UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

LOCAL RULES

Adopted by the Court

Effective April 2, 2024

PREFACE

Pursuant to Federal Rule of Civil Procedure 83(a), the United States District Court for the Western District of Missouri adopts the following Local Rules, governing cases before the District on and after May 14, 2019.

The Local Rules supplement the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure. Attorneys practicing before the District must be familiar with all of these rules. For the attorneys' convenience, the Local Rules are numbered to correspond to the Federal Rules of Civil Procedure. Local Rules applying to criminal actions only are numbered as Local Rules 99.0 to 99.10.

Citations should be to "Local Rule ___" or "L.R. ___."

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1.1 DEFINITIONS

As used in these Rules:

(a) **District.** "District" means the United States District Court for the Western District of Missouri.

(b) **Court.** "Court" means the district judge or magistrate judge to whom a case is assigned.

(c) **District Judge.** "District judge" means a United States District Judge for the Western District of Missouri, including judges on senior status.

(d) **Magistrate Judge.** "Magistrate judge" means a United States Magistrate Judge for the Western District of Missouri, including full-time and part-time magistrate judges.

(e) **Judge.** "Judge" means either a district judge or a magistrate judge.

(f) **Court En Banc.** "Court en banc" means all district judges assigned to the District,

including judges on senior status.

(g) **Clerk.** "Clerk" means the Clerk of the United States District Court for the Western District of Missouri.

3.1 CIVIL COVER SHEET

In a civil action, an attorney filing a pleading asserting a claim for relief must complete and file a civil cover sheet on the form prescribed by the Court en banc and provided by the Clerk.

3.2 CIVIL DIVISIONAL VENUE

(a) **Divisions within the District.** The District comprises the following divisions:

1. **To Be Heard in Federal Court in Kansas City, Missouri:**

A. **Western Division:** The Western Division comprises the counties of Clay, Ray, Carroll, Saline, Lafayette, Jackson, Cass, Johnson, Henry, Bates, and St. Clair.

B. **St. Joseph Division:** The St. Joseph Division comprises the counties of Atchison, Nodaway, Worth, Gentry, Harrison, Mercer, Putnam, Sullivan, Grundy, Livingston, Daviess, Caldwell, DeKalb, Clinton, Platte, Buchanan, Holt, and Andrew.

2. To Be Heard in Federal Court in Jefferson City, Missouri:

Central Division: The Central Division comprises the counties of Pettis, Benton, Hickory, Howard, Cooper, Morgan, Camden, Boone, Moniteau, Miller, Callaway, Cole, and Osage.

3. To Be Heard in Federal Court in Springfield, Missouri:

A. Southern Division: The Southern Division comprises the counties of Cedar, Dade, Polk, Greene, Christian, Taney, Dallas, Webster, Douglas, Ozark, Laclede, Wright, Pulaski, Texas, Howell, and Oregon.

B. Southwestern Division: The Southwestern Division comprises the counties of Vernon, Barton, Jasper, Newton, McDonald, Lawrence, Barry, and Stone.

(b) Divisional Venue.

1. Single Defendant. All actions brought against a single defendant who is a resident of this district must be brought in a division where the defendant resides, or where the claim for relief arose.

2. Multiple Defendants. All actions brought against multiple defendants all of whom reside in the same division must be brought in that division, or in the division where the claim for relief arose. If at least two of the defendants reside in different divisions, such action must be filed in any division in which one or more of the defendants reside, or where the claim for relief arose.

3. Non-Resident Defendant. If none of the defendants is a resident of the District, the action must be filed in the division where at least one plaintiff resides, or where the claim for relief arose.

(c) Location of Proceedings. Subject to statutory limitations, the Court may fix the location where any courtroom proceedings are held.

(d) Construction with Venue Statutes. This Rule must be construed consistently with the district venue statutes.

5.1 MANDATORY ELECTRONIC FILING

Any represented party filing a document in connection with a case must do so electronically through the District's electronic filing system. Unrepresented parties in civil actions are not required to electronically file documents, but may do so in cases in which they are a party. The Court may excuse compliance with this Rule if a prospective filer demonstrates reasonable grounds preventing electronic filing. The *CM/ECF Civil and Criminal*

Administrative Procedures Manual and User's Guide, available on the District's website, governs electronic filing.

7.0 WRITTEN MOTIONS

(a) Suggestions Generally. A written motion must be supported and opposed with suggestions, which are a written brief containing relevant facts and applicable law. Suggestions must be concise and emphasize their primary authorities.

(b) Considerations in Ruling on Motions. In ruling upon a written motion, the Court must consider the motion, supporting suggestions, opposing suggestions, and reply suggestions. The Court may, but need not, order and consider oral argument.

(c) Timing of Suggestions.

1. Supporting Suggestions. When filing a motion, the moving party must also file supporting suggestions.

2. Opposing Suggestions. Within 14 days after a motion is filed, each party opposing the motion must file suggestions opposing the motion. For summary judgment motions, a party instead has 21 days to file its opposing suggestions.

3. Reply Suggestions. Within 14 days after the opposing suggestions are filed, the moving party may file reply suggestions.

(d) Length of Suggestions.

1. Unless the Court orders otherwise:

A. Supporting suggestions may not exceed 15 pages;

B. Opposing suggestions may not exceed 15 pages; and

C. Reply suggestions may not exceed 10 pages.

2. Exhibits, signature blocks, certificates of service, and statements of fact—including facts presented under Rules 9.1(d)(2) or 56.1—do not count toward these page limitations.

3. Suggestions exceeding 10 pages must have a table of contents and table of authorities, which do not count toward these page limitations.

(e) Oral Argument. Any request for oral argument must be clearly marked on the first page of either the motion or the suggestions.

(f) Proposed Orders. Any proposed orders should not be filed on ECF. Proposed orders can be emailed to the courtroom deputy.

(g) **Temporary Restraining Orders**. If a hearing is sought for an injunction or restraining order pursuant to Rule 65, the party should direct that request to the courtroom deputy.

7.1 DISCLOSURE OF CORPORATION INTERESTS

(a) **Certificate of Interest.** Every non-governmental corporate party must file a certificate of interest. The Court may consider the information provided in the certificate, but only to determine whether recusal is appropriate. The party must file

this certificate with its first pleading or entry of appearance. Unless the Court orders otherwise, the party may not file the certificate of interest under seal.

(b) **Content.** The certificate of interest must identify all associations, firms, partnerships, corporations, and other entities that either are related to the party as a parent, subsidiary, or otherwise, or have a direct or indirect pecuniary interest in the outcome in the case, including a description of its connection to or interest in the litigation. The certificate must indicate when its answer is negative or not applicable.

(c) **Changes and Updates.** If the information contained in the certificate of interest changes after the certificate is filed and before time has expired for filing a notice of appeal from a final judgment in the case, the party must file an amended certificate within 7 days after the change.

9.1 SOCIAL SECURITY PRACTICE

(a) **The Complaint**. To obtain review of a final decision of the Commissioner of Social Security under 42 U.S.C. § 405(g), a party must file a complaint with the Court. The complaint must state that the action is brought under § 405(g), identify the final decision to be reviewed including any identifying designation provided by the Commissioner with the final decision, state the name and county of residence of the person for whom benefits are claimed, name the person in whose wage record benefits are claimed, and state the type of benefits claims. Neither the complaint nor a summons need to be served under Fed. R. Civ. P. 4; however, after filing a complaint, a plaintiff is responsible for sending an email to USAMOW.SSA@usdoj.gov and OGC.WDMO@ssa.gov stating the full name of name the person in whose wage record benefits are claimed and stating that individual's full Social Security number. Upon the filing of the complaint, the Court will notify the local United States Attorney's office and the Social Security Administration's Office of the General Counsel of the filing by transmitting a Notice of Electronic Filing to USAMOW.SSA@usdoj.gov and OGC.WDMO@ssa.gov

(b) **The Answer**. Within 90 days after notice of the action, the defendant must serve an answer on the plaintiff. An answer may be limited to a certified copy of the administrative record. The defendant may also file an answer with a statement of any affirmative defenses under Fed. R. Civ. P. 8(c) or any motion under Fed. R. Civ. P. 12.

(c) The Record.

1. Unless the Court orders otherwise, the record in Social Security cases comprises all decisions by an Administrative Law Judge and all pleadings, evidence and orders in the administrative record.

2. If a party discovers a material omission from, or misstatement in, the record:

A. The discovering party must immediately notify the Court and all other parties;

B. The parties may supply the omission or correct the misstatement by stipulation; and

C. The Court may order a party to correct the omission or misstatement and, if necessary, prepare and file a supplemental record.

(d) Briefs.

1. **Plaintiff's Brief**. The plaintiff must file and serve on the Commissioner a brief for any requested relief within 40 days after the certified copy of the administrative record is filed.

2. **Commissioner's Brief**. The Commissioner must file a brief and serve it on the plaintiff within 40 days after service of the plaintiff's brief.

3. **Reply Brief**. The plaintiff may file and serve on the Commissioner a reply brief within 21 days after service of the Commissioner's brief.

4. Briefs from the parties must support assertions of fact by citations to particular parts of the certified copy of the administrative record.

5. In ruling upon a Social Security complaint, the Court must consider the record, supporting brief, opposing brief, and reply brief. The Court may, but need not, order and consider oral argument.

9.2 PETITIONS FOR POST-CONVICTION RELIEF FILED BY PERSONS IN CUSTODY

(a) Generally. Absent exceptional circumstances, petitions for a writ of habeas corpus under 28 U.S.C. §§ 2241 or 2254 and motions under 28 U.S.C. § 2255 must be in writing, signed and verified. The Clerk must provide forms for such petitions and motions.

(b) **Information Required for a Petition under This Rule.** A petitioner under this Rule must supply the following information, if applicable and if known:

1. The petitioner's full name and prison number;

2. The name of the respondent, i.e., the petitioner's custodian;

3. The place where the petitioner is detained;

4. The name and location of the court which imposed the sentence;

5. The indictment number(s) upon which, and offense(s) for which, the sentence was imposed;

6. The date upon which the sentence was imposed and the terms of the sentence;

7. Whether the petitioner pled guilty, not guilty, or nolo contendere;

8. If the petitioner pled not guilty but was found guilty, whether the finding of guilty was made by a jury, or by a judge without a jury;

9. If the petitioner appealed his or her conviction or sentence, the name of each court to which the petitioner appealed, the results of such appeals, the date of such results, and the citations of any written opinions or orders entered on appeal;

10. The name and address of each attorney that represented the petitioner in connection with the petitioner's case at any time—including arraignment, plea, trial, sentencing, appeal, or filing of a post-conviction motion—and the proceedings at which each attorney represented the petitioner;

11. Whether the petitioner has previously filed any petition, motion, or application with respect to this conviction in any court, state or federal; and if so, the name and location of all such courts, the specific nature of the proceedings therein, the disposition thereof, the date of each such disposition, and the citations of any written opinions or orders entered therein;

12. In concise form: the grounds for which the petitioner bases the allegation that he or she is being held in custody unlawfully, or the allegation that the sentence which was imposed upon him or her is invalid; the facts that support each of these grounds; whether these grounds have been previously presented to any court, by way of any petition, motion or application; and if so, which grounds have been previously presented and in what proceedings.

