER ASSIGNMENT.

All proceedings in a case after its assignment shall be conducted by the judge to whom the case is assigned, except as otherwise provided in these Rules. A judge who declares a mistrial shall retain the case for subsequent proceedings including, where appropriate, retrial.

(d) WIRETAP ORDER APPLICATIONS.

Applications by the United States Attorney for orders authorizing interception of wire or oral communications shall be assigned in rotation by seniority among the active judges, excluding the Chief Judge.

COMMENT TO LCrR 57.10: *To ensure an even distribution of cases filed on the miscellaneous docket these cases will now be randomly assigned to a judge of this Court at the time of filing. The assigned judge will maintain jurisdiction of the miscellaneous case for all purposes. The assignment of miscellaneous cases does not affect the duties of the Motions Judge as specified in LCvR 40.8 (a)(b)(c).*

LCrR 57.11

SUSPENSION OF NEW ASSIGNMENTS

A judge shall be relieved by the Calendar and Case Management Committee from any new assignment of indictments and civil cases accompanied by motions for temporary restraining orders and preliminary injunctions or civil cases in which an intention to file a motion for a preliminary injunction is expressed, upon notification by the judge or the Chief Judge to the Committee that the judge: (1) has continued in a protracted trial or hearing for 10 consecutive trial days;[4] (2) is confined to a hospital; (3) is confined at home due to illness for seven days; (4) has had a death in the judge's immediate family; or (5) is performing judicial duties out of this jurisdiction pursuant to assignment. New cases shall be assigned to the judge in accordance with normal procedures upon the conclusion of any such condition.

Whenever a judge begins what is expected to be an unusually protracted criminal trial (one lasting four weeks or more) he or she may refer to the Calendar and Case Management Committee for routine reassignment such other criminal cases assigned to such judge as the judge was unable to dispose of prior thereto and which are expected to require disposition pursuant to the Speedy Trial Act within the time period of the unusually protracted trial.

LCrR 57.12

RELATED CASES

(a) DEFINITION.

A related case for the purpose of this Rule means as follows:

(1) Criminal cases are deemed related when (i) a susperseding indictment has been filed, or (ii) more than one indictment is filed or pending against the same defendant or defendants, or (iii) prosecution against different defendants arises from a common wiretap, search warrant, or activities which are a part of the same alleged criminal event or transaction. A case is considered pending until a defendant has been sentenced.

(2) If a civil forfeiture proceeding is filed concerning a criminal defendant, or a defendant is charged in a criminal case while a civil forfeiture

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[4] If a judge after suspension based upon 10 consecutive days in a trial or hearing, thereafter devotes an occasional day to other court business, that judge shall not by virtue thereof be reinstated in the complete draw.

proceeding is pending concerning that defendant, the civil and criminal cases are to be deemed related.

(3) Civil cases are deemed related when the earliest is still pending on the merits in the District Court and they (i) relate to common property, or (ii) involve common issues of fact, or (iii) grow out of the same event or transaction or (iv) involve the validity or infringement of the same patent. Notwithstanding the foregoing, a case filed by a *pro se* litigant with a prior case pending shall be deemed related and assigned to the judge having the earliest case. However, if a judge in the interest of judicial economy, consolidates a significant number of similar *pro se* prisoner complaints, or has a single case with a significant number of *pro se* prisoner plaintiffs, and any of those prisoners later files a new complaint which is unrelated to the subject matter of the consolidated cases or the multiple plaintiffs' case, the judge who receives the new case as related may, if he or she chooses refer the new case to the Calendar and Case Management Committee for random assignment.

(4) Additionally, cases whether criminal or civil shall be deemed related where a case is dismissed, with prejudice or without, and a second case is filed involving the same parties and relating to the same subject matter.

(b) NOTIFICATION OF RELATED CASES.

The parties shall notify the Clerk of the existence of related cases as follows:

(1) At the time of returning an indictment the United States Attorney shall indicate, on a form to be provided by the Clerk, the name, docket number and relationship of any related case pending in this Court or in any other United States District Court. The form shall be mailed to all defense counsel along with the notification of the arraignment. Any objection by the defendant to the related case designation shall be served on the U.S. Attorney and filed with the Clerk within 21 days after arraignment.

(2) At the time of filing any civil action, the plaintiff or his attorney shall indicate, on a form to be provided by the Clerk, the name, docket number and relationship of any related case pending in this Court or in any other United States Court. The plaintiff shall serve this form on the defendant with the complaint. Any objection by the defendant to the related case designation shall be filed and served with the defendant's first responsive pleading or motion.

(3) Whenever an attorney for a party in a civil or criminal action becomes aware of the existence of a related case or cases, the attorney shall

immediately notify, in writing, the judges on whose calendars the cases appear and shall serve such notice on counsel for all other parties. Upon receiving information from any source concerning a relationship between pending cases, the Clerk shall transmit that information in writing to the judges on whose calendars the cases appear and to all parties to the proceeding.

(c) ASSIGNMENT OF RELATED CASES.

Related cases noted at or after the time of filing shall be assigned in the following manner:

(1) Where the existence of a related case in this Court is noted at the time the indictment is returned or the complaint is filed, the Clerk shall assign the new case to the judge to whom the oldest related case is assigned. If a judge who is assigned a case under this procedure determines that the cases in question are not related, the judge may transfer the new case to the Calendar and Case Management Committee. If the Calendar and Case Management Committee finds that good cause exists for the transfer, it shall cause the case to be reassigned at random. If the Calendar and Case Management Committee finds that good cause for the transfer does not exist, it may return the case to the transferring judge.

(2) Where the existence of related cases in this Court is revealed after the cases are assigned, the judge having the later-numbered case may transfer that case to the Calendar and Case Management Committee for reassignment to the judge having the earlier case. If the Calendar and Case Management Committee finds that good cause exists for the transfer, it shall assign the case to the judge having the earlier case. If the Calendar and Case Management Committee finds that good cause for the transfer does not exist, it may return the case to the transferring judge.

(3) Where a party objects to a designation that cases are related pursuant to subparagraphs (b)(1) or (b)(2) of this Rule, the matter shall be determined by the judge to whom the case is assigned.

(d) REFERRALS TO A SINGLE JUDGE BY THE CALENDAR AND CASE MANAGEMENT COMMITTEE.

Upon a finding by the Calendar and Case Management Committee that two or more cases assigned to different judges should be referred for a specific purpose to one judge in order to avoid a duplication of judicial effort, the Calendar and Case Management Committee may enter such an order of referral. The order

shall be with the consent of the judge to whom the cases will be referred and shall set forth the scope of authority of said judge. Unless otherwise provided, such an order shall not transfer any cases nor affect the assignment of future cases.

COMMENT TO LCvR 57.12(c)(3): *The Court has eliminated the provision in this Rule that permitted a party to appeal to the Calendar and Case Management Committee an individual judge's decision with respect to whether cases are related because the Court does not believe it is appropriate for a party to be able to seek review of a decision of one judge of this Court by three of that judge's co-equal colleagues. As amended, the Rule would make the individual judge's decision final.*

LCrR 57.13

OTHER TRANSFERS AND REASSIGNMENTS

(a) TRANSFERS BY CONSENT.

A judge, upon written advice to the Calendar and Case Management Committee, may transfer directly all or part of any case on the judge's docket to any consenting judge.

(b) DEATH, RETIREMENT, APPOINTMENT OF NEW JUDGES, ETC.

When reassignments are necessitated by the death, retirement, resignation or incapacity of any judge or by the appointment of a new judge, or by any other circumstances, the Calendar and Case Management Committee shall determine and indicate by order the method by which such reassignments shall be made.

(c) REASSIGNMENT OF CRIMINAL CASES.

If the Calendar and Case Management Committee, giving due consideration to LCrR 45.1 of these Rules, determines in its discretion that the interest of justice require the transfer of any criminal case from one judge to another, it may reassign the case.

(d) CALENDAR AND CASE MANAGEMENT COMMITTEE CALENDAR.

Any criminal case in which the only defendant is a fugitive or is mentally incompetent to stand trial shall be assigned to the Calendar and Case Management Committee by the judge upon whose calendar it appears after the case has been pending for 90 days or more. In cases involving two or more defendants, in the event that one or more are fugitives or are mentally

incompetent to stand trial, the case may go to trial as to those defendants who are not fugitives and are not mentally incompetent to stand trial. Upon the entry of a final judgment as to such defendants, the case shall be assigned to the Calendar and Case Management Committee for further action as to those defendants who are fugitives or mentally incompetent to stand trial. Additionally, the case of any criminal defendant who becomes a fugitive subsequent to a guilty plea but prior to sentencing shall be assigned to the Calendar and Case Management Committee by the judge upon whose calendar the case had appeared after such a fugitive has been an absconder for 90 days or more. The Calendar and Case Management Committee may assign one or more judges for the purpose of making a periodic call of such cases. The judge or judges so assigned shall from time to time consult with the United States Attorney to ascertain whether dismissals of particular criminal actions or civil commitment of defendants incompetent to stand trial shall be deemed advisable. If the reasons which made a case untriable cease to exist, the case shall be reassigned for trial to the transferring judge.

(e) TRANSFERS NOT PROVIDED FOR BY OTHER RULES.

If a case is transferred to the Calendar and Case Management Committee for any reason not otherwise provided for in this title, and the Calendar and Case Management Committee approves the transfer, it shall cause the case to be reassigned by random lot or otherwise as these Rules provided.