13. If the petitioner seeks leave to proceed in forma pauperis, an affidavit completed in accordance with Rule 83.7.

(c) **Additional Information for Petitions under 28 U.S.C. §§ 2241 or 2254.** A petitioner seeking a writ of habeas corpus under 28 U.S.C. §§ 2241 or 2254 must also supply the reasons why the petitioner did not appeal his or her conviction or sentence, if the petitioner did not do so.

(d) **Additional Information for Motions under 28 U.S.C. § 2241.** A petitioner seeking a writ of habeas corpus under 28 U.S.C. § 2241 must also supply the reasons why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to test the legality of the petitioner's detention, regardless of if the petitioner has or has not previously filed a motion under 28 U.S.C. § 2255.

(e) **Additional Information for Motions under 28 U.S.C. § 2255.** A petitioner seeking relief under 28 U.S.C. § 2255 must also supply the name of the judge who imposed the sentence, if known.

(f) **Submission of Petitions and Motions to the Clerk.** A petitioner under this Rule must send an original and one copy of the completed petition to the Clerk. A petition addressed to an individual judge must be redirected to the Clerk for assignment.

(g) **Noncompliance with Form and Content Requirements.** If a petition under this Rule does not substantially comply with the above requirements of form and content, the Clerk must:

1. Provisionally file the petition;

2. Notify the petitioner of the defects; and

3. Give the petitioner a reasonable amount of time to correct the defects and to resubmit the petition.

(h) **Suggestions.** Once assigned a petition, the Court must fix a time by which the respondent must file suggestions opposing the petition. Unless the Court grants an extension, the petitioner must file any reply suggestions within 14 days after the opposing suggestions are served. If the petitioner fails to timely file reply suggestions, and fails to show good cause for failing to do so, the Court must deem admitted all facts well pleaded in the opposing suggestions.

(i) **Duty of the U.S. Attorney.** If the United States of America is a party in a proceeding opened under this Rule, the United States Attorney or other attorney representing the United States of America must obtain whatever order of court may be appropriate to secure the appearance of any person—including the petitioner or a material witness—who is in state or federal custody at all proceedings where such persons' appearances are necessary.

(j) **Duty of Attorneys Representing the State of Missouri.** If the State of Missouri is a party in a proceeding opened under this Rule, the Attorney General of the State of Missouri or other attorney representing the State of Missouri must obtain whatever

order of court may be appropriate and necessary to secure the appearance of any person—including the petitioner or a material witness—who is in state or federal custody, at all proceedings where such persons' appearances are necessary.

15.1 MOTIONS TO AMEND AND FOR LEAVE TO FILE

(a) Requirements of Motion. A party filing a motion to amend a pleading or a motion for leave to file a pleading or other document that may not be filed as a matter of right must:

1. Set forth a concise statement of the amendment or leave sought;

2. Attach the proposed pleading or other document; and

3. Comply with the other requirements of Rule 7.0.

(b) Where Motion Is Granted. If the Court grants the motion, the moving party must file and serve the pleading within 7 days after the Court grants the motion, or as the Court otherwise directs.

16.1 SCHEDULING OF CIVIL ACTIONS

(a) Method of Calculating the Scheduling Order Deadline. For the purposes of calculating the time periods in Fed. R. Civ. P. 16(b)(2), the date that "any defendant has appeared" means the date on which any defendant files any paper in the action.

(b) Timing of Scheduling Order. The parties must file a proposed scheduling order within 14 days after holding the Fed. R. Civ. P. 26(f) conference.

(c) Responsibility for Drafting the Proposed Scheduling Order.

1. Plaintiffs' Attorney Generally Takes the Lead in Drafting. An attorney for the plaintiffs must prepare a draft of the proposed scheduling order. The plaintiffs' attorney must present this draft to the attorneys for all other parties for additions and modifications. If no plaintiff is represented by an attorney, an attorney for the defendants must discharge these duties.

2. Resolving Disagreements. The attorneys must communicate fully, openly, and in good faith with each other so that they can submit a joint proposed scheduling order. If all attorneys do not agree on a proposed scheduling order, they may not file separate proposed scheduling orders. Rather, they must state disagreements concerning the proposed scheduling order in the joint proposed scheduling order.

(d) Content of the Proposed Scheduling Order. The attorneys must suggest reasonable dates for the proposed scheduling order. The proposed scheduling order must:

1. Propose a date limiting joinder of parties;

2. Propose dates limiting the filing of types of motions. The attorneys in most actions should consider proposing that, subject to Fed. R. Civ. P. 12(h)(2), all dispositive motions be filed within 30 days after the date proposed for the completion of discovery;

3. Include the discovery plan specified in Rule 26.1(c);

4. Estimate the number of days necessary to try the action;

5. Propose a trial date; and

6. State whether any party anticipates requesting a protective order. In the Fed. R. Civ. P. 26(f) conference, the parties must discuss specific areas of written discovery and deposition testimony which may be the subject of a request for protective order. Any party that anticipates requesting a protective order must

serve on every other party a proposed protective order and a proposed stipulation for its entry no later than the date of serving Fed. R. Civ. P. 26(a)(1) initial disclosures. If a party seeks a protective order without first having followed the requirements of this Rule, then it must state the cause within any motion for a protective order later filed with the Court.

(e) Sanctions for Failing to Cooperate in Preparing a Proposed Scheduling Order. If a party or its attorney fails to participate in good faith in the framing of the proposed scheduling order—including the discovery plan—the Court may impose sanctions consistent with Fed. R. Civ. P. 16(f) and 37(b)(2).

(f) Actions Exempt from These Procedures. This Rule does not apply to categories of actions specified in Fed. R. Civ. P. 26(a)(1)(B).

16.2 PRETRIAL CONFERENCES

(a) Optional Pretrial Conference. The Court may hold a pretrial conference, either upon motion or sua sponte. The Court must give the parties reasonable notice of the time and place of any pretrial conference.

(b) Trial Attorneys Must Participate. Unless the Court orders otherwise, the attorneys who will handle the trial must participate in all pretrial conferences. The trial attorneys must have authority to agree to uncontroverted facts and to the scope and scheduling of future discovery.

16.3 EXTENSION OF DEADLINES FIXED IN SCHEDULING ORDER

(a) Motion to Extend a Scheduling Deadline. A party may move to extend a deadline established by a scheduling order. The motion must:

1. Demonstrate a specific need for the requested extension; and

2. Contain a detailed proposed amendment to the previously entered scheduling order. For motions to extend the deadline for completion of all discovery, the remaining discovery must be specifically described and scheduled, e.g., the motion must provide the names of each remaining deponent and the date, time, and place of each remaining deposition; and

3. State the position of opposing counsel as to the requested extension.

(b) Standard for Granting an Extension of a Scheduling Deadline. The Court may grant a Rule 16.3(a) motion only upon a showing of good cause. Further, the Court may extend the deadline for completion of all discovery only if:

1. There has been active discovery; or

2. The moving party demonstrates that disabling circumstances precluded active discovery.

16.4 ALTERNATIVE DISPUTE RESOLUTION

Pursuant to 28 U.S.C. § 651(b), alternative dispute resolution proceedings are authorized for use in all civil actions, including adversary proceedings in bankruptcy. Pursuant to the District's General Order—available on its website—parties in all civil cases, except those cases specifically exempted by the Order, must participate in the District's Mediation and Assessment Program. The Court may, at any stage of a civil action, require the parties to participate in an alternative dispute resolution process.

26.1 DISCOVERY SCHEDULING

(a) Meeting of the Parties; Initial Disclosures. The parties must hold their Fed. R. Civ. P. 26(f) conference as soon as practicable, but not earlier than 30 days before the Court's scheduling order is due under Fed. R. Civ. P. 16(b). The parties are encouraged to make their Fed. R. Civ. P. 26(a)(1) initial disclosures at this conference, but in any event must make them no later than 14 days after the conference. If the attorneys fail to investigate their actions or fail to make initial disclosures as provided by these Rules, the Court may impose sanctions.

(b) Filing of Motions Does Not Automatically Stay Discovery or Disclosure Requirements. Unless the Court orders otherwise, the filing of any motion—including a motion to dismiss, a discovery motion, or a motion for summary judgment—does not stay the action or excuse the parties from complying with any discovery rule or scheduling order.

(c) Content of Discovery Plan. The proposed scheduling order required by Rule 16.1 includes a discovery plan. In creating the discovery plan, the parties should consider proposing dates prior to the close of discovery for the completion of specific phases of discovery. The attorneys should keep in mind the general principles governing

discovery, as set forth in the Federal Rules of Civil Procedure. Specifically, the discovery plan must:

1. Conform with Fed. R. Civ. P. 26(f)(3);

2. Propose a date by which all discovery must be completed, and state the facts, such as the complexity of the issues, which the attorneys considered in arriving at the proposed deadline for the completion of all discovery. If the parties propose more than 180 days to complete discovery, then they must provide an explanation sufficiently detailed to inform the Court why the period of time proposed for completing discovery is necessary. The longer the time proposed for discovery, the greater detail the attorneys must furnish in support of the request; and

3. State the status of all discovery completed to date, including the date by which Fed. R. Civ. P. 26(a)(1) initial disclosures were made or will be made.

(d) Preliminary Discovery Plan. If the parties believe that it is impossible to propose a realistic deadline under Rule 26.1(c) by the deadline of Rule 16.1(b), they must file a preliminary discovery plan. The Court may accept this preliminary plan only in special situations and upon a showing of good cause. The preliminary discovery plan must:

1. Explain in detail why a deadline for completion of all discovery cannot be proposed;

2. Suggest a date for completing all discovery; and

3. Suggest a date by which the parties must file a plan fully complying with Rule 26.1(c).

(e) Limits on Stipulations. Parties may not eliminate by stipulation any of the disclosures required by Fed. R. Civ. P. 26, this Rule, or any Court order. Parties who want to eliminate a particular disclosure requirement must file a joint written motion setting forth the proposed change and showing good cause for the change.