LCrR 57.14

DUTIES OF THE CHIEF JUDGE

In addition to the trial of such cases as he may undertake and other duties provided by these Rules, the Chief Judge shall:

(1) preside at the assignment of criminal cases;

(2) hear and determine requests for excuse from service on grand and petit juries;

(3) empanel the grand jury and hear and determine all matters relating to proceedings before the grand jury;

(4) receive indictments from the grand jury;

(5) consider applications for allowance under the Criminal Justice Act in a case not already assigned;

(6) dispose of matters requiring immediate action in criminal cases already assigned to any judge of the Court if that judge is unavailable or otherwise unable to hear the matters;

(7) hear and determine requests for review of rulings by magistrate judges in criminal cases not already assigned to a judge of the Court; and

(8) take such other administrative actions, after consultation with appropriate committees of the Court, as in his judgment are necessary to assure the just, speedy and inexpensive determination of cases, and are not inconsistent with these Rules.

The Chief Judge may, from time to time, reassign any of the foregoing duties to an active judge for a reasonable period.

COMMENT TO LCrR 57.14: *Paragraph (8) has been added to affirm the power of the Chief Judge to take other appropriate administrative actions not inconsistent with the Rules.*

LCrR 57.15

SANCTIONS IMPOSED

(a) COURT OFFICERS AND EMPLOYEES.

The Clerk or his/her designee may respond to or describe, in general terms, the process of creating case assignment decks for the automated case assignment system. In addition, the Clerk or his/her designee is also authorized to reveal the name of a judge assigned a case and the procedure by which the assignment was made. No employee of the Court may reveal to any other person, other than members of the Calendar and Case Management Committee and the Chief Judge, any list that may show the composition of any deck. No court employee may number or assign any case other than in the manner provided in these Rules or in the manner ordered by the Calendar and Case Management Committee. An employee who violates this provision may be subject to discharge from service.

(b) THIRD PARTIES.

No person shall directly or indirectly cause, or procure, or attempt to cause or procure, a court officer or employee to reveal to any person, other than the members of the Calendar and Case Management Committee, the sequence of the judges' names within each block of assignment cards, or to number or assign any case otherwise than herein provided or as ordered by the Calendar and Case

Management Committee. A violation of this Rule may be punished as a contempt of court.

COMMENT TO LCrR 57.15(a): *This amendment provides the Clerk's Office with sufficient latitude to generally discuss the creation of the case assignment decks. Further, it permits the Chief Judge to be apprised of the composition of any deck.*

LCrR 57.16

COMPLAINTS AGAINST JUDGES

The Judicial Conduct and Disability Act of 1980, 28 U.S.C. § 372(c), authorizes that complaints against United States circuit, district, bankruptcy, and magistrate judges who have "engaged in conduct prejudicial to the effective, and expeditious administration of the business of the courts" or who are "unable to discharge all the duties of office by reason of mental or physical disability" may be submitted to a judicial committee for review.

Written complaints may be filed with the Judicial Council of the District of Columbia Circuit, E. Barrett Prettyman Courthouse, 333 Constitution Avenue, N.W, Washington, D.C. 20001-2866, attention "Circuit Executive."

LCrR 57.17

DUTIES AND POWERS OF MAGISTRATE JUDGES

(a) GENERAL DUTIES.

The United States Magistrate Judges appointed by this Court pursuant to 28 U.S.C. § 631 shall have the duty and the power to:

(1) Act as committing magistrate judge in holding preliminary hearings for violations of the United States Code.

(2) Issue arrest warrants or summonses for violations of the United States Code.

(3) Issue search warrants.

(4) Conduct transfer proceedings and conduct proceedings incident to the transfer of criminal cases, as provided in Rules 5, 5.1 and 40, Federal Rules of Criminal Procedure.

(5) Receive indictments returned by the grand jury and issue bench warrants, when necessary, for defendants named in indictments.

(6) Conduct international extradition proceedings pursuant to 18 U.S.C. § 3181 *et seq*.

(7) Administer oaths and affirmations and take acknowledgments, affidavits and depositions.

(8) Impose or review conditions of release under applicable federal law.

(9) Order the return or the forfeiture of collateral or surety bonds.

(10) Issue subpoenas, *writs of habeas corpus ad testificandum,* or *habeas corpus ad proseduendum,* or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings.

(11) Order lineups, photographs, fingerprinting, palm-printing, voice identification, medical or physical examinations, and the taking of blood, urine, fingernail, hair and bodily secretion sampling (with any appropriate medical safeguards required by due process considerations) and handwriting exemplars.

(12) Ascertain whether defendants or any other persons entitled to counsel in criminal matters are represented by counsel and, in instances where any such person is financially unable to obtain counsel, appoint counsel to represent the person.

(13) Conduct proceedings and enter orders as described in LCrR 58.

(14) Refer a defendant to an available facility for a preliminary opinion; hear motions and enter orders for examinations to determine mental competency; and conduct competency hearings to determine a defendant's ability to understand and to participate in any proceeding which a magistrate judge is authorized to conduct.

(b) POWERS EXERCISED UPON REFERRAL FROM A DISTRICT JUDGE.

At the request of the district judge to whom the case is assigned, a magistrate judge shall:

(1) Conduct proceedings and enter orders or recommendations as described in LCrR 59.1 and LCrR 59.2 of these Rules.

(2) Dismiss indictments on motion of the United States and with the consent of the defendants.

(3) Conduct arraignments in felony cases pursuant to Rule 10, Federal Rules of Criminal Procedure.

(4) Conduct *voir dire* and select petit juries in felony cases, upon consent of the defendant.

(5) Conduct guilty plea proceedings in felony cases upon consent of the parties, and forward recommendations to the district judge to whom the case is assigned.

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

COMMENT TO LCrR 57.17: *The Rule has been revised to remove references to civil procedure. Section (a)(5) has been moved from the previous section (c) to clarify that indictments may be returned to magistrate judges in accordance with Rule 6(f), Federal Rules of Criminal Procedure. Other changes have also been made to conform to the Federal Rules of Criminal Procedure. Section (b)(4) has been amended to make explicit that, in order for voir dire to be conducted before a magistrate judge in a felony case, the parties must consent, in accordance with Peretz v. United States, 501 U.S. 923 (1991). Section (b)(5) has been added to give magistrate judges the authority to conduct guilty plea proceedings in felony cases upon the consent of the parties. Section (b)(6) has been moved from section (a) to make clear that it is one of the duties that may be performed only at the request of a judge.*

LCrR 57.21

ADMISSION TO THE BAR

(a) WHO MAY BE ADMITTED.

Admission to and continuing membership in the Bar of this Court are limited to attorneys who are (1) active members in good standing in the District of Columbia Bar; or (2) active members in good standing of the highest court of any state in which the attorney maintains his/her principal law office and is a member in good standing of a United States District Court that provides for reciprocal admission to members of the Bar of this Court.

(b) PETITION FOR ADMISSION.

Each applicant for admission shall file with the Clerk at least 14 days prior to hearing thereon (unless for good cause shown the judge shall shorten the time) a written petition for admission on a form supplied by the Clerk stating:

(1) applicant's residence and office addresses and office telephone number;

(2) the court where and date when admitted;

(3) applicant's legal training and experience;

(4) whether the applicant has ever been held in contempt of court and, if so, the nature of the contempt and the final disposition thereof;

(5) whether the applicant has ever been convicted of any crime (other than minor traffic offenses) or publicly reprimanded, publicly censured, suspended, disciplined or disbarred by any court, and, if so, the facts and circumstances connected therewith; and

(6) that the applicant is familiar with:

(i) the provisions of the Judicial Code (Title 28 U.S.C.) which pertain to the jurisdiction of and practice in the United States District Courts;

(ii) the Federal Rules of Civil or Criminal Procedure;

(iii) The Rules of the United States District Court for the District of Columbia; and

(iv) the *Rules of Professional Conduct* as adopted by the District of Columbia Court of Appeals except as otherwise provided by specific rule of this Court, and that he/she will faithfully adhere thereto; and

(v) D.C. Bar Voluntary Standards for Civility in Professional Conduct, adopted by the Bar on June 18, 1996 (attached as Appendix B to the Local Civil Rules).

(c) AFFIDAVIT OF A MEMBER OF THE BAR.

The petition shall be accompanied by an affidavit of an attorney who is a member in good standing of the Bar of this Court who has known the applicant for at least one year stating when the affiant was admitted to practice in this Court and how long and under what circumstances the attorney has known the

applicant and a statement of the applicant's character and experience at the bar. The affidavit shall be on a form supplied by the Clerk.

(d) HEARING ON THE PETITION.

The petition for admission shall be placed on the calendar of the Motions Judge and shall be heard on the first Monday of each month. If the first Monday is a holiday, the petition shall be heard on the following Monday. If the petition is granted, the applicant shall take the oath of office.

(e) OATH.

The oath which each applicant for admission to the Bar of this Court shall take shall be as follows:

I do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will respect courts of justice and judicial officers; that I will well and faithfully discharge my duties as an attorney and as an officer of the court; and in the performance of those duties I will conduct myself with dignity and according to both the law and the recognized standards of ethics of our profession.

(f) ADMISSION FEE.

Each petition shall be accompanied by payment in such amount and form as determined by the Court, which the Clerk shall deposit to the credit of a fund to be used for such purposes as inure to the benefit of the members of the bench and the Bar in the administration of justice which are determined to be appropriate by the Court from time to time. This fee shall be in addition to the statutory fee for administering the oath of office and issuing the certificate of admission.

(g) CLERK AS AGENT FOR SERVICE.

By being admitted to the Bar of this Court or by being permitted to practice in this Court under LCrR 44.1 and LCrR 57.23 or in fact practicing in this Court, the attorney shall be deemed to have designated the Clerk of the Court as agent for service of process in any disciplinary proceeding before this Court.

COMMENT TO LCrR 57.21: *This Rule clarifies the intention that continuing membership in the Bar is premised on a continuing duty to meet the requirements of this Rule. Section (a) parallels revised LCrR 44.1 regarding practice by attorneys.*

***COMMENT TO LCcR 57.21(b)(6)(v)**: Section (v) was added to LCrR 57.21(b)(6) to stress the importance that the Court places on the need for civility among lawyers who practice in the Court.*

LCrR 57.21.1

RENEWAL OF MEMBERSHIP

(a) RENEWAL OF MEMBERSHIP EVERY THREE YEARS.

Each member of the Bar of this Court shall renew his or her membership every three years by filing with the Clerk of the Court, on or before July 1st of every third year, a certificate in a form prescribed by the Clerk that the member is familiar with the then-current version of the Federal Rules of Civil Procedure, Federal Rules of Evidence, the Local Rules of this Court, *Rules of Professional Conduct* and the D.C. Bar Voluntary Standards for Civility in Professional Conduct. If the attorney appears in criminal cases, he or she must also certify familiarity with the then-current version of the Federal Rules of Criminal Procedure and the Sentencing Guidelines. (See LCrR 44.5(b).) Members of the Bar of this Court on the effective date of this Rule shall file certificates by March 1, 1990, and by July 1 of every third calendar year thereafter. Subsequently admitted members shall file certificates by July 1st of every third calendar year after the year in which they were admitted. The Clerk shall notify members of this certification requirement at least 60 days before the date for filing such certificates and renewals.

(b) RENEWAL FEE.

Each certificate required by (a) above shall be accompanied by a payment of $25 in a form determined by the Clerk. The fee shall be $10 for the initial certificate filed by any person admitted to the Bar of this Court after July 1, 1986. The Clerk shall deposit the fees received to the credit of the fund described in LCvR 83.8(f) to be used for the purposes specified in that Rule, including the defraying of expenses of maintaining a current register of members in good standing and to administer the counseling program outlined in LCrR 57.31.

(c) FAILURE TO RENEW.

An attorney who fails to file the required certifications and pay the renewal fee shall be provisionally removed from the list of members in good standing and pursuant to LCrR44.1(a) shall not be permitted to practice before this Court until restored as a member in good standing. The name of the attorney shall be restored to the list of members in good standing upon filing of the required certificates and payment of the delinquent fee within five years after the due

date. At the end of five years from the due date, the name will be permanently removed from the roll, without prejudice to an application for admission as a new member.

COMMENT TO LCrR 57.21.1(a): *This amendment brings the rule in compliance with LCrR57.21(b)(6)(v).*

LCrR 57.22

COURT APPOINTED REPRESENTATION

(a) Attorneys who are members in good standing of the Bar of this Court shall be required to assist or represent the needy in civil matters before this Court whenever requested by the Court and, if necessary, without compensation and to accept appointments under the Criminal Justice Act unless exempted by rule or statute.

(b) Attorneys who are members in good standing of the Bar of the District of Columbia or of any United States Court or of the highest court of any state may assist or represent the needy in civil matters before this Court without compensation, provided that such attorneys file a certificate under LCrR 44.1(g) and comply with the provisions of LCrR 57.26

LCrR 57.23

RULES OF DISCIPLINARY ENFORCEMENT

(a) PROMULGATION OF RULES.

This Court, in furtherance of its inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it under LCrR 44.1 or LCrR 57.21 of these Rules, or who are admitted for the purpose of a particular proceeding (*pro hac vice*), or who otherwise appear before the Court, promulgates the following Rules of Disciplinary Enforcement superseding all of its other Rules pertaining to disciplinary enforcement heretofore promulgated. These Rules shall become effective on May 1, 1987, provided, however, that any formal disciplinary proceeding then pending before this Court shall be concluded under the procedure existing prior to the effective date of these Rules.

(b) ATTORNEYS SUBJECT TO RULES.

These Rules shall apply to all attorneys admitted to membership in the Bar of this Court, to all attorneys permitted to practice before this Court under LCrR 44.1, and to all attorneys who appear before this Court or who participate in proceedings, whether admitted or not. All attorneys to whom these Rules apply shall be subject to the disciplinary jurisdiction of this Court for any alleged misconduct arising in connection with such proceeding. All such attorneys shall also be deemed thereby to have designated the Clerk of the Court as agent for service of process under these Rules governing discipline and disciplinary proceedings.

COMMENT TO LCrR 57.23: *Section (a) incorporates the former Preamble to the Rules of Disciplinary Enforcement. Section (b) was added to make clear that the Court has authority to discipline all attorneys who appear before it, whether admitted or not. Because this Rule is broader in its application than either LCvR 83.2 or 83.8, it restates the provision that all attorneys subject to these Rules shall be deemed to have designated the Clerk of the Court as agent for service of process for purposes of the disciplinary rules.*

LCrR 57.24

DISCIPLINARY PANEL

(a) APPOINTMENT.

The Chief Judge shall appoint three judges of the Court to be known as the Disciplinary Panel and shall appoint two additional judges to serve as alternate members. The Disciplinary Panel shall have jurisdiction over all judicial proceedings involving the disbarment, suspension, censure or other discipline of attorneys subject to these Rules.

(b) POWERS OF INDIVIDUAL JUDGES.

Nothing contained in these Rules shall be construed to deny to this Court or to any individual judge or United States Magistrate Judge thereof or to the United States Bankruptcy Judge such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure, or to deprive any judge or magistrate judge of his/her inherent power of discipline for conduct committed in the presence of the Court.

COMMENT TO LCrR 57.24: *Section (b) makes clear the power of an individual judge, Bankruptcy Judge or Magistrate Judge to maintain control over proceedings through the contempt power or otherwise to discipline for conduct in the presence of the Court.*

LCrR 57.25

COMMITTEE ON GRIEVANCES

(a) APPOINTMENT.

There shall be established a standing committee appointed by the Court to be known as the Committee on Grievances (the "Committee") consisting of six or more members of the Bar of this Court appointed for terms of three years and until their successors have been appointed. The terms of the members shall be staggered so as to provide continuity. No members of the Committee on Grievances shall serve more than two consecutive terms.

The Court shall designate a Chairman of the Committee and a Vice Chairman who shall act in the absence or disability of the Chairman. Members of the Committee shall serve without compensation except that the Court may authorize payments in lieu of expenses from fees collected by the Clerk pursuant to Rule LCrR 57.21(f).

(b) DUTIES.

The Committee shall be charged with receiving, investigating, considering and acting upon complaints against all attorneys subject to these Rules.
LCrR 57.23(b) relating to disbarment, suspension, censure, reprimand or other disciplinary action, and petitions for reinstatement of attorneys.

(c) CLERK.

The Clerk shall with approval of the Court, appoint a Clerk to the Committee who shall have all powers vested in a Deputy Clerk of the Court. The Clerk to the Committee shall assist the Committee, maintain records of its proceedings, investigations and prosecutions, and proceed as otherwise set forth in these Rules.

(d) CONFIDENTIALITY AND IMMUNITY.

All proceedings before the Committee involving allegations of misconduct of an attorney and all documents and charges presented to the Committee shall remain confidential and privileged. All formal charges prepared by the Committee and directed to be filed by the Court, attorney or grievance cases filed with the Clerk of the Court, court orders and subsequent pleadings, answers or responses filed therein shall be matters of public record.

All meetings and hearings of the Committee shall be held *in camera* and the business conducted therein shall remain confidential and privileged. The Committee's Chairman or, in the Chairman's absence or disability, the Vice Chairman shall have discretion in determining the manner and extent of cooperating with disciplinary agencies from other jurisdictions. All records and minutes of the Committee shall be maintained under seal and shall not be disclosed except by order or direction of the Chief Judge (or the designee of the Chief Judge).

When exercising the power delegated by the Court, Committee members shall be absolutely immune from suit for any conduct in connection with their duties. Complaints submitted to the Committee on Grievances pursuant to LCrR 57.27 shall be absolutely privileged and no claim or action predicated thereon may be instituted or maintained.

COMMENT TO LCrR 57.25: *Section (c) governs the responsibilities of the Clerk to the Committee. The most important change is Section (d) which is added to describe the practice of the Committee on Grievances and the Court relating to confidentiality and disclosure of disciplinary proceedings. It clarifies existing practice by explicitly stating which proceedings are confidential and which are not. The Rule does not bar disclosure of information by order of the Chief Judge or his/her designee in connection with judicial appointments. In addition, consistent with rules of other courts and case law, the Rule provides that Committee members shall be immune from suit for conduct in the course of their duties in exercising the power delegated to the Committee members by the Court.*

LCrR 57.26

OBLIGATIONS OF ATTORNEYS

(a) RULES OF PROFESSIONAL CONDUCT.

Violations of the Rules of Professional Conduct (as adopted by the District of Columbia Court of Appeals except as otherwise provided by specific Rule of this Court) by attorneys subject to these Rules shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

(b) DUTY TO NOTIFY THE COURT.

It shall be the duty of each attorney subject to these Rules to notify promptly the Clerk of this Court of:

(1) conviction for any crime other than minor traffic offenses, giving the name of the court in which the attorney was convicted, the date of conviction, docket number, the offense for which the attorney was convicted and the sentence;

(2) any disbarment, suspension or other public discipline imposed by any federal, state or local court, giving the name of the court, the date of such disbarment, suspension or other public discipline, the docket number, and a description of the discipline imposed and the offense committed in connection therewith; or any disbarment by consent or resignation while an investigation into allegations of misconduct is pending;

(3) whether the attorney has ever been held in contemp of court and if so, the nature of the contempt and the final disposition thereof; and

(4) any change in the attorney's office address or telephone number as provided for in (c) below.