26.2 THE FORM OF ANSWERS AND RESPONSES TO CERTAIN DISCOVERY REQUESTS AND DISCLOSURE REQUIREMENTS

A party answering interrogatories, complying with disclosure requirements, or responding to requests to admit, produce, or inspect, must set forth each question, disclosure requirement, or request immediately before its response. Upon request, the party propounding the discovery requests must provide responding counsel with an electronic copy of the discovery requests, if an electronic version is available.

26.3 NON-FILING OF DISCOVERY DOCUMENTS

(a) **Discovery Documents Not to Be Filed.** Unless the Court orders otherwise and except as provided in Rule 26.3(d), a party must serve but not file the following discovery documents:

1. Initial disclosures under Fed. R. Civ. P. 26(a)(1);

2. Disclosure of expert testimony under Fed. R. Civ. P. 26(a)(2);

3. Depositions under Fed. R. Civ. P. 30 and 31;

4. Interrogatories, and answers thereto, under Fed. R. Civ. P. 33;

5. Requests for production or inspection, and responses thereto, under Fed. R. Civ. P. 34; and

6. Requests for admissions, and responses thereto, under Fed. R. Civ. P. 36.

(b) **Filing of Certificate of Service Required.** A party must file a certificate of service when it serves any discovery document.

(c) **Filing of Certificate for Deposition Transcript.** A court reporter, upon completing a deposition transcript, must file a certificate showing the name of the deponent, the date of taking, the name and address of the person having custody of the original transcript, and the charge made for the original.

(d) **Filing Required for Discovery Disputes.** If a party files a motion placing a discovery matter in dispute, the party must contemporaneously file copies of the relevant discovery materials.

30.1 DEPOSITIONS

(a) **Public Inspection.** Unless the Court orders otherwise, any deposition transcript filed by a party is a public record and must be available for public inspection to the same extent as any other paper in the case file.

(b) **Examining a Witness.** Unless the Court orders otherwise or the parties stipulate otherwise, not more than one attorney for each party may examine any one witness during a deposition.

(c) **Non-Stenographic Recordings.** A party may record a deposition by non-stenographic means, including audio or audiovisual means, without leave of Court and without agreement of the parties.

1. The party planning on recording the deposition by non-stenographic means must state the method or methods to be used and state the name, address, and employer of the recording technician or technicians. If the recording party is

the party conducting the deposition, it must include this information in every notice or subpoena for the taking of the deposition. If the recording party is any other party, it must include this information in a separate document filed no later than 3 days before the date designated in the original notice for the taking of the deposition.

2. If a party intends, in any court proceeding, to use deposition testimony which has been recorded only by non-stenographic means, the party must prepare a written transcription of the deposition part to be used. That party must submit the transcription to the witness for signature—unless the witness and the parties waive signature—and to the Court in accordance with Fed. R. Civ. P. 26(a)(3)(B) and 32(c).

3. The recording party may use more than one camera or recording device, either in sequence or simultaneously.

4. An attorney for the party recording by non-stenographic means must take custody of, and be responsible for, the safeguarding of the recording. Upon request, the attorney must permit another party to examine the recording, and to provide the other party with a copy of the recording at the requesting party's cost.

37.1 DISCOVERY MOTIONS

(a) **Attorneys Must Attempt to Resolve Discovery Disputes on Their Own before Requesting Court Intervention**. Unless the Court orders otherwise, no party may file a discovery motion until:

1. An attorney for the prospective moving party has, in good faith, conferred or attempted to confer by telephone or in person with opposing counsel concerning the matter. The attorney must do more than merely write a demand letter.

2. If the issues remain unresolved after the attorney has satisfied Rule 37.1(a)(1), the attorney must arrange with the Court for an immediate telephone conference with the judge and opposing counsel. When communicating with the Court, the attorney for the prospective moving party must certify compliance with this Rule. The attorney may not file a written discovery motion until after this telephone conference.

(b) **Exception.** Rule 37.1(a) does not apply to an initial motion requesting the Court compel or deny discovery pursuant to a subpoena issued under the District's authority if the primary case is pending in another district. Once such a motion has been filed and a miscellaneous case is initiated within the District, the parties are then subject to Rule 37.1(a). Rule 37.1(a) also does not initially apply to a third-party subpoena issued in a case pending in this District. The third party may file a motion to quash

the subpoena. The Judge may resolve the motion to quash based upon the briefing or pursuant to Rule 37.1(a).

38.1 DEMAND FOR JURY TRIAL

A party demanding a jury trial must make the demand in:

(a) The caption of the appropriate pleading;

(b) A separate statement at the conclusion of the appropriate pleading; or

(c) A separate document endorsed "Demand for Jury Trial."

40.1 PRETRIAL FILINGS

No later than the completion of discovery, the Court must establish dates for pretrial filings, including but not limited to the Fed. R. Civ. P. 26(a)(3) pretrial disclosures, stipulations of uncontroverted facts, proposed voir dire questions and jury instructions, and trial briefs.

47.1 CHALLENGE TO JURY PANEL

(a) **Applicability.** This Rule applies only to civil actions.

(b) **Generally.** Each party is entitled to 3 peremptory challenges. If there are multiple plaintiffs or defendants, the Court may either:

1. Consider all plaintiffs or all defendants to be a single party for the purpose of exercising peremptory challenges; or

2. Allow additional peremptory challenges and permit the parties to exercise them separately or jointly.

(c) **Requesting Additional Peremptory Challenges.** If a party wants additional peremptory challenges, it must file a motion at least 30 days before the date of trial setting. Failure to timely file such a motion is deemed a waiver of the right to request additional peremptory challenges. If the Court grants the motion, it must notify the Clerk, who will arrange for adding to the panel the additional jurors necessary to provide for the peremptory challenges allowed.

51.1 PROPOSED JURY INSTRUCTIONS AND VERDICT FORMS

(a) **Annotated Set Must Be Filed.** Each party that submits proposed jury instructions and verdict forms must file and serve an annotated set. At the top of each proposed instruction in this set, the tendering party must place the words "Instruction No. __." Neither "Plaintiff" nor "Defendant" may precede "Instruction No. __." At the bottom of each proposed instruction in this set, the tendering party must state who is submitting the instruction and the number of the instruction (e.g., "Plaintiff's Instruction No. 1") and the legal source or authority for the instruction.

(b) Clean Set Must Be Emailed to the Courtroom Deputy. Each party that submits proposed jury instructions and verdict forms must also email a "clean" set to the appropriate courtroom deputy. At the top of each proposed instruction in this set, the tendering party must place the words "Instruction No. __." The "clean" set of instructions may not identify the legal source or authority for the instruction nor the party submitting the instruction. The "clean" set of instructions must be submitted in Microsoft Word.

54.1 BILL OF COSTS

(a) District Court Costs.

1. A party seeking an award of costs must file a verified bill of costs, on the form provided by the Clerk, no later than 21 days after entry of final judgment under Fed. R. Civ. P. 58. Within 14 days after the bill of costs is filed, each party objecting to the bill of costs must file suggestions stating specific objections. Within 14 days after objections are filed, the party seeking costs may file reply suggestions.

2. If timely objections are filed, after the Court considers the objections and any reply, it will direct the Clerk to tax costs as appropriate. If no timely objection is filed, the Clerk must tax costs as claimed in the bill.

3. Costs are paid directly to the attorneys of record and execution may be had therefor. The filing of a bill of costs in no way affects the finality and appealability of the final judgment previously entered.

(b) Costs on Appeal Taxable in the District Court. If a party files a bill of costs or amended bill of costs within 21 days after the Court of Appeals issues the mandate,

the Clerk must tax costs allowable pursuant to Fed. R. App. P. 39(e) in accordance with Rule 54.1(a).

55.1 DEFAULT JUDGMENT

Obtaining a default judgment is a two-step process: (1) a party must first file a motion for entry of default and obtain a Clerk's Entry of Default, and (2) a party must then file a motion for default judgment.

(a) Entering a Default. Upon motion, the Clerk of Court shall enter the default of any party against whom a judgment for affirmative relief is sought and who has failed to plead or otherwise defend.

1. Notice Required. Written notice of the intention to move for entry of default must be provided to counsel or, if counsel is unknown, to the party against whom default is sought, regardless of whether counsel or the party have entered an appearance. Such notice shall be given at least 14 days prior to the filing of the motion for entry of default. If notice cannot be provided because

the identity of counsel or the whereabouts of a party are unknown, the moving party shall inform the Clerk of Court in the declaration or affidavit.

2. Declaration or Affidavit Required. The moving party must show (a) that the party against whom default is sought was properly served with the summons and complaint in a manner authorized by Federal Rule of Civil Procedure 4; (b) that the party has failed to timely plead or otherwise defend; and (c) that proper notice of the intention to seek an entry of default, as described above, has been accomplished.

3. No Notice of Hearing Required. The Clerk shall enter default upon the filing of a properly supported motion for entry of default.

4. Court Review. Notwithstanding the provisions of Federal Rule of Civil Procedure 55(a), the Clerk of Court may refer any request for entry of default judgment to the Court for review prior to formal entry.

(b) Entering a Default Judgment.

1. Motion Practice. All applications and requests for default judgment shall be conducted by motion practice. No motion for default judgment shall be filed unless an entry of default has been entered by the Clerk of Court. By declaration or affidavit, the moving party must (A) specify whether the party against whom judgment is sought is an infant or an incompetent person and, if so, whether that person is represented by a general guardian, conservator, or other like fiduciary; and (B) attest that the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501-597b, does not apply.

2. Court Review. Notwithstanding the provisions of Federal Rule of Civil Procedure 55(b)(l), the Clerk of Court may refer any request for entry of default judgment to the Court for review prior to formal entry.

56.1 SUMMARY JUDGMENT MOTIONS

(a) Supporting Suggestions. A party moving for summary judgment must begin its supporting suggestions with a concise statement of uncontroverted material facts. Each fact must be set forth in a separately numbered paragraph and supported in accordance with Fed. R. Civ. P. 56(c).

(b) Opposing Suggestions.

1. A party opposing a motion for summary judgment must begin its opposing suggestions by admitting or controverting each separately numbered paragraph in the movant's statement of facts. If the opposing party controverts a given fact, it must properly support its denial in accordance with Fed. R. Civ. P. 56(c). Unless specifically controverted by the opposing party, all facts set

forth in the statement of the movant are deemed admitted for the purpose of summary judgment.

2. If the opposing party relies on any facts not contained in the movant's suggestions, the party must add a concise listing of material facts. Each fact in dispute must be set forth in a separately numbered paragraph and properly supported in accordance with Fed. R. Civ. P. 56(c).