Failure to provide the notice required by this paragraph may constitute a separate ground for discipline.

(c) CHANGES IN ADDRESS.

Notice to the Clerk of any change in the attorney's address or telephone number (see (b)(4) above) shall be filed in writing within 14 days of the change. The attorney shall also within 14 days file a *praecipe* reflecting such change in each case which the attorney has pending before this Court, serving a copy upon each of the attorneys in these cases.

(d) DUTIES OF THE CLERK UPON NOTIFICATION.

Upon being informed that an attorney subject to these Rules has been convicted of any crime, disciplined by any court, held in contempt by any court, disbarred by consent, or resigned from any Bar pending an investigation into allegations of misconduct, the Clerk shall promptly obtain a certified or exemplified copy of such conviction, disciplinary judgment or other court order and present it to the Committee which shall proceed in accordance with these Rules.

COMMENT TO LCrR 57.26: *Section (b) combines several former Rules relating to an attorney's obligations under these Rules to notify the Court of certain facts: (1) conviction of crime; (2) disbarment, suspension or public discipline; (3) citation for contempt; and (4) change in address or telephone number. The duty of notification in LCrR 57.26(b) regarding public discipline does not include sanctions imposed under civil rules other than contempt as*

specified in subsection (b)(3). Failure to provide notice may constitute grounds for disciplinary action.

Section (c) has been added to impose on the Clerk to the Grievance Committee the duty to obtain a certified or exemplified copy of such conviction, disciplinary judgment or court order.

LCrR 57.27

GROUNDS AND PROCEDURES FOR DISCIPLINE

(a) SERVICE OF PROCESS.

Service of process under these Rules shall be made by certified mail addressed to the attorney (hereinafter attorney or respondent) at the last known address or at the last recorded address filed with the Clerk of the Court as required pursuant to LCrR 57.21(g). If service cannot be so made, service shall be sufficient when served on the Clerk of this Court and all time periods specified in these Rules shall run from the time of such service. If service is made by serving the Clerk, a courtesy copy shall be mailed to the respondent by first class mail at his/her last known address.

(b) ATTORNEYS CONVICTED OF CRIMES.

(1) **FELONIES.**

Upon presentation to the Disciplinary Panel of a certified copy of a court record demonstrating that an attorney subject to these Rules has been found guilty of a felony in any court, the attorney shall be immediately suspended from practicing before this Court by order of the Disciplinary Panel, whether the finding resulted from a plea of guilty or *nolo contendere* or from a verdict after trial or otherwise, and regardless of the pendency of an appeal. The Disciplinary Panel may defer entry of the order or set aside an order of suspension when it appears to the Panel in the interest of justice to do so.

Upon presentation of proof that the conviction is final, and regardless of the pendency of an appeal or other review of the conviction or of a Petition for *Writ of Certiorari*, the respondent shall be disbarred and the attorney's name shall be struck from the roll of members of the Bar of this Court by order of the Disciplinary Panel, unless within a period of 30 days from the date of the order, the respondent shows cause why disbarment would not be in the interest of justice.

(2) **MISDEMEANORS.**

An attorney subject to these Rules who shall be convicted in any court of a misdemeanor may be disciplined in such manner and to such extent as the Disciplinary Panel may determine and may upon petition of the Committee and for good cause shown, be temporarily suspended pending a final decision of the Disciplinary Panel.

Upon receipt of a certified copy of such judgment of conviction, the Committee shall obtain an order from the Disciplinary Panel requiring the respondent to show cause within thirty days after service in accordance with LCrR 57.27(a) why the attorney should not be disciplined. If the respondent files a timely Answer, the Committee shall have 30 days within which to file a response thereto if it so desires. The Committee shall serve a copy of its response, if any, upon the respondent or respondent's counsel of record by first class mail, or failing that, in accordance with LCrR 57.27(a).

Upon the filing of the respondent's Answer to the Order to Show Cause and any response thereto by the Committee, or if no answer has been filed, upon the filing of a recommendation by the Committee, the matter shall be promptly submitted to the Disciplinary Panel for its consideration. The Disciplinary Panel may, in its discretion, schedule a hearing. If a hearing is scheduled, the Chairman or designated member(s) of the Committee shall appear at the hearing and offer proof or arguments pertinent to the issues. After the hearing or, if no hearing is scheduled, upon a review of the papers submitted, the Disciplinary Panel shall take such action as these Rules and justice may require. In all proceedings hereunder the certified copy of judgment of conviction shall constitute conclusive proof of the respondent's guilt of the conduct for which the respondent was convicted. The pendency of an appeal or other review of the conviction or of a petition for *writ of certiorari* will not constitute a ground for failing to proceed in accordance with this Rule absent extraordinary circumstances and for good cause shown.

(3) **REINSTATEMENT FOLLOWING SUSPENSION.**

An attorney suspended under LCrR 57.27(b)(1) or (2) will be reinstated immediately upon the filing of a certificate demonstrating that the conviction has been reversed, vacated, or set aside, but the reinstatement will not terminate any formal disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Committee on the basis of the available evidence.

(c) DISCIPLINE IMPOSED BY OTHER COURTS.

(1) **POLICY OF RECIPROCAL DISCIPLINE.**

An attorney subject to these Rules who has been suspended for more than 30 days or disbarred by another court shall be automatically suspended from practice in this Court. The suspension shall be effective upon service of Temporary Suspension and Show Cause Order in accordance with these Rules. An attorney who has been suspended for 30 days or less by another court shall have the fact of that discipline noted by the Clerk on the Lawyers' Register maintained by this Court, and no further proceedings shall be had thereon, unless the Committee on Grievances shall determine that the facts underlying the discipline warrant a proceeding for the imposition of discipline by this Court. Notations on the Lawyers' Register do not constitute discipline imposed by the Court and they shall be available only to the Court and to the Committee and shall not be matters of public record.

(2) **ISSUANCE OF TEMPORARY SUSPENSION AND SHOW CAUSE ORDER.**

Upon receipt of a certified or exemplified copy of a judgment or order from another court suspending or disbarring an attorney subject to these Rules, the Disciplinary Panel of this Court shall issue a Temporary Suspension and Show Cause Order suspending the attorney from practice before this Court pending a final disposition under these Rules, except where it finds extraordinary circumstances. Respondent may answer and show cause within 30 days after service of the Order why the imposition of the identical discipline by the Court would be unwarranted and the reasons thereof.

(3) **DUTIES OF THE CLERK.**

The Clerk to the Committee thereupon shall cause to be served on the attorney the following documents: a copy of the judgment or order of discipline imposed by the other court; a certified copy of this Court's Temporary Suspension and Show Cause Order; and a copy of LCrR 57.27.

(4) **PROCEDURES WHEN RESPONDENT FAILS TO ANSWER.**

If respondent fails to answer to show cause within 30 days from service of the Temporary Suspension and Show Cause Order, this Court shall issue an Order vacating the Temporary Suspension and Show Cause Order and imposing the identical discipline or such other discipline it

deems appropriate, unless it finds that upon the face of the record on which the discipline by the other court is predicated it clearly appears:

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

(ii) that proof establishing the misconduct gives rise to a reasonable doubt that this Court could not, consistent with its duty, accept as final the conclusion of the disciplining court; or

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

(iv) that the misconduct established is deemed by this Court to warrant substantially different discipline; or

(v) that the misconduct on which the discipline was imposed by the other court does not constitute misconduct in the District of Columbia.

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

(5) **PROCEDURES WHEN RESPONDENT ANSWERS.**

If the respondent files a timely Answer, the Committee shall have 30 days within which to file a response and make a recommendation to the Court. Upon consideration of the papers submitted by the respondent and by the Committee, the Court shall either (1) enter an Order vacating the Temporary Suspension and Show Cause Order and imposing the identical discipline or such other discipline it might find appropriate, or (2) if the Court finds that, upon the face of the record on which the discipline in another jurisdiction is predicated it clearly appears that one or more of the factors listed in subparagraphs (4)(i)-(v) exists, it shall enter such other order as it deems appropriate.

(6) **CENSURE OR REPRIMAND.**

Where discipline imposed by the other court is a public censure or reprimand, the Clerk shall note the fact of that discipline on the Lawyers' Register maintained by this Court, and no further proceedings shall be had thereon. Notations on the Lawyers' Register do not constitute discipline imposed by this Court and they shall be available only to the Court and to the Committee and shall not be matters of public record.

(7) **STAYS.**

If the discipline imposed by another court has been stayed, any reciprocal discipline proceeding in this Court may, upon motion of the respondent, be deferred by order of this Court until the stay expires and until further order of this Court. In the absence of a stay of discipline imposed by such other court, neither a motion for reconsideration or motion for rehearing or rehearing *en banc* filed in the other court or petition for a *writ of certiorari* will be the basis for a deferral of the proceedings in this Court absent good cause shown.

(d) COMPLAINTS OF MISCONDUCT FILED IN THIS COURT.

(1) **COMPLAINTS GENERALLY**

Any person seeking to charge an attorney subject to the Rules with any act or omission which may justify disbarment, suspension, censure, reprimand or other discipline shall do so by a clear and concise written statement of facts in support of the allegations, subscribed and under oath or affirmed under the penalty of perjury pursuant to the United States Code, Title 28, Section 1746. The Complaint shall be presented to the Committee by lodging it with the Clerk to the Committee. The Committee shall have the inherent power without any formal Complaint to inquire into misconduct of attorneys subject to these Rules.