(c) **Reply Suggestions.** The party moving for summary judgment may file reply suggestions. In those suggestions, the party must respond to the non-moving party's statement of additional facts in the manner prescribed in Rule 56.1(b)(1). Unless specifically controverted by the moving party, all facts set forth in the statement of the opposing party are deemed admitted for the purpose of summary judgment.

(d) **Presentation of Factual Matter.** If a party's suggestions refer to facts contained in another document, such as a deposition, interrogatory answer, or admission, the party must attach a copy of the relevant excerpt.

58.1 ENTRY OF JUDGMENTS AND ORDERS

(a) **Timing of Entry of Judgments and Orders.** At the earliest practicable time, the Clerk must make the notation of judgments and orders in the civil docket. The notation of judgments may not be delayed pending taxation of costs, but a blank space may be left in the form of judgment for insertion of costs by the Clerk after they have been taxed, or there may be inserted in the judgment a clause reserving jurisdiction to tax and apportion the costs by subsequent order.

(b) **Authorization to Enter Judgments and Orders.** Except as authorized by the Federal Rules of Civil Procedure, the Clerk may not note any judgment or order without a specific direction from the Court to enter it. The Court's direction may be evidenced by either:

1. A directive given to the Clerk in open court and noted in the minutes; or **2.** The signature or initials of the judge on the form of judgment or order.

58.2 SETTLEMENT OF JUDGMENTS AND ORDERS BY THE COURT

If the Court awards any judgment or order which requires settlement and Court approval as to form, the Court may order the prevailing party to, within 7 days after the announcement of the decision, prepare a draft of the judgment or order embodying the Court's decision, serve a copy upon each party, and file a copy. Within 7 days after receiving the draft of judgment, any party may file a statement of approval or disapproval as to the form of the draft, and serve a copy upon each party. If that party disapproves of the draft of judgment, it must file a statement of its objections, the reasons therefor, and a draft of the judgment or order which it proposes as a substitute for the transmitted draft.

66.1 RECEIVERSHIPS

(a) **Applicability.** This Rule applies to the administration of estates by receivers or by other similar officers appointed by the Court. In respects other than administration of the estate, any civil action in which the appointment of a receiver or other similar officer is sought, or which is brought by or against such an officer, is governed by the Federal Rules of Civil Procedure and by this Rule. This Rule does not supersede any special provisions made by the General or Special Bankruptcy Rules.

(b) **Inventories.** The receiver or similar officer must file an inventory of all the estate's property and assets in his or her possession, and in the possession of others who hold possession as the agent of the receiver or similar officer. In a separate schedule, the receiver or similar officer must file an inventory of all the estate's property and assets not possessed by him or her, but rather claimed and held by others. Unless the Court otherwise orders, the receiver or similar officer must file these inventories as soon as practicable after appointment, but not later than 30 days after he or she has taken possession of the estate.

(c) **Reports.** Within 3 months after the filing of the inventory, and at regular intervals of 3 months thereafter, the receiver or similar officer must file a report of receipts and expenditures, and a report of acts and transactions undertaken in an official capacity.

(d) Compensation of Receivers, Attorneys, and Others. In its discretion, the Court may ascertain and award the compensation of receivers or similar officers, of their attorneys, and of all those who may have been appointed by the Court to aid in the estate's administration. The Court may make such an allowance only on notice to creditors and other persons in interest, as the Court may direct. The notice must state the amount claimed by each applicant.

(e) Administration of Estates. Unless the Court orders otherwise, in all other respects, the receiver or similar officer must administer the estate as nearly as may be in accordance with the practice in the administration of estates in bankruptcy.

72.1 DUTIES AND POWERS OF MAGISTRATE JUDGES

(a) Generally. This Rule describes and defines the general, specific, and additional duties of magistrate judges in the District. Unless otherwise limited or prohibited by an order of the Court en banc, each magistrate judge is designated, authorized, and empowered to exercise all powers and perform all duties under this Rule that are assigned to them. In performing these duties, a magistrate judge must conform to all applicable provisions of federal statutes and rules, to the Local Rules, and to the requirements specified in any order of reference from a district judge.

(b) Recommendations Regarding Dispositive Motions.

1. A magistrate judge may conduct a hearing, and submit to the district judge a report containing proposed findings of fact and recommendations for disposition by the district judge, on any of the following motions and matters:

A. Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;

B. Motions for judgments on the pleadings;

C. Motions for summary judgment;

D. Motions to dismiss or permit the maintenance of a class action;

E. Motions to dismiss for failure to state a claim upon which relief may be granted;

F. Motions to involuntarily dismiss an action;

G. Motions for review of default judgments;

H. Motions to dismiss or quash an indictment or information made by a defendant;

I. Motions to suppress evidence in a criminal case;

J. Proceedings for pleas pursuant to Fed. R. Crim. P. 11;

K. Motions under 18 U.S.C. § 4241 to determine whether a defendant may presently be suffering from a mental disease or defect that would render the defendant mentally incompetent to the extent that the defendant is unable to understand the nature of the proceedings against him or her or to assist properly in his or her defense;

L. Petitions and motions for post-conviction relief under 28 U.S.C. §§ 2241, 2254, and 2255;

M. Petitions filed by prisoners challenging the conditions of their confinement; and

N. Applications or petitions for enforcement of summonses issued under 26 U.S.C. §§ 6420(e)(2), 6421(g)(2), 6427(j)(2), and 7602, in accordance with 26 U.S.C. § 7604.

2. While exercising the authority conferred by Rule 72.1(b)(1), a magistrate judge may determine any preliminary matter, issue any procedural order, and conduct any necessary proceeding, including an evidentiary hearing.

(c) **Determining Non-Dispositive Pretrial Matters.** A magistrate judge may hear and determine any non-dispositive motion or matter not specified in Rule 72.1(b)(1).

(d) **Conducting Trials and Disposing of a Civil Case upon the Parties' Consent.** If all parties consent, a magistrate judge may conduct any and all proceedings in a civil case, including the conduct of a jury or non-jury trial, and may enter a final judgment in accordance with 28 U.S.C. § 636(c). In the course of conducting such proceedings, a magistrate judge may hear and determine any and all pretrial and post-trial motions which are filed by the parties, including case-dispositive motions and motions specified in Rule 72.1(b)(1).

(e) **Other Duties.** A magistrate judge may:

1. Exercise all powers and perform all duties prescribed by 28 U.S.C. § 636(a);

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

3. Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in civil and criminal cases;

4. Conduct arraignments in criminal cases not triable by the magistrate judge and take not guilty pleas in such cases;

5. Receive grand jury returns in accordance with Fed. R. Crim. P. 6(f) and issue orders for the issuance of warrants of arrest and summonses;

6. Accept waivers of indictment in accordance with Fed. R. Crim. P. 7(b);

7. Conduct voir dire and select petit juries for a district judge;

8. Accept petit jury verdicts in civil and admiralty cases for a district judge;

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

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

11. Approve sureties, both corporate and individual, to proffer bail, surety, and other bonds, and order previously approved sureties to be precluded from proffering bail, surety, and other bonds to the Court because of conduct of such nature to cause a loss of confidence in the personal or business integrity of the surety, and order the exoneration of forfeiture of bonds;

12. Conduct proceedings for the collection of civil penalties of not more than $200.00 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. § 4311(d);

13. Conduct examinations of judgment debtors in accordance with Fed. R. Civ. P. 69;

14. Perform the functions specified in 18 U.S.C. §§ 4107, 4108, and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of an attorney therein;

15. Audit Criminal Justice Act forms submitted by appointed attorneys for payment of expert, investigative, or other services or for payment of counseling services and expenses, and make a written recommendation to the Court in respect to the amount to be approved for payment;

16. Institute prosecutions under 42 U.S.C. § 1987;

17. With the consent of a defendant who has not been convicted but has signified an intention to enter a plea of guilty or nolo contendere, order presentence investigations to be commenced in respect to that defendant;

18. Issue orders authorizing the installation and use of devices, such as traps and traces, which are used to determine from which telephone number a telephone call originated, and pen registers, which are used to register telephone numbers dialed or pulsed from a particular telephone; and issue orders directing a communications common carrier, as that term is defined in 47 U.S.C. § 153(11), including a telephone company, to provide assistance to a named federal investigative agency in accomplishing the installation of traps, traces, and pen registers;

19. Issue statutory administrative inspection or search warrants on determination of probable cause;

20. Issue search warrants for searches and seizures which are not within the purview of Fed. R. Crim. P. 41;

21. Issue warrants of arrest for persons who have been determined, in accordance with 18 U.S.C. § 3144, to be material witnesses;

22. Preside over naturalization ceremonies and administer the oath required by 8 U.S.C. § 1448(a);

23. Enforce the award or arbitration or decree of any consul, vice consul, or commercial agent of any foreign nation in differences between the captain and the crew of a vessel belonging to the nation whose interests are committed to his charge, in accordance with 22 U.S.C. § 258a;

24. Conduct extradition proceedings in accordance with 18 U.S.C. § 3184;

25. Serve as a member of the District's Speedy Trial Act Planning Group and assist the Court en banc in drafting and promulgating local rules and procedures;

26. Preside over and conduct proceedings relating to any Re-entry, Drug or similar court conducted in the District; and

27. Perform any other additional duty that is consistent with the Constitution and the laws of the United States.

(f) Territorial Assignments and Administrative Provisions.

1. Chief Magistrate Judge Assignments. Under the Chief District Judge's supervision and with the assistance of the Clerk, the Chief Magistrate Judge is responsible for assigning and reassigning actions, proceedings, and petitions to magistrate judges.

2. Doubts about Administrative Actions. In case of doubt about any administrative action, the Chief Magistrate Judge must secure directions from the Chief District Judge, or if the Chief District Judge is unavailable, from the active district judge with the most seniority who is available.

3. Full-Time Magistrate Judges Generally Must Perform Duties at Their Duty Stations.

A. Generally, a full-time magistrate judge with a duty station at Kansas City must perform duties to be performed in the Western and St. Joseph Divisions or in connection with actions and proceedings arising therein.

B. Generally, a full-time magistrate judge with a duty station at Springfield must perform duties to be performed in the Southern and Southwestern Divisions or in connection with actions and proceedings arising therein.

C. Generally, a full-time magistrate judge with a duty station at Jefferson City must perform duties to be performed in the Central Division or in connection with actions and proceedings arising therein.

4. Full-Time Magistrate Judges May Perform Duties Elsewhere in the District. Any full-time magistrate judge may perform any duty or exercise any power granted, conferred, or imposed by this Rule in any division of the District or in any action or proceeding arising herein.

5. Part-Time Magistrate Judges Must Perform All Duties at Their Duty Stations. Unless otherwise ordered by the Chief Magistrate Judge, the Court en banc, or a district judge, a part-time magistrate judge must perform the general duties and powers of a full-time magistrate judge in the division in which the parttime magistrate judge's duty station is located.

6. Part-Time Magistrate Judge at Fort Leonard Wood. The United States District Court for the Western and Eastern Districts of Missouri may jointly appoint a parttime magistrate judge for the Western and Eastern Districts of Missouri, with an official station at Fort Leonard Wood, Missouri. The order of appointment must specify the part-time magistrate judge's territorial jurisdiction. This part-time magistrate judge must perform such duties in or arising from actions or omissions occurring only within the territorial jurisdiction specified. The United States District Court for the Western and Eastern Districts of Missouri may expand or alter the territorial jurisdiction by any subsequent joint supplemental order.

(g) Reserving or Assigning Additional Duties from or to Magistrate Judges.

1. Reserving Proceedings for Conduct by a District Judge. Notwithstanding this Rule, the Court en banc or any district judge may reserve any proceeding for conduct by a district judge, rather than by a magistrate judge. The Court en banc may, by order, modify the method of assigning proceedings to a magistrate judge as changing conditions may warrant.

2. Assigning Additional Duties to a Magistrate Judge. Absent exceptional circumstances requiring a temporary emergency assignment, the Court en banc, as a part of a system of assignment or by special order, must approve a district judge's assignment of duties or functions to a magistrate judge beyond those permitted in this Rule.

3. District Judge Orders Supersede Magistrate Judge Orders. In case of conflict, the order of a district judge prevails over the order of any magistrate judge.

74.1 PROCEDURE FOR REVIEWING MAGISTRATE JUDGES' ORDERS

(a) Appeal of Non-Dispositive Matters.

1. Any party may appeal from a magistrate judge's order determining a motion or matter under Rule 72.1(c). The appealing party must file, and serve on the magistrate judge and all parties, a written statement of appeal which specifically designates the order, or part thereof, appealed from and the basis for its objections.

2. Unless the magistrate judge or assigned district judge orders otherwise, the appealing party must file its written statement within 14 days after the magistrate judge issues the order.

3. The assigned district judge must consider the appeal and set aside any portion of the order he or she finds to be clearly erroneous or contrary to law.

4. The assigned district judge may reconsider sua sponte any matter determined by a magistrate judge under Rule 72.1(c), and set aside any portion of the order he or she finds to be clearly erroneous or contrary to law.

(b) Appeal of Dispositive Matters.

1. Any party may appeal from a magistrate judge's proposed findings, recommendations, or report under Rule 72.1(b). The appealing party must file, and serve on the magistrate judge and all parties, a written statement of appeal which specifically identifies the portions of the proposed findings, recommendations, or report to which objections are made and the basis for such objections.

2. The appealing party must file its objections within 14 days after the magistrate judge issues the findings, recommendations, or report. If the appealing party shows excusable neglect or good cause, the magistrate judge or district judge may extend this time by up to 21 days. A party may respond to another party's objections within 14 days after being served with a copy.

3. The assigned district judge must make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The assigned district judge may also recommit the matter to the magistrate judge with instructions.

4. In making its determination, the assigned district judge may consider the record developed before the magistrate judge and make his or her own determination on the basis of that record. The assigned district judge may conduct a new hearing, but does not have to unless required by law. In a new hearing, the assigned district judge may receive further evidence or recall witnesses.

5. A party waives its right to appeal any issue which has been determined by the magistrate judge but which it failed to present to the assigned district judge by timely written objections.

(c) Special Master Reports. Any party may seek a review of, or action on, a special master's report filed by a magistrate judge in accordance with Fed. R. Civ. P. 53(f).

(d) Appeals from Judgments in Misdemeanor Cases. A defendant may appeal a judgment of conviction by a magistrate judge after trial in a misdemeanor case. The appealing defendant must file a notice of appeal within 14 days after entry of the judgment, and serve a copy upon the United States Attorney. The scope of appeal is the same as on an appeal from a judgment of the district court to the court of appeals.

79.1 WITHDRAWAL OF FILES

(a) **Procedure for Withdrawal.** Papers on file in the Clerk's Office may not be removed except pursuant to a subpoena from any federal or state court directing their production or on order of the Court.

(b) **Receipt Required.** Whenever papers are withdrawn, the person receiving them must leave with the Clerk a signed receipt identifying the paper taken and agreeing to return the same in the same condition as received and within the period allotted.

79.2 CUSTODY OF EXHIBITS

(a) **Withdrawal.** After trial or as soon as possible, but no more than 14 days after a verdict is rendered or a judgment is entered, the offering attorney must withdraw any exhibits in the Clerk's custody and give the Clerk a receipt for the exhibits.

(b) **Duty to Retain Exhibits.** An attorney must:

1. Retain exhibits withdrawn from the Clerk's custody until the judgment is no longer subject to appellate review;

2. Preserve the retained exhibits in the same condition they were in when offered into evidence;

3. If an opposing attorney requests the exhibits, make them available for examination and use at reasonable times and places; and

4. Upon request, promptly return the exhibits to the Clerk.

(c) **Destruction.** After the judgment is no longer subject to appellate review, an attorney may destroy or otherwise dispose of the exhibits. If an attorney does not claim and withdraw any exhibits, the Clerk may destroy or otherwise dispose of such exhibits. Upon destroying the exhibits, the Clerk must enter a remark on the docket sheet reflecting the date and fact of destruction.

(d) **Sanctions.** The Court may impose sanctions on any person that violates this Rule. The Court retains jurisdiction over the parties and their attorneys for the purpose of enforcing this Rule, even after judgment has been entered.

80.1 COURT REPORTERS' TRANSCRIPTS

(a) **Procedures for Filing Transcripts.** When a court reporter or transcriber completes a transcript of any proceeding in this District, he or she must electronically file the certified transcript in accordance with 28 U.S.C. § 753(b). The transcript must be made available to the public in the following manner:

1. For a period of 90 days after the transcript is filed, the Clerk must make the transcript available for public inspection only. During this period, any person may purchase a copy of the transcript at the rate established by the Judicial Conference.

Unless the Court orders otherwise, purchase by members of the general public is subject to the redaction process set forth in Rule 80.1(a)(2), (3), and (4).

2. Within 7 days after the transcript is filed, each party wishing to redact personal data identifiers from the electronic transcript in accordance with Fed. R. Crim. P. 49.1 and Fed. R. Civ. P. 5.2 must file a Notice of Intent to Redact. Any party wishing to redact additional information must do so by filing a written motion.

3. Within 21 days after the transcript is filed, any party that filed a Notice of Intent to Redact must file a statement indicating the page number and line number where the personal data identifiers to be redacted appear in the transcript.

4. Within 31 days after the transcript is filed, the court reporter or transcriber must perform the requested redactions and file a redacted version of the transcript. The Clerk must retain the original, unredacted electronic transcript as a restricted document.

5. After the initial 90-day period has ended, the Clerk must make the filed, redacted transcript—or the original, if no redactions were requested—available for inspection and copying in the Clerk's Office, and for download from the District's Case Management/Electronic Case Files system, the court reporter, or transcriber.

(b) **The Clerk Must Develop Further Policies and Procedures.** The Clerk must develop a written policy and procedures document which covers the subject of this Rule in more detail.

(c) **Rough Draft Transcripts.** A rough draft transcript or any portion thereof is not the official transcript of any Court proceeding. Rough draft transcripts of proceedings had in the Western District of Missouri may not be quoted from, filed with the Court, or otherwise relied upon to establish to the Court the contents of testimony or other statements made during a court proceeding. Absent prior court authorization, counsel shall not quote from or display unedited transcripts during proceedings or attach them to any briefs or exhibits filed with the Court.

83.1 PARTICIPATION BY FORMER LAW CLERKS IN CASES PENDING BEFORE THE JUDGE WHO PREVIOUSLY EMPLOYED THEM

(a) **Cases Pending during Tenure as a Law Clerk.** An attorney who has been employed as a law clerk to a judge of the District may not work in any case which was pending before that judge during the attorney's tenure as a law clerk. If a former law clerk violates this Rule, the Court may disqualify the attorney and his or her employer from appearing in the case. An employer of a former law clerk must implement procedures to assure that the former law clerk does not violate this Rule.

(b) **Newly-Filed Cases.** For two years after a law clerk leaves the employment of a judge of the District:

1. The former law clerk may not work on any case assigned to that judge, even if the case was filed after the attorney left the judge's employment; and

2. If the former law clerk assisted in preparing a case, or in preparing the defense of a case, that is then assigned at the time of filing to the judge, the former law clerk's employer must promptly file notice of such and the judge must recuse.

83.2 WITHDRAWAL OF COUNSEL

To withdraw from a case, an attorney must file a motion to withdraw. The Court may grant the motion only upon a showing of good cause, which can be shown by entry of appearance of substitute counsel.

83.3 COURTHOUSE DECORUM

(a) **Addressing the Court.** Unless the Court orders otherwise, an attorney must stand while addressing the Court and while examining witnesses.

(b) **Examining a Witness.** Unless the Court orders otherwise, not more than one attorney for each party may examine any one witness.

(c) **Grand Jury.** When a grand jury is convening, no person may remain in a location within the courthouse for the purpose of observing or monitoring persons who enter and leave the grand jury chambers. This prohibition does not apply to:

1. Grand jurors;

2. Witnesses;

3. The Government's attorneys, agents, and employees;

4. District personnel;

5. Attorneys whose clients were called to appear as witnesses at a grand jury session then in progress or about to commence; and

6. Others specifically authorized by a judge to be present.

83.4 PHOTOGRAPHING, BROADCASTING AND TELEVISING AROUND COURTHOUSES

(a) **Definitions.** As used in this Rule:

1. **Environs.** "Environs" includes every part of the United States Courthouses in Kansas City, Jefferson City, and Springfield, including courtrooms, post offices, offices, driveways, parking spaces, steps, docks, and entrances to and exits from those buildings.

2. **Judicial Proceedings.** "Judicial proceedings" includes all judicial proceedings, whether civil or criminal, and whether pending, on appeal, or terminated.

(b) **When Photographing & Broadcasting Are Not Permitted.** Except as provided by this Rule, no person may, during the progress of or in connection with judicial proceedings, regardless of whether court is in session:

1. Take photographs in any District environs; or

2. Broadcast any radio or television, or make any audio or video tapes, in any District environs.

(c) When Photographing & Broadcasting Are Permitted. With leave of the officer in charge, a person may make still or motion pictures, and audio and video tapes, of a ceremony or interview, including administration of oaths to executive, legislative, and judicial officers, so long as the ceremony or interview is not connected with any judicial proceedings. Unless a district judge orders otherwise, if the United States Marshal determines, in his or her judgment, that there is no problem of security, a person may take photographs with handheld equipment in the back driveway parking areas in connection to a particular case.