COMMENT TO LCrR 57.27(d)(1): *This rule was modified to require that written complaints of misconduct contain a clear and concise statement of facts supporting the allegations made against attorneys.*

(2) **COMPLAINTS BY A COURT OR A JUDGE.**

Any court, judge or United States magistrate judge in the District of Columbia may refer to the Committee the name of any attorney subject to these Rules on a Complaint that such attorney has engaged in conduct, which, if substantiated, would warrant the imposition of discipline.

(3) **INVESTIGATION.**

Complaints received by the Committee shall be reviewed to determine if the Complaint is appropriate for action. If the Complaint is insufficient on its face to warrant investigation, the Committee may discharge the complaint and advise the complainant that no action will be taken. If the Committee decides that the Complaint or information otherwise received by the Committee requires action, the Committee is authorized to (1) investigate the matter itself; (2) refer the matter to the

Office of Bar Counsel, the Board on Professional Responsibility, District of Columbia Court of Appeals; (3) informally seek information from the respondent; or (4) require a formal Answer from the respondent in accordance with subsection (d)(4). To further any investigation, the Chairman, or in his absence, the Vice Chairman is authorized to issue subpoenas commanding the production of books, papers, documents, records or tangible items. If following any of these actions the Committee decides no further action is warranted, the Committee may, if its investigation was based on receipt of a complaint, discharge the Complaint and so inform the complainant and the respondent. If the Committee's investigation was based on information otherwise received and the respondent was made aware by the Committee of its investigation, the Committee shall notify the respondent that it has decide that no further action is warranted. The Committee may, as part of its notice to the respondent discharging the Complaint, provide an informal, non-reportable cautionary or educational statement, which shall not be considered discipline.

(4) **SERVICE OF COMPLAINT; ANSWER.**

If the Committee determines that a formal Answer is required from the respondent, a copy of the Complaint as received by the Committee or as prepared by it based on information otherwise received shall be served upon the respondent and he/she shall be required to answer within 30 days after the date of service. An Answer to a Complaint shall be in writing, subscribed and under oath or affirmed under the penalty of perjury in a form prescribed by the provisions of the United States Code, Title 28, Section 1746 and shall be accompanied by a list of all courts before which the respondent is admitted to practice. Upon receipt of the Answer, the Clerk to the Committee shall mail a copy thereof to the complainant, if there is one, who may reply to the Answer within 14 days of the date of the transmittal letter from the Clerk of the Committee. A copy of any reply to the Answer to the Complaint shall be served upon the respondent. If a respondent is served with a copy of a Complaint by the Committee and fails to answer within the time allowed by these Rules, the matter shall be certified to the Disciplinary Panel for its appropriate action.

(5) **SUBCOMMITTEE OF INQUIRY.**

The Chairman may designate three members of the Committee to sit as a Subcommittee of Inquiry and shall designate one as Chairman of the Subcommittee. The Chairman of the Subcommittee of Inquiry is hereby designated and appointed a Master with authority to cause subpoenas to

be issued commanding the attendance of witnesses and/or parties at any hearings, as well as commanding the production of books, papers, documents, records or tangible things designated therein at such hearing. The Chairman of the Subcommittee as such Master is further authorized to administer oaths to the parties and witnesses. Should any witness and/or party fail or refuse to attend or to testify under oath, the witness' or party's name may be certified to the Disciplinary Panel of the Court, whereupon the Disciplinary Panel may refer the matter to the United States Attorney or to the U.S. Department of Justice to bring formal criminal contempt charges against such witness and/or party for so refusing. If the witness or party is found guilty of contempt, the Court shall administer such punishment as may be appropriate.

(6) **RIGHT TO COUNSEL IN DISCIPLINARY PROCEEDINGS.**

The respondent shall be entitled to be represented by counsel who may appear in the respondent's behalf at any time during the investigation or after a Complaint has been served upon respondent.

(7) **SUBMISSION OF CHARGES.**

If following investigation the Subcommittee of Inquiry recommends, and a majority of the committee concurs, the Committee shall prepare charges and submit them to the Disciplinary Panel of the Court or, in its discretion with or without preparing charges refer the matter to the Office of Bar Counsel, the Board on Professional Responsibility, District of Columbia Court of Appeals with a request that that Office take whatever action it deems appropriate. If submitted to the Disciplinary Panel and the Panel orders the charges to be filed, the Clerk shall file them and issue a summons directed to the respondent, commanding respondent to answer. The summons and a copy of the charges shall be served in accordance with these Rules. The respondent shall answer the charges within 30 days after the effective date of service and shall file with the Answer a list of all courts before which the attorney is admitted to practice. If no Answer is received within 30 days or such additional time as the Disciplinary Panel may allow, the charges may be taken as admitted and the Disciplinary Panel may reprimand, censure, suspend, disbar or otherwise discipline the respondent by entering an appropriate order.

(8) **HEARINGS AND ORDERS OF THE DISCIPLINARY PANEL OF THE COURT.**

When the respondent has filed an Answer, the case shall be set down for hearing before the Disciplinary Panel and a member of the Committee designated by the Chairman shall appear at the hearing to offer proof or

arguments pertinent to the issues. If the charges are sustained by clear and convincing evidence, the Disciplinary Panel may reprimand, censure, suspend, disbar or otherwise discipline the respondent by entering an appropriate order. Any knowing violation of the order of judgment shall be deemed a contempt of court.

(e) DISBARMENT ON CONSENT.

(1) **BY THIS COURT.**

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 not resign from this Bar, but may consent to disbarment. The attorney must deliver to this Court an affidavit stating that the attorney desires to consent to disbarment and that:

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

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

Upon receipt of the required affidavit, the Disciplinary Panel shall enter an order disbarring the attorney. The order disbarring the attorney on consent shall be a matter of public record, but the affidavit shall be sealed and not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

(2) **BY OTHER COURTS.**

Any attorney admitted to practice before this Court who shall be disbarred on consent or who shall resign from the Bar of any court of the United States or from the bar of any State, Territory, District, Commonwealth or Possession of the United States while an investigation into allegations of misconduct is pending, shall so advise this Court and submit a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation. If no such order or judgment is submitted, the Clerk shall obtain it from the other court. The Disciplinary Panel thereupon shall enter an order disbarring the attorney and directing that the attorney's name be stricken from the roll of attorneys admitted to practice before this Court unless the attorney shows why it would not be in the interest of justice to do so. A certified or exemplified copy of the judgment or order accepting such

disbarment on consent or resignation is conclusive proof of such disbarment on consent or resignation.

COMMENT TO LCrR 57.27: *LCrR 57.27 outlines the grounds and procedures for discipline of: attorneys convicted of crimes; attorneys disciplined by other courts; attorneys who are the subject of complaint of misconduct filed in this Court; and attorneys disbarred on consent.*

Section (a) governs service of process in disciplinary proceedings. It makes clear that the primary method of service is by mail and the alternative method is by service on the Clerk of the Court.

Section (b) provides for immediate suspension upon proof of a felony conviction. The Disciplinary Panel may defer or set aside entry of the order in the interest of justice. This provision is to be invoked only in extraordinary circumstances. The Rule further provides for disbarment upon final conviction, regardless of the pendency of an appeal or other review, unless respondent shows cause within 30 days why disbarment would not be in the interest of justice.

With respect to misdemeanors, the Rule essentially maintains the show cause procedures in effect under former Rule 4-3(i)(b). With respect to both felonies and misdemeanors, the Rule makes clear that the pendency of an appeal or other review of conviction or of a petition for writ of certiorari *does not affect the imposition of discipline. This provision was added to solve the recurring problem of a year or more delay attendant on petitions for* certiorari*, during which time the attorney might be permitted to practice before this Court.*

Subsection (b)(3) has been added to provide for reinstatement after suspension upon proof that the underlying conviction has been reversed, vacated or set aside.

Section (c) governs discipline imposed by other courts and is a significant change from former Rule 4-3(II). The Rule provides that an attorney subject to these Rules who is suspended or disbarred by another court shall be suspended from practice in this court during the pendency of disciplinary proceedings. The procedures adopted are consistent with the practice in the United States Supreme Court, many United States Court of Appeals and a number of other district courts. By providing the attorney an opportunity to show cause why reciprocal discipline should not be imposed, the Rule satisfies the due process requirements of the relevant Supreme Court cases. See, e.g. In Re Ruffalo*, 390 U.S. 544 (1968);* Theard v. United States*, 354 U.S. 278(1957);* Selling v. Radford*, 243 U.S. 46 (1917). The Rule corrects the inadequacies of the former show cause procedures that permitted a respondent to continue to practice during the pendency of disciplinary*

proceedings. The revised procedure, requiring immediate temporary suspension followed by a show cause order, shifts the burden of going forward to the respondent to show cause why identical reciprocal discipline should not be imposed.

The provision for suspension eliminates the procedure of noting short-term suspensions imposed by other courts on this Court's records, rather than imposing reciprocal discipline (former Rule 4-3(i)(e)). Those procedures were unworkable and caused inequities. Under the procedures, censures and reprimands will be noted, but reciprocal discipline proceeding will be followed in the case of all suspension or disbarments.

Subsection (c)(7) makes clear that if discipline imposed by another court has been stayed, reciprocal discipline in this Court may be deferred. However, in the absence of a stay, neither a motion for reconsideration nor a motion for rehearing or rehearing en banc *nor a petition for writ of* certiorari *serves to defer disciplinary proceedings in this Court absent good cause shown.*

Section (d) sets forth in one section all the procedures relating to Complaints filed in this Court. Subsection (d)(1) specifies that the Committee has the inherent power to inquire into misconduct of attorneys subject to these Rules, without formal Complaint. Subsection (d)(3) was amended to clarify that the Committee on Grievances may include an informal, non-reportable cautionary or educational statement as part of a notice discharging a Complaint without further actions.