(d) Non-Applicability of Rule. This Rule does not apply to legislative hearings, naturalization or other ceremonial proceedings, or to recordings made for future use in judicial proceedings by official court reporters or other persons authorized by a judge.

83.5 BAR ADMISSION

(a) Roll of Attorneys. The Bar of this District consists of those attorneys admitted to appear and practice before the District. Except as otherwise provided in this Rule, only members of the Bar of this District, attorneys admitted pro hac vice, and individuals representing themselves may appear or practice before this District.

(b) Eligibility and Qualifications. An attorney is eligible for admission to the Bar of this District if he or she is a member in good standing of either the Missouri Bar or the Bar of the United States District Court for the District of Kansas.

(c) Procedure for Admission.

1. Admission Materials. To apply for admission, an eligible attorney must submit to the Clerk, on the forms provided by the Clerk:

A. A written petition setting forth: the applicant's name, age, and office address; the date the applicant was admitted to practice by the Supreme Court of Missouri or the United States District Court for the District of Kansas; an attestation that applicant is not in default in payment of any fee required by the Rules of the Supreme Court of Missouri or the United States District Court for the District of Kansas;

B. Two certificates, each signed by a member of this Bar who has at least five years' good standing, stating when they were admitted to this Bar and what they know of the applicant's character and experience at the Bar. If the applicant has passed the Missouri Bar Examination and been admitted to the Missouri Bar in the current calendar year, then the applicant may instead submit a form indicating, unless the Court en banc orders otherwise, that he or she does currently, or intends to:

i. Maintain a law office:

ii. Associate with, or be employed by, an attorney admitted to this Bar; or

iii. Serve as a law clerk to any state or federal judge.

C. The appropriate admission fee as set by the Court en banc; and

D. A completed registration form for the District's Case Management/Electronic Case Files system.

2. Notification of Ceremony. If the submitted materials comply with Rule 83.5(c)(1), the Clerk must notify the applicant of a date and time for the admission ceremony.

3. Procedure at Ceremony. The applicant must attend the admission ceremony. If admitted, the applicant must, in open court, take an oath in the form prescribed by the Court en banc and provided by the Clerk. The Clerk must enter the attorney's name into the rolls and the Case Management/Electronic Case Files system. The applicant is now a member of the Bar of the District.

(d) Annual Fee.

1. Annual Fee Required. Every member of this Bar must pay an annual fee as set by the Court en banc. This fee must be paid in the manner designated by the Clerk. The Clerk may establish a deadline for these payments. If a fee is received after the deadline, the Clerk may assess a reinstatement fee.

2. Failure to Comply. If an attorney fails to pay the annual fee, the Clerk must place the attorney on inactive status and disable the attorney's Case Management/Electronic Case Files account, if applicable. While on inactive status, the attorney may not appear or practice before the District.

3. Bar Fund. The Clerk must maintain the collected annual fees in a separate account, and disburse these fees under the direction of the Court en banc.

(e) Disciplinary Registration Fees.

1. Disciplinary Registration Fees Required. Upon admission, every member of this Bar must pay the Clerk an initial disciplinary registration fee, in an amount set by the Court en banc. The Clerk must maintain these fees , as trustee, for the payment of expenditures incurred for the payment of costs incurred in the disciplinary administration and enforcement under Rule 83.6.

2. Payment of Disciplinary Registration Fee to Another Court. If an attorney demonstrates that he or she has paid a disciplinary registration fee in another court of the United States pursuant to that court's adoption of disciplinary rules similar to this local rule, then the attorney need not pay the registration fee required under Rule 83.5(d).

(f) Inactive Status.

1. Process. Any member of this Bar who desires to become inactive in the practice of law before the District may advise the Clerk, in writing, that the attorney desires to assume inactive status. Members also become inactive automatically upon failure to pay any annual fees.

2. Effect. Upon the filing of a notice to assume inactive status, or upon the nonpayment of annual fees, the attorney may not appear or practice before the District and is no longer required to pay the annual fees.

3. Reinstatement. If a member of this Bar has been placed on inactive status and desires to be reinstated to active status, the attorney must submit a request through the Case Management/Electronic Case Filing system and pay the required fee electronically. Once the Clerk accepts this request, the attorney is again a member of this Bar.

(g) Pro Hac Vice Admission. Any attorney who is not a member of this Bar may nonetheless appear and practice in a particular case if admitted pro hac vice.

1. Eligibility. The attorney seeking pro hac vice admission must:

A. Reside outside the District;

B. Be admitted to practice in any United States District Court; and

C. Be a member in good standing in all bars of which he or she is a member.

2. Limited Initial Appearance before Application. An attorney that is not a member of this Bar may appear in a case, but must comply with Rule 83.5(h)(3) within 14 days after entering the appearance. If the attorney fails to do so, then the Court, upon motion or sua sponte, may remove the attorney from the case.

3. Procedures for Admission. The applicant must:

A. Associate with an active member in good standing of this Bar;

B. File a written Petition for Admission *Pro Hac Vice* via the Case Management/Electronic Case Files system;

C. Submit an admission fee, including the disciplinary registration fee, in an amount set by the Court en banc; and

D.

4. Admission. If the submitted materials comply with Rule 83.5(h)(3), the Clerk must enter the applicant's name into the rolls and notify the applicant. The applicant may then participate as an attorney in the specified case only.

5. Role of Sponsoring Attorney. As soon as the visiting attorney complies with the foregoing and enters an appearance, the Court may excuse the Rule 83.5(h)(3)(A)

attorney from further attendance in the case. Even if such attorney is so excused from attendance, he or she retains all of the responsibilities of an attorney of record and must continue to accept service of papers and to serve as a point of contact or communication between the Court and the party he or she represents.

6. Discipline. Whenever an attorney applies for pro hac vice admission, the attorney thereby consents to disciplinary jurisdiction by this District for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

(h) Government Attorneys and Federal Public Defenders. An attorney who is not a member of this Bar may nonetheless practice in a particular case in the attorney's official capacity if he or she represents the United States, any of its agencies, or the Office of the Federal Public Defender, and completes a Petition for Admission of a Government Attorney. If the attorney represents the United States and does not reside within the District, the attorney must designate the United States Attorney or an Assistant United States Attorney for this District to receive service. Service of notice upon such designated attorney constitutes service upon the non-resident Government attorney.

(i) Certificates of Good Standing. A Certificate of Good Standing issued by this District attests that a particular attorney is admitted to this Bar, is not currently suspended or disbarred, has registered timely with the Clerk, and is current with payment of the annual fee. To obtain a Certificate of Good Standing, a person must make a request in writing via the Case Management/Electronic Case Filing system and submit a fee to the Clerk in an amount set by the Court en banc.

(j) Duty to Report Contact Information. An attorney admitted to practice under this Rule has a continuing duty to promptly notify the Clerk of any change of name, business address, telephone number, or e-mail address. An attorney may do so through the Case Management/Electronic Case Filing system.

83.6 ATTORNEY DISCIPLINE

(a) Generally. If an attorney admitted to this Bar commits misconduct as specified in this Rule, then the Court en banc may discipline that attorney in accordance with this Rule.

(b) Definitions. As used in this Rule:

1. Any Court. "Any court" includes any federal court or the court of any state, territory, commonwealth, or possession of the United States.

2. Serious Crime. "Serious crime" includes any felony. It also includes any lesser crime, a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit the above crimes.

(c) Forms of Misconduct.

1. **Attorneys Violating Rules of Professional Responsibility.** An attorney admitted to this Bar has committed misconduct if he or she violates the District's adopted Code of Professional Responsibility, whether by act or omission, whether committed individually or in concert with any other person or persons, and whether committed in the course of an attorney client relationship or the practice of law. The District's Code of Professional Responsibility is the Rules of Professional Conduct adopted by the Supreme Court of Missouri, except as otherwise provided by specific order of the Court en banc.

2. **Attorneys Convicted of Crimes.**

   A. An attorney admitted to this Bar has committed misconduct if convicted of a serious crime in any court, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, and regardless of whether the charge resulted in a suspended imposition of sentence.

   B. If the Clerk receives a certified copy of a judgment of conviction demonstrating that an attorney admitted to this Bar has been convicted of a serious crime in any court, the Court en banc must enter an order commencing a disciplinary proceeding and immediately suspending that attorney until final disposition of the disciplinary proceeding. The Court en banc must immediately serve a copy of such order upon the attorney. Upon a showing of good cause, the Court en banc may set aside such order.

   C. An attorney suspended under this Rule must be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed. This reinstatement does not terminate any disciplinary proceeding then pending against the attorney, the disposition of which must be determined by the Court en banc on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

   D. In any disciplinary proceeding instituted against an attorney based upon a criminal conviction, a certified copy of a judgment of that is conclusive evidence that the attorney committed that crime.

   E. If the misconduct alleged is the commission of a serious crime, the Court en banc may not issue final discipline until all appeals from the conviction are concluded.

3. **Attorneys Disciplined by Other Courts**

   A. An attorney admitted to this Bar has committed misconduct if subjected to public discipline by any court besides this District. Upon being subjected to such discipline, the attorney must so inform the Clerk.

   B. Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted this Bar has been disciplined by

another court, this Court en banc must serve on the attorney under investigation:

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

ii. An order directing the respondent to show cause within 30 days why the Court en banc should not impose identical discipline.

C. If the other court has stayed the discipline imposed, any reciprocal discipline imposed by the Court en banc must be deferred until the stay expires.

D. In any disciplinary proceeding instituted against an attorney based upon discipline by another court, a final adjudication by that court that the attorney was guilty of misconduct is conclusive evidence that the attorney committed misconduct.

E. No sooner than 30 days after serving the respondent, the Court en banc must impose the identical discipline unless the Court en banc enters an order finding from the face of the certified copy of the judgment or order that clearly:

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

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

iii. The imposition of the same discipline by the Court en banc would result in grave injustice; or

iv. The misconduct established warrants substantially different discipline.

F. Upon resigning or being disbarred on consent from the bar of any other court, the attorney must so inform the Clerk. Upon the filing of a certified or exemplified copy of a judgment or order by any other court accepting the resignation or disbarment on consent from that court by an attorney admitted to this Bar, the Clerk must strike the attorney's name from the rolls. The stricken attorney is no longer permitted to appear or practice in this District. Such a resignation or disbarment on consent does not terminate any disciplinary proceeding against that attorney in this District.

(d) Disciplinary Proceedings. Except as specified in Rule 83.6(c), the following governs the process of disciplining attorneys admitted to this Bar that have committed misconduct.