Subsection (d)(7) provides that if a respondent fails to respond after a formal complaint is filed, the Disciplinary Panel has the power to take the allegations as admitted and impose appropriate discipline. Subsection (d)(8) sets forth the clear and convincing standard of proof for the imposition of discipline.

Section (e) governs disbarment on consent. It makes clear that there can be disbarment on consent in this Court or reciprocal disbarment for disbarment on consent by another court. It changes the former Rule by providing that an attorney under investigation or subject to pending proceedings involving allegations of misconduct may not resign from the Bar of this Court, but may only consent to disbarment.

Revised subsection (e)(1) governing disbarment on consent by this Court makes two substantive changes. First it permits the attorney affidavit, which is the predicate for disbarment on consent, to be filed under seal. Second, it eliminates the former requirement that an affidavit filed by an attorney seeking disbarment on consent contain an

acknowledgment that the material facts alleged are true. This revision was adopted because it was felt that it was in the public interest to encourage consent disbarments.

With respect to disbarment on consent or resignation in other courts, subsection (e)(2) is changed only to the extent of providing the attorney an opportunity to show cause why such disbarment would not be in the interest of justice.

COMMENT TO LCrR 57.27(c)(1): *Typically, an order of suspension entered by the District of Columbia Court of Appeals by its terms is effective 30 days from the date of its entry. The Disciplinary Panel of this Court signs its Temporary Suspension and Show Cause Order after the effective date of suspension order in the other court.*

Since a respondent has 30 days within which to answer an order to show cause in this Court, a short-term suspension by another court has often expired and a respondent automatically reinstated in the other court before the time an answer is due in this Court. Thus, no useful purpose is served by initiating reciprocal disciplinary proceedings in cases involving suspensions of 30 days or less.

LCrR 57.28

NOTIFICATION TO DISCIPLINARY AUTHORITIES

(a) NOTIFICATION TO OTHER COURTS.

When any person subject to these Rules has been convicted of any crime or disbarred, suspended, reprimanded, censured or disbarred on consent by this Court, the Clerk shall within ten days transmit to the disciplinary authorities in any other jurisdictions or courts in which the attorney is admitted to practice, a certified copy of the conviction or a certified copy of the judgment or order of disbarment, suspension, reprimand, censure or disbarment on consent. The Clerk shall also serve a certified copy of such judgment or order and a copy of such notice upon the respondent in accordance with LCrR 57.27(a).

(b) NOTIFICATION TO NATIONAL DISCIPLINE DATA BANK.

The Clerk 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.

COMMENT TO LCrR 57.28: *LCrR 57.28 has been adopted from the Model Rules of Disciplinary Enforcement. The Purpose is to foster cooperation in reporting disciplinary actions.*

LCrR 57.29

REINSTATEMENT

(a) AFTER DISBARMENT OR SUSPENSION.

An attorney suspend for a specific period shall be automatically reinstated at the end of the period upon the filing with the Court of an affidavit of compliance with the provisions of the order of suspension (including, in the case of reciprocal discipline, proof that the attorney has been reinstated by the court in which the attorney was disciplined). An attorney suspended for an indefinite period may not resume practice until the suspension is terminated by an order of the Disciplinary Panel. A disbarred attorney may not resume practice until reinstated by order of the Disciplinary Panel.

(b) TIME OF APPLICATION FOLLOWING DISBARMENT OR SUSPENSION FOR INDEFINITE PERIOD.

A person who has been disbarred may not apply for reinstatement until the expiration of at least five years from the effective date of the order of disbarment. A person who has been suspended for an indefinite period may not apply for termination of the suspension until after the expiration of the minimum period fixed by the order of suspension or, if no minimum period is fixed, for a period of three years, or, in the case of reciprocal discipline, upon proof that the attorney has been reinstated by the court in which the attorney was discipline.

(c) HEARING ON APPLICATION.

Petitions for reinstatement under this Rule shall be filed with the Clerk to the Committee. The Committee shall have 30 days within which to respond. The attorney shall have the burden of demonstrating by clear and convincing evidence that he/she has met the conditions of reinstatement or termination of suspension as provided for under these Rules. The Disciplinary Panel may hold a hearing on the application or, in its discretion, decide the matter on the basis of the papers filed.

(d) CONDITIONS OF REINSTATEMENT OR TERMINATION OF SUSPENSION.

If the Disciplinary Panel finds the attorney unfit to resume the practice of law, the petition for reinstatement shall be denied. If the Disciplinary Panel finds the attorney fit to resume the practice of law, it shall issue an order reinstating the attorney or terminating the suspension. The order may make reinstatement or termination of the suspension 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 attorney's misconduct which led to the suspension or disbarment. In the discretion of the Disciplinary Panel, reinstatement or termination of suspension may also be conditioned 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 indefinite suspension or disbarment.

(e) SUCCESSIVE PETITIONS.

No petition for reinstatement or for termination of suspension under this Rule shall be filed within one year following an order denying a petition for reinstatement or termination of suspension filed by or on behalf of the same person.

(f) NOTIFICATION OF REINSTATEMENT.

Upon entry of an Order of Reinstatement or an Order Termination Suspension, the Clerk shall promptly notify the same persons who notified of the disciplinary orders.

COMMENT TO LCrR 57.29: *Section (a) provides that to apply for reinstatement in the case of reciprocal discipline, the attorney must submit proof of reinstatement by the court in which the attorney was disciplined. Section (c) provides that the Committee will have 30 days to respond to a petition for reinstatement. The provision outlining the respondent's burden in obtaining reinstatement requires proof that the respondent has met the conditions of reinstatement under these Rules.*

Section (d) sets forth the conditions for reinstatement. It provides that the Disciplinary Panel has the discretion to condition reinstatement or termination of suspension upon proof of competency and learning in the law, eliminating the provision that such proof would only be required if the disbarment or suspension lasted for five years or more. Section (f) provides for notification of reinstatement to the attorney.

LCrR 57.30

PROCEEDINGS WHERE AN ATTORNEY IS DECLARED TO BE MENTALLY INCOMPETENT OR IS ALLEGED TO BE INCAPACITATED

(a) ATTORNEYS DECLARED INCOMPETENT OR PHYSICALLY INFIRM.

If an attorney who is subject to these Rules has been judicially declared incompetent or involuntarily committed to a mental hospital, or has resigned from the bar of any court or been suspended from such a bar on the basis of such mental incompetence or incapacity or on the basis of physical infirmity or illness, the Disciplinary Panel, upon proper proof of the fact, shall enter an order suspending such attorney from the practice of law effective immediately and for an indefinite period until further order of the Court. A copy of such order shall be served upon such attorney, his/her guardian and the administrator of any hospital or other institution if the Court is informed such attorney is a patient thereof in such manner as the Disciplinary Panel may direct.

(b) ATTORNEYS ALLEGED TO BE INCAPACITATED.

Whenever the Committee shall petition the Disciplinary Panel to determine whether an attorney who is subject to these Rules is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of the use of drugs or intoxicants, the Disciplinary Panel may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Disciplinary Panel shall designate. Failure or refusal to submit to such examination shall be prima facie evidence of incapacity. If upon due consideration of the matter the Disciplinary Panel concludes that the attorney is incapacitated from continuing to practice law it shall enter an order suspending the attorney on the ground of such disability for an indefinite period and until further order of the Court.

The Disciplinary Panel may provide for such notice to the attorney of proceedings in the matter as it deems proper and advisable and may appoint an attorney to represent the attorney if the attorney is without representation.

(c) CLAIM OF DISABILITY DURING DISCIPLINARY PROCEEDINGS.

If during the course of a disciplinary proceeding the attorney contends that he/she is suffering from a disability by reason of mental or physical infirmity or illness or because of the use of drugs or intoxicants which makes it impossible for the attorney to defend adequately, the Disciplinary Panel shall

enter an order immediately suspending the attorney from continuing to practice law until a determination is made of the attorney's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of paragraph (b) above.

(d) APPLICATION FOR REINSTATEMENT.

Any attorney suspended under this Rule for incompetency, mental illness, physical infirmity or because of the use of drugs or intoxicants may apply to the Disciplinary Panel for reinstatement immediately and thereafter once a year or at such shorter intervals as the Disciplinary Panel may direct in the order of suspension. The application shall be granted by the Disciplinary Panel, upon a showing by clear and convincing evidence that the attorney's disability has been removed and that the attorney is fit to resume the practice of law provided, however, that if the suspension was based on resignation from the bar of another court the attorney must provide proof that the attorney has been reinstated in the other court, or that, if the suspension from practice before this Court was based on a finding of incompetence or incapacity by another court, it clearly appears on the face of the record that any of the five elements set forth in LCrR 57.27(c)(4) exist. The Disciplinary Panel may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed including a direction for an examination of the attorney. The Disciplinary Panel may direct that the expenses of such an examination shall be paid for by the attorney.

If an attorney has been suspended because of a judicial declaration of incompetence or involuntary commitment to a mental hospital and has thereafter been judicially declared to be competent, the Disciplinary Panel may dispense with further evidence and direct the reinstatement of the attorney upon such terms as it deems proper and advisable.

(e) EVIDENTIARY HEARING.

If the Disciplinary Panel holds an evidentiary hearing to determine whether an attorney is incapacitated or on an attorney's application for reinstatement under this Rule, the Chairman of the Committee shall appoint one or more members of the Committee to appear for the purpose of examining and cross-examining witnesses and /or offering proof or argument pertinent to the issues.