1. Initiating a Disciplinary Investigation. When misconduct, or allegations which, if substantiated, would constitute misconduct, on the part of an attorney admitted

to this Bar come to the attention of a judge, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by this Rule, the Judge may initiate a disciplinary investigation. If the misconduct or allegations come to the attention of the Clerk, the Clerk shall refer the matter to the Chief Judge, who may initiate a disciplinary investigation.

2. Investigation.

A. Once a disciplinary investigation is initiated, the Court en banc may refer the matter to an attorney to serve as a special master.

i. The special master may perform any appropriate task, including investigating the case, determining whether probable cause exists to believe that an attorney has violated Rule 83.6(c), prosecuting a formal disciplinary proceeding, and formulating another appropriate recommendation.

ii. An attorney is eligible to serve as special master if he or she is an attorney for the Missouri Office of Chief Disciplinary Counsel, a member of this Bar, or an Assistant United States Attorney. The attorney under investigation may move at any time to disqualify a special master on the grounds that the special master is or has been engaged in any matter as an adversary of the attorney under investigation. A special master, once appointed, may not resign unless granted leave of the Court en banc.

iii. If the special master concludes after investigation and review that there is probable cause to believe that an attorney has violated Rule 83.6(c), the special master must demonstrate such to the Court en banc. If the Court en banc concurs with the special master, the special master must file with the Court en banc an order that contains a short and plain statement of each ground for discipline and that directs the attorney under investigation to show cause why he or she should not be disciplined. The Court en banc must serve the show cause order on the respondent, who may, within 30 days, file an answer identifying any disputed issues of fact and any matters in mitigation.

iv. If the special master concludes after investigation and review that there is no probable cause to believe that an attorney has violated Rule 83.6(c), or that the Court en banc should await the disposition of another proceeding against the attorney under investigation, the special master must file with the Court en banc a report containing recommendations for disposition—whether by dismissal, admonition, or deferral—and setting forth the reasons.

B. Once a disciplinary investigation is initiated, if the Court en banc does not appoint an attorney to serve as special master, the Court en banc must undertake its own investigation. If the Court en banc determines that there

is probable cause to believe that an attorney has violated Rule 83.6(c), the Court en banc must serve on the attorney under investigation an order that contains a short and plain statement of each ground for discipline and that directs the respondent to show cause why he or she should not be disciplined. The respondent may, within 30 days, file an answer identifying any disputed issues of fact and any matters in mitigation.

C. At any stage in the process, the Court en banc may instead refer the matter to the disciplinary authorities for the appropriate state bar. The Court en banc may conclude that a disciplinary investigation is not warranted and that no disciplinary action will be taken.

3. Selecting Discipline.

A. If the respondent's response to the show cause order raises any issue of fact or gives notice of issues on which the respondent wishes to be heard in mitigation, the Court en banc must set the matter for a hearing.

i. The Chief District Judge must appoint one or more judges to serve on the hearing panel. If the proceeding resulted from the initial complaint of a judge, the Chief District Judge must appoint 3 judges, none of who may be the complaining judge. If the Chief District Judge is the complainant, the active district judge with the most seniority must appoint the panel. If the appointing judge determines that the complaint involves issues related to practice before the Bankruptcy Court, at least one bankruptcy judge must be appointed.

ii. The hearing panel must submit to the Court en banc a report containing findings on disputed facts and issues heard in mitigation, and recommendations for appropriate discipline, if any, to the Court en banc. Upon consideration of this report and recommendation, the Court en banc must determine the appropriate discipline, if any, and terminate the proceeding.

B. If no hearing panel is required, then the Court en banc must determine the appropriate discipline, if any, and terminate the proceeding.

(e) Disbarment on Consent While under Disciplinary Investigation or Prosecution.

1. Affidavit Required to Consent to Disbarment. Any attorney admitted to this Bar who is the subject of an investigation into, or a pending proceeding involving allegations of misconduct may consent to disbarment, but only by delivering to the Court en banc an affidavit swearing that the attorney:

A. Freely and voluntarily consents to disbarment, is not being subjected to coercion or duress, and is fully aware of the implications of so consenting;

B. Is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline the nature of which the attorney must specifically set forth;

C. Acknowledges that the material facts so alleged are true; and

D. Acknowledges that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself.

2. Disbarment upon Receipt of Affidavit. Upon receiving this affidavit, the Court en banc must enter an order disbarring the attorney and terminating the disciplinary investigation or proceeding.

3. Disbarment Order Matter of Public Record. The order disbarring the attorney on consent must be a matter of public record. Unless the Court en banc orders otherwise, the attorney's affidavit may not be publicly disclosed or made available for use in any other proceeding.

(f) Resignation While under Disciplinary Investigation or Prosecution.

An attorney admitted to this Bar who is the subject of an investigation into or a pending proceeding involving allegations of misconduct may voluntarily resign from the Bar, but the resignation does not automatically terminate the disciplinary proceeding against that attorney.

(g) Reinstatement.

1. Generally. An attorney who is suspended for more than 3 months or disbarred may not resume practice until the Court en banc grants a petition for reinstatement. An attorney who is suspended for 3 months or less is automatically reinstated at the end of the period of suspension if he or she files with the Chief District Judge an affidavit of compliance with the provisions of the order of suspension.

2. Ineligibility for Reinstatement. An attorney may not petition for reinstatement within one year following an order rejecting a petition for reinstatement. Unless the Court en banc orders otherwise, an attorney who has been disbarred may not petition for reinstatement until at least five years after the effective date of the disbarment.

3. Filing the Petition. A petition for reinstatement must be filed with the Chief District Judge and must be accompanied by an advance deposit, in an amount to be set from time to time by the Court en banc, towards payment of anticipated costs of the reinstatement proceeding. The Court en banc must fix the actual amount of the cost of the reinstatement proceeding at the conclusion of the proceeding.

4. Assigning the Petition. Upon receiving a petition for reinstatement, the Chief District Judge must assign the petition to one or more judges of this Court to conduct appropriate proceedings and to recommend appropriate disposition to the

Court en banc. If the discipline resulted from the initial complaint of a judge, the Chief District Judge may not assign the petition for reinstatement to the complaining judge. The Court en banc, after consulting with the judges assigned

to the petition, may appoint a special master in accordance with Rule 83.6(d)(2)(A)(ii) to investigate the petition. If a special master is appointed under this Rule, the special master must submit, within 45 days, a report and recommendation to the judges assigned to the petition.

5. **Hearing on Reinstatement.** After receiving and considering any report and recommendation of a special master, the judges assigned to the petition may schedule a hearing. If a hearing is scheduled, the special master must present all pertinent information bearing on the relief requested in the petition at the hearing. At the hearing, the petitioner has the burden of demonstrating by clear and convincing evidence that he or she has the necessary integrity, moral qualifications, and competency for readmission to this Bar. The judges assigned to the petition must submit suggested findings and conclusions to the Court en banc.

6. **Conditions of Reinstatement.** Upon consideration of these findings and conclusions, the Court en banc must decide whether to reinstate the petitioner and terminate the proceeding. The Court en banc may reinstate the petitioner subject to conditions. Conditions of reinstatement may include the payment of all or part of the costs of the proceedings, and may include partial or complete restitution to parties harmed by the attorney, and proof of competency to practice before the District.

(h) Service of Papers and Other Notices.

The show cause order specified in Rule 83.6(d) must be served on the respondent by personal service or by registered or certified mail. Service of any paper or notice under this Rule is proper if the paper or notice is addressed to the respondent at:

1. The most recent address the Clerk has on file;

2. The address indicated in the most recent pleading or other document filed in the course of any proceeding; or

3. The respondent's last known address.

(i) Payment of Fees and Costs.

1. At the conclusion of any disciplinary investigation or proceeding, any special master may move the Court en banc for an order awarding reasonable fees and reimbursing costs expended in the course of the investigation or proceeding. The Court en banc may require the special master to submit a budget for approval.

2. The Chief District Judge may order the Clerk, as trustee of the funds collected under Rule 83.5(e), to pay the costs incurred by the Court en banc in administrating this Rule. The Chief District Judge may order these payments to be taxed as costs against any attorney disciplined by the Court en banc.

(j) Certificate of Disciplinary Judgment and Notice by Clerk.

1. Upon being informed that an attorney admitted to this Bar may have been convicted of a crime, the Clerk must determine whether the clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to the Court en banc. If a certificate has not been forwarded, the Clerk must promptly obtain a certificate and file it with the Court en banc.

2. Upon being informed that an attorney admitted to this Bar may have been subjected to discipline by any other court, the Clerk must determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with the Court en banc. If it has not been filed, the Clerk must promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with the Court en banc.

3. Upon being informed that an attorney disbarred, suspended, censured, or disbarred on consent by this District for being convicted of a crime is admitted to practice law before any other court, the Clerk must promptly transmit a certificate of the conviction or a certified exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, to the disciplinary authority of that court and to the last known office and residence addresses of the attorney.

4. The Clerk must promptly notify the National Discipline Data Bank operated by the American Bar Association of any order by the Court en banc imposing public discipline upon an attorney admitted to this Bar.

(k) Jurisdiction. This Rule does not preclude a judge from imposing sanctions or taking any other action pursuant to the Court's inherent authority, the Federal Rules of Civil Procedure, or any other applicable authority (including referral of a matter to the disciplinary authorities for the appropriate state bar), not does it preclude a judge from initiating civil of criminal contempt proceedings against an attorney appearing in an action in the Court. A judge may take these actions if he or she deems it appropriate, even if the conduct at issue is also subject to discipline under the Rule, and even if discipline is imposed under this Rule.

(l) Unauthorized Practice. Unless specifically authorized by a judge, an attorney who, before admission or during disbarment or suspension, exercises any of the privileges of a member of this Bar, or who pretends to be entitled to so do, is guilty of contempt of court and is subject to appropriate punishment, to be instituted in the same manner as provided in this Rule.

83.7 FILING FEES FOR INDIGENT PERSONS

(a) Written Request to Proceed In Forma Pauperis. An individual may request leave to commence a civil action without being required to prepay fees or costs by filing with the complaint an affidavit requesting leave to proceed in forma pauperis. The affidavit must either be on the form provided by the Clerk, or else contain the same information requested on the Clerk's form.

(b) **Materials Reviewed.** The Court must review the affidavit and any other information the applicant provides that is relevant to his or her ability to prepay the filing fees and costs. If the applicant is incarcerated, the Court may request a copy of the applicant's inmate account, if it is not filed with the affidavit. In calculating the applicant's average monthly income, the Court must exclude gifts of $5.00 or less, unless the applicant has received a sufficient number of such gifts that it is reasonable to include them in the applicant's average income. The Court may give the defendants the opportunity to show cause why the applicant should not be granted leave to proceed in forma pauperis.