(f) WAIVER OF PHYSICIAN-PATIENT PRIVILEGE.

The filing of an application for reinstatement by an attorney who has been suspended for disability shall constitute a waiver of any physical patient privilege with respect to any treatment of the attorney during the period of the attorney's disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital by whom or in which

the attorney has been examined or treated since the attorney's suspension and the attorney shall furnish the Disciplinary Panel with written consents for such psychiatrists, psychologists, physicians or hospital to disclose such information or records as may be requested by the medical experts designated by the Disciplinary Panel.

LCrR 57.31

LAWYER COUNSELING PANEL

(a) REFERRAL OF ATTORNEYS FOR COUNSELING.

Judges or the Committee on Grievances may refer to the lawyer counseling panel established by this Rule any member of the Bar of this Court who exhibits a deficiency in performance and who, in the judge's or the Committee's opinion, would likely benefit from counseling by other trial attorneys on matters of litigation practice, ethics, or apparent abuse of alcohol or drugs. The judge or the Committee will notify both the panel and the attorney of the referral and the basis therefor. The referral shall be confidential.

(b) THE COUNSELING PANEL.

The counseling panel shall be composed of experienced litigation practitioners appointed by the Court, one of whose members shall be designated chairperson.

(c) PANEL PROCEEDINGS.

The chairperson of the lawyer counseling panel shall receive references from judges or the Committee on Grievances and assign the referred member to a particular panel member for counseling. Participation in the counseling program by referred attorneys shall be voluntary. Any conversations between the referred attorney and members of the panel shall be confidential and shall not waive any attorney client privilege. The panel will make no findings or report of its action as to any referred attorney, other than a report to the referring judge or the Committee on Grievances as to whether the attorney did or did not participate in counseling.

(d) CONFIDENTIALITY AND IMMUNITY.

All documents and communications relating or referring to the panel's referrals shall remain confidential and privileged.

All meetings and discussions of the counseling panel shall be held *in camera* and the business conducted therein shall remain confidential and privileged. All records, reports, correspondence and minutes of the panel shall be maintained

by the Chairperson of the Counseling Panel and shall not be disclosed except by order or direction of the Chief Judge (or the designee of the Chief Judge).

When exercising the power relegated by the court, panel members shall be absolutely immune from suit for any conduct in connection with their duties. Referrals and counseling with respect thereto shall be absolutely privileged and no claim or action predicated thereon may be instituted or maintained.

COMMENT TO LCrR 57.31(a) and (c): *This rule was modified to permit the Committee on Grievances to refer attorneys to the Lawyer Counseling Panel and receive reports from the Panel concerning whether the referred attorney participated in counseling.*

LCrR 58

MISDEMEANOR CASES BEFORE MAGISTRATE JUDGES

(a) JURISDICTION TO CONDUCT TRIALS OF MISDEMEANOR CASES.

A magistrate judge may conduct trials (with or without a jury), accept pleas, impose sentence, and otherwise exercise jurisdiction in cases of misdemeanor offenses in accordance with 18 U.S.C. § 3401 and Rule 58, Federal Rules of Criminal Procedure.

(b) RECORDING THE PROCEEDINGS.

The court must record any proceedings under this rule by using a court reporter or a suitable recording device.

(c) PRESENTENCE INVESTIGATION AT THE REQUEST OF A MAGISTRATE JUDGE.

When requested by a magistrate judge, the Probation Office shall conduct a presentence investigation and render a report on any person convicted or who pleads guilty or *nolo contendere* before the magistrate judge.

(d) PAYMENT OF FIXED SUM IN LIEU OF APPEARANCE.

(1) In accordance with Rule 58(d), Federal Rules of Criminal Procedure, the magistrate judge may in suitable misdemeanor cases accept payment of a fixed sum in lieu of appearance. In such cases, payment of the fixed sum shall terminate the proceeding. A schedule of fixed sums for misdemeanor cases subject to this Rule shall be approved by the Court on recommendation of the magistrate judges. The schedule may provide

that the fixed sums will be increased depending on the stage of the proceedings at which the sum is paid, but the sum may not exceed the maximum fine allowed by law.

(2) If the defendant fails to pay a fixed sum, request a hearing, or appear in response to a citation or violation notice, the Clerk or a magistrate judge may issue a notice for the defendant to appear before the court on a date certain. The notice may give the defendant an additional opportunity to pay a fixed sum in lieu of appearance. The Clerk must serve the notice on the defendant by mailing a copy to the defendant's last known address.

(3) Upon an indictment, or upon a showing by one of the other charging documents specified in Federal Rules of Criminal Procedure 58(b)(1) of probable cause to believe that an offense has been committed and that the defendant has committed it, the court may issue an arrest warrant or, if no warrant is requested by an attorney for the government, a summons. The showing of probable cause must be made under oath or under penalty of perjury, but the affiant need not appear before the court. If the defendant fails to appear before the court in response to a summons, the court may summarily issue a warrant for the defendant's arrest.

(e) APPEAL

Appeal from a magistrate judge's order or judgment under this Rule is governed by Federal Rule of Criminal Procedure 58(g).

COMMENT TO LCrR 58: The Rule has been renumbered as LCrR 58 to conform with the numbering of Federal Rule of Criminal Procedure 58. Changes and additions have been made to conform with Federal Rule of Criminal Procedure 58.

LCrR 59.1

REFERRAL OF MOTIONS AND PRETRIAL MATTERS TO MAGISTRATE JUDGES

(a) MATTERS DETERMINABLE BY A MAGISTRATE JUDGE.

At the request of the district judge to whom a felony case is assigned, a magistrate judge may hear and determine any nondispositive pretrial motion or matter other than those motions specified in LCrR 59.2 of these Rules, and may conduct pretrial proceedings and enter orders pursuant to LCrR 57.2 of these Rules.

(b) OBJECTIONS TO MAGISTRATE JUDGE'S RULING.

Any party may file written objections to a magistrate judge's ruling under paragraph (a) within 14 days after being served with the order of the magistrate judge or after the oral order is stated on the record, unless a different time is prescribed by the magistrate judge or the district judge. The objections shall specifically designate the order or part thereof to which objection is made, and the basis for the objection. The filing of oppositions and replies shall be governed by LCrR 47(b) and (d).

(c) DETERMINATION OF OBJECTIONS

Upon consideration of objections filed in accordance with this Rule, a district judge may modify or set aside any portion of a magistrate judge's order under this Rule found to be clearly erroneous or contrary to law.

COMMENT TO LCrR 59.1*: The Rule has been revised to remove references to civil procedure. Section (a) has been amended to make clear that magistrate judges may determine only nondispositive motions or matters in a felony case. See Federal Rule of Criminal Procedure 59(a). Additionally, the Rule has been renumbered as LCrR 59.1 to conform with the numbering of Federal Rule of Criminal Procedure 59. Finally, the Rule is intended to make clear that objections to the magistrate judge's proposed findings and recommendations should not be called motions for reconsideration and are to be directed to the district judge.*

LCrR 59.2

REFERRAL OF MATTERS FOR HEARING AND RECOMMENDATION BY MAGISTRATE JUDGES

(a) MATTERS REFERABLE TO A MAGISTRATE JUDGE FOR HEARING AND RECOMMENDATION.

At the request of the district judge to whom the case is assigned, a magistrate judge may conduct hearings, including evidentiary hearings, and submit to the district judge proposed findings of fact and recommendations for the disposition of:

(1) application for posttrial relief made by individuals convicted of criminal offenses;

(2) applications for revocation or modification of probation or supervised release, in accordance with LCrR 32.1(e) and Federal Rules of Criminal Procedure 32.1(b) and (c); and

(3) motions to dismiss or quash an indictment or information motions to suppress evidence, or any matter that may dispose of a charge or defense.

(b) OBJECTION TO RECOMMENDATIONS OF THE MAGISTRATE JUDGE.

Any party may file for consideration by the district judge written objections to the magistrate judge's proposed findings and recommendations issued under paragraph (a) within 14 days after being served with a copy thereof. The objections shall be denominated "Objections to the Magistrate Judge's Proposed Findings and Recommendations." The objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for the objection. The filing of oppositions and replies shall be government by LcrR 47(b) and (d).

Failure to file timely objections may waive appellate review of a District Court order adopting the magistrate judge's report. All magistrate judge's reports shall contain a notice substantially as follows:

> Failure to file timely objections to the findings and recommendations set forth in this report may waive your right of appeal from an order of the District Court adopting such findings and recommendations. See *Thomas v. Arn*, 474 U.S. 140 (1985)**.**

(c) DETERMINATION BY THE COURT

A district judge shall make a *de novo* determination of those portions of a magistrate judge's findings and recommendations to which objection is made as provided in paragraph (b). A district judge may make a determination based solely on the record developed before the magistrate judge, or may conduct a new hearing, receive further evidence, and recall witnesses. A district judge may accept, reject, or modify, in whole or in part, the findings and recommendations of the magistrate judge, or may recommit the matter to the magistrate judge with instructions.

COMMENT TO LCrR 59.2: *The Rule has been revised to remove references to civil procedure. Additionally, the Rule has been renumbered as LCrR 59.2 to conform with the numbering of ~~new~~ Federal Rule of Criminal Procedure 59. Finally, the Rule is intended to make clear that objections to the magistrate judge's proposed findings and recommendations should not be called motions for reconsideration and are to be directed to the ~~trial~~ district judge.*

ADMINISTRATION OF THE BANKRUPTCY SYSTEM[1]

DCt.LBR 5011-1

REFERENCE TO BANKRUPTCY JUDGE

Pursuant to 28 U.S.C § 157(a), all cases under Title 11 and all proceedings arising under Title 11 or arising in or related to a case under Title 11 are referred to the Bankruptcy Judge of this District. All papers filed in any such case or proceeding, including the original petition, shall be filed with the Clerk of the Bankruptcy Court and shall be captioned "United States Bankruptcy Court for the District of Columbia."

DCt.LBR 5011-2

WITHDRAWAL OF REFERENCE

(a) FORM OF REQUEST; PLACE FOR FILING.

A request for withdrawal in whole or in part of the reference of a case or proceeding referred to the Bankruptcy Judge, other than a *sua sponte* request by the Bankruptcy Judge, shall be by motion filed timely with the Clerk of the Bankruptcy Court. All such motions shall conform to Local Rule LCvR 7 of the Local Rules of this Court. In addition, all such motions shall clearly and conspicuously state that "RELIEF IS SOUGHT FROM A UNITED STATES DISTRICT JUDGE."

(b) TIME FOR FILING.

Except as provided below as to adversary proceedings and contested matters, motion to withdraw the reference of a whole bankruptcy case or any part of a bankruptcy case shall be served and filed at or before the time first scheduled for the meeting of creditors held pursuant to 11 U.S.C. § 341(a). Except as provided below as to contested matters, a motion to withdraw the reference of a whole adversary proceeding or any part of an adversary proceeding shall be (c) served and filed on or before the date on which an answer, reply or motion under Bankruptcy Rule 7012 or 7015 is first due. A motion to withdraw the

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[1] Rules 5011-1 – 9033-1 deal with the interrelationship of matters (references, *de novo* review, appeals, etc.) between the United States District Court and the United States Bankruptcy Court. The United States Bankruptcy Court has its own local rules governing procedures within that court. Those local rules, which were last revised on January 1, 1997, remain in effect.

reference of a contested matter within a case shall be served and filed not later than 14 days after service of the motion, application or objection which initiates the contested matter. Notwithstanding the foregoing, a motion to withdraw the reference may be served and filed not later than 14 days after service of any timely filed pleading or paper in which the basis for the motion first arises.

(c) STAY.

The filing of a motion to withdraw the reference does not stay proceedings in the Bankruptcy Court. The procedures relating to stay shall be the same as set forth in Bankruptcy Rule 8005.

(d) DESIGNATION OF RECORD.

The moving party shall serve and file, together with the motion to withdraw the reference, a designation of those portions of the record of the proceedings in the Bankruptcy Court that the moving party believes will reasonably be necessary or pertinent to the District Court's consideration of the motion. Within 14 days after service of such designation of record, any other party may serve and file a designation of additional portions of the record. If the record designated by any party includes a transcript of any proceeding or a part thereof, that party shall immediately after filing the designation deliver to the reporter and file with the Clerk of the Bankruptcy Court a written request for the transcript and make satisfactory arrangements for payment of its cost. All parties shall take any other action necessary to enable the Clerk to assemble and transmit the record. The parties shall submit only that part or parts of a transcript of proceedings relevant to the issues raised on the motion for withdrawal of reference. If the issues involve only questions of law, the parties may submit an agreed statement of facts or such part or parts of the records as are relevant to such questions of law, unless the District Judge considering the motion directs otherwise.

(e) RESPONSES TO MOTIONS TO WITHDRAW THE REFERENCE; REPLY.

Opposing parties shall file with the Clerk of the Bankruptcy Court, and serve on all parties to the matter as to which withdrawal of the reference has been requested, their written responses to the motion to withdraw the reference, within 14 days after being served a copy of the motion. The moving party may serve and file a reply within 14 days after service of a response.

(f) TRANSMITTAL TO AND PROCEEDINGS IN DISTRICT COURT.

When the record is complete for the purpose of transmittal, but without awaiting the filing of any transcripts, the Clerk of the Bankruptcy Court shall promptly transmit to the Clerk of the District Court the motion papers and the portions of

the record designated. After the opening of a docket in the District Court, documents pertaining to the matter under review by the District Court shall be filed with the Clerk of the District Court, but all documents relating to other matters in the bankruptcy case or adversary proceeding or contested matter shall continue to be filed with the Clerk of the Bankruptcy Court. Any motion and any *sua sponte* request by the Bankruptcy Judge to withdraw the reference shall be referred to the Chief Judge or the Chief Judge's designee for decision, but if the matter is withdrawn it shall be assigned to a District Judge in accordance with this court's usual system for assigning civil cases, unless the Chief Judge determines that exceptional circumstances warrant special assignment to a District Judge. Upon request of this Court, the Bankruptcy Judge shall determine, pursuant to 28 U.S.C. § 157(b)(3), whether or not any proceeding, as to which withdrawal of the reference is sought in whole or in part, is a core proceeding. This Court may, in its discretion, grant or deny the motion to withdraw the reference, in whole or in part. After such withdrawal, this Court may retain the entire matter withdrawn or may refer part or all of it back to the Bankruptcy Judge with or without instructions for further proceedings.

DCt.LBR 8003-1

INTERLOCUTORY APPEALS

Whenever the Bankruptcy Judge has entered an interlocutory order, decree or judgment as to which a motion for leave to appeal has been filed pursuant to 28 U.S.C. § 158 and Rule 8003 of the Bankruptcy Rules, the Bankruptcy Judge shall, upon request of this Court, submit to this Court a written certification stating whether, in the Bankruptcy Judge's opinion, such order, decree or judgment involves a controlling question of law as to which there is substantial ground for difference of opinion and whether an immediate appeal from the order may materially advance the ultimate termination of the case. This Court may thereupon, in its discretion, grant or deny the motion for leave to appeal.

DCt.LBR 8006-1

FAILURE TO DESIGNATE RECORD OR ISSUES

If, after an appeal to the District Court has been noted, the appellant fails to designate the contents of the record on appeal or to file a statement of the issues to be presented on appeal within the time required by Bankruptcy Rule 8006, the Clerk of the bankruptcy Court shall forward forthwith to the Clerk of the District Court a partial record consisting of a copy of the order or judgment appealed from, the notice of appeal, a copy of the docket entries and any other part of the record that the Clerk of the Bankruptcy Court deems appropriate. On request of the District Court, the Clerk of the Bankruptcy Court shall in addition transmit any other part of the record to the Clerk of the District Court. The District Court may, upon motion of the

appellee filed in the office of the Clerk of the District Court, or upon its own order, dismiss the appeal for failure to comply with Bankruptcy Rule 8006.

DCt.LBR 8007-1

RETENTION OF RECORD IN BANKRUPTCY COURT

Unless the District Court or the Bankruptcy Court otherwise orders in any particular case, the record on appeal as designated pursuant to Bankruptcy Rule 8006 shall be retained by the Clerk of the Bankruptcy Court until such time as it is requested by the District Judge to whom the appeal is assigned.

DCt.LBR 8009-1

FAILURE TO FILE BRIEF

If, after an appeal has been noted and the appellant has complied with Bankruptcy Rule 8006, the appellant fails to serve and file a brief within the time required by Bankruptcy Rule 8009, the District Court may, upon motion of the appellee filed in the office of the Clerk of the District Court, or upon its own order, dismiss the appeal for failure to comply with Bankruptcy Rule 8009.

DCt.LBR 9033-1

DE NOVO REVIEW

(a) FORM OF REQUEST; TIME AND PLACE FOR FILING.

Pursuant to 28 U.S.C. § 157(c)(1), any party may request *de novo* review of proposed findings of fact and conclusions of law and a proposed final order or judgment by the Bankruptcy Judge by filing with the Clerk of the Bankruptcy Court, and serving on all parties to the matter under review within 14 days after service of a copy of such proposed findings, conclusions and order or judgment, written objections which shall specifically identify the portions of the proposed findings, conclusions, and order or judgment to which objection is made and the basis for such objection. All such objections shall conform to Local Rule 7.1 of the Local Rules of this Court and in addition shall clearly and conspicuously state that "RELIEF IS SOUGHT FROM A UNITED STATES DISTRICT JUDGE."

(b) DESIGNATION OF RECORD: RESPONSE TO OBJECTIONS; REPLY; TRANSMITTAL TO AND PROCEEDINGS IN DISTRICT COURT.

The procedures for designation of record, responses to objections, reply, and transmittal to and proceedings in the District Court shall be the same as set forth in Rule 5011-2 but the matter under review shall be assigned to a District Judge in accordance with this Court's usual system for assigning civil cases.

(c) *DE NOVO* CONSIDERATION BY DISTRICT JUDGE.

A District Judge shall make a *de novo* determination of those portions of the Bankruptcy Judge's proposed findings, conclusions, and order or judgment to which objection is made and may accept, reject, or modify, in whole or in part, the proposed findings, conclusions, and order or judgment by the Bankruptcy Judge. The District Judge, however, need not normally conduct a new hearing and may consider the record developed before the Bankruptcy Judge and may make a determination on the basis of that record. The District Judge may also receive further evidence, recall witnesses or re-refer the matter to the Bankruptcy Judge with instructions.

(d) EFFECT OF FAILURE TO OBJECT.

Failure to file a timely objection to the Bankruptcy Judge's proposed findings, conclusions and order or judgment shall constitute consent to determination of the proceeding by the Bankruptcy Judge, pursuant to 28 U.S.C. § 157(c)(2); in such event the proposed findings, conclusion and order or judgment shall become the findings, conclusions and order or judgment of the Bankruptcy Court as of the date of their original entry.