(c) **Standards for Granting In Forma Pauperis Status.** The Court must determine whether the applicant is capable of paying the initial filing fee. An applicant is not capable of paying the initial filing fee if doing so will cause him or her to give up the basic necessities of life. Unless the applicant shows good cause, an incarcerated applicant is capable of paying the initial filing fee if his or her average monthly income or the balance in the inmate account is $1,200.00. If the Court concludes the applicant is capable of paying the initial filing fee, the Court may require the fee to be paid before the case proceeds or may grant the applicant leave to pay the filing fee within a specified time period no shorter than 30 days. If the applicant then fails to timely pay the filing fee, the Court may dismiss the complaint. The Court may grant leave to proceed in forma pauperis after the applicant has paid the filing fee.

(d) **Partial Filing Fees.** Except in cases filed under 28 U.S.C. §§ 2254 and 2255, if the Court concludes that the applicant is not capable of paying the full filing fee, the Court may require the applicant to pay a partial filing fee of at least $1.50. The partial fee required may not cause the applicant to give up the basic necessities of life. If the applicant is confined in an institution which provides the basic necessities of life, the Court may impose a partial filing fee of 10% of the applicant's average monthly income for the six months immediately preceding the filing of the complaint. If the Court concludes the applicant is capable of paying the partial filing fee, the Court may require the fee to be paid before the case proceeds or may grant the applicant leave to pay the filing fee within a specified time period no fewer than 30 days. If the applicant then fails to timely pay the partial filing fee, the Court may dismiss the complaint.

(e) **Objections to In Forma Pauperis Status.** If a filing fee is imposed on a person who has requested leave to proceed in forma pauperis, any party to the case may, within 21 days after being notified of the fee imposed, file written objections to the fee, to correct the information that may have been considered in setting the fee, or to demonstrate special circumstances justifying the payment of a lower or higher fee. The Court must review promptly the objections and rule on the application for leave to proceed in forma pauperis.

(f) **Review and Rescission of In Forma Pauperis Status.** The Court may review and rescind in forma pauperis status at any time for any reason, such as if the party becomes capable of paying the complete filing fee, if the Court determines the case is frivolous, or if the Court determines that the applicant has willfully misstated information in his or her application.

(g) **Payment of Attorney's Fees and Costs from Recovery.** By applying for in forma pauperis status, the applicant and his or her attorney consents that a portion of any

recovery, as directed by the Court, must be paid to the Clerk, who will pay therefrom all unpaid attorney's fees and costs taxed against the applicant.

83.8 PRACTICE BY STUDENT INTERNS ENROLLED IN LAW SCHOOL

An eligible law student acting under a supervising attorney may appear and participate in proceedings in this District under this Rule.

(a) Eligibility. To be eligible to appear and participate, a law student must:

1. Be a student in good standing in a law school approved by the American Bar Association;

2. Have completed legal studies amounting to 3 semesters, or the equivalent if the law school is on some other basis than a semester basis;

3. Be sponsored by a supervising attorney who must:

A. Be a member in good standing of this Bar;

B. Assume personal professional responsibility for the conduct of the student being supervised;

C. Co-sign all pleadings, papers, and documents prepared by the student;

D. Advise the Court of the student's participation in accordance with Rule 83.8(c), be present with the student at all times in court, and be prepared to supplement oral or written work of the student as requested by the Court or as necessary to ensure proper representation of the client; and

E. Be available for consultation with the client;

4. File with the Clerk a Notice of Appearance, on the form provided by the Clerk, in each case in which the student is appearing or participating. The notice must be signed by the supervising attorney and the law student. When signing the notice of appearance, the law student must certify that he or she has read and agrees to abide by the Local Rules, all applicable codes of professional responsibility, and all relevant federal practice rules. The supervising attorney must certify that he or she has advised the client that the law student will make an appearance and that the client have consented to the participation of the law student intern; and

5. Be introduced by the supervising attorney to the Court in which the student is appearing.

(b) Restrictions. No law student admitted under this Rule may:

1. Request or receive any compensation or payment of any kind from the client, except that the supervising attorney or his or her law firm, a law school, a public defender, or any agency of the government may pay compensation to the law student or charges for its services as it may otherwise properly require;

2. Appear in court without the presence of the supervising attorney; or

3. File any documents or papers that the student has prepared which have not been read, approved, and signed by the supervising attorney and co-signed by the student.

(c) Notice. Any supervising attorney intending to use a law student under this Rule in any contested matter must notify the Court of such intention at least 24 hours before the matter is scheduled to commence. If the Court deems participation by the law student would be inappropriate, the Court must so advise the supervising attorney and the appearance may not be made.

(d) Termination. Any judge may terminate a law student's participation under this Rule at any time, without notice or hearing, and without a showing of cause. The judge may file notice of the termination.

83.9 ASSIGNMENT OF CASES

(a) Assignment of New Cases. Unless otherwise provided in a statute, federal rule, or order of the Court en banc, the Clerk must assign newly filed matters among the qualified judges by blind draw. Judges are considered qualified unless they have given blanket recusal instructions to the Clerk in writing.

(b) Temporary Case Management by Another Judge. If a judge assigned to a case is unavailable or so requests, any other judge may enter an order in that case, subject to Rule 72.1.

(c) Transfer of Cases. The Clerk must transfer a case to another judge if:

1. The transferring judge and the receiving judge mutually consent;

2. The case is on a joint trial docket, and the Chief District Judge certifies that reassigning the case would promote its prompt and efficient disposition;

3. The case is a refiling of a previously dismissed case, in which instance the refiled case must be transferred to the judge last handling the dismissed case; or

4. The case is related to another case filed in the District, in which instance the later filed case must be transferred to the judge with the earlier-filed case, regardless of whether the earliest filed case is pending.

83.10 SANCTIONS FOR LATE NOTIFICATION OF SETTLEMENT

If the parties in a civil action scheduled for jury trial settle or otherwise dispose of the action, then they must notify the Clerk before twelve noon of the last business day before the day when trial is scheduled to begin. Unless they show good cause, if the parties fail to so notify the Clerk, then the Court may assess equally against them and their attorneys the jury costs, including Marshal fees, mileage, and per diem.

83.11 ELECTRONIC COMMUNICATION DEVICES

(a) **Definitions.** As used in this Rule, "electronic communication device" includes any computer, personal digital assistant, cellular telephone, digital camera or camcorder, pager, two-way radio, or other electronic device.

(b) **General Prohibition on Possessing Electronic Communication Device.** No person may possess an electronic communication device in any District courthouse, except by:

1. Law enforcement officers;

2. United States Attorneys and staff;

3. Federal Public Defenders and staff;

4. Bankruptcy panel trustees;

5. District employees and other tenants of any District courthouse;

6. Attorneys, including pro hac vice counsel, who present photo identification and a current bar registration card from this or any other federal or state court, and staff; and

7. Others specifically granted permission by a judge.

(c) **Restrictions on Use.** Individuals authorized under Rule 83.11(b) to possess an electronic communication device:

1. Are subject to proper screening and security clearance before entry into a District courthouse;

2. May not allow an electronic communication device to be used by any unauthorized person or for any unauthorized purpose; and

3. May not use an electronic communication device—except for a laptop computer—in a courtroom, unless the individual is court personnel or has been granted specific permission by a judge.

(d) **Sanctions for Violations.** The Court, the United States Marshals Service, and Court Security Officers may confiscate any electronic communication device that is used in violation of this Rule or Rule 83.4. In addition, the Court may impose sanctions, including financial sanctions.

LOCAL CRIMINAL RULES

99.0 APPLICABILITY OF LOCAL CIVIL RULES

Unless the context clearly indicates otherwise, all Local Civil Rules apply to criminal proceedings in this District.

99.1 BAIL AND SURETIES

(a) **Bail.** If a person is arrested in the District for committing a criminal offense, the Court may admit that person to bail in accordance with Fed. R. Crim. P. 46 and 18 U.S.C. §§ 3141, 3146, 3148, and 3149.

(b) **Approval of Sureties.** Unless a district judge orders otherwise, any entity offered as a surety must appear before a magistrate judge to demonstrate that its assets are adequate under Fed. R. Crim. P. 46(e) and that, if applicable, it satisfies Rule 99.1(c). If a magistrate judge is not readily available, the Clerk may take such demonstration and admit a defendant to bail.

(c) **Qualifications for Individual Sureties.** An individual may be accepted as a surety on bond or undertaking in any action or proceeding only if he or she:

1. Is a reputable person, at least 21 years of age, and a bona fide resident of the State of Missouri;

2. Has not been convicted of any felony under the law of the United States or of any state;

3. Is not an attorney, a peace officer, marshal or deputy marshal, a constable or deputy constable, sheriff, or deputy sheriff;

4. Is not the Clerk, a deputy clerk, or other officer or employee of the District;

5. Is not an elected or appointed official or employee of the United States, or any state or any political subdivision thereof;

6. Owns real or personal property having a reasonable market value, in excess of all encumbrances thereon, exemptions, and all other liabilities, at least equal to the amount specified in the bond which the individual proposes to execute. To qualify upon the basis of real estate owned, an individual must be the sole, legal, and equitable owner thereof in fee simple and at record, and must file in connection with the surety's Fed. R. Crim. P. 46(e) demonstration a certificate of a title company authorized to do business in the State of Missouri as to ownership and encumbrances and an appraisal made by a real estate appraiser who is a member of the Society of Real Estate Appraisers or the American Institute of Real Estate Appraisers in respect to the real estate proffered as security.

If there are several sureties, the aggregate market value of real estate or personal property owned by them, in excess of encumbrances, exceptions, and all other liabilities, must be at least equal to the amount specified in the bond.

(d) **Disqualification of Sureties.**

1. **Conditions.** Any judge may enter an order disqualifying a surety from proffering bail, surety, or other bonds if:

A. The surety—or its agent, representative, servant, or employee—conducts himself or herself in the surety's business in a manner that forfeits the confidence of the judge; or

B. Causes the judge to lose confidence in the business integrity or moral manner by which the surety carries out the surety's business or undertakings. The judge measures "moral manner" by whether, in the judge's opinion, the method of the conduct of the business of the surety will subject the judge or District to calumny in any manner.

2. Procedure for Magistrate Judges. If the disqualifying judge is a magistrate judge, he or she must set forth findings of fact and conclusions of law in the order. The magistrate judge must file the order and mail a copy to the surety. Within 14 days after being served with a copy of the order, the surety may file a written specific objection to the order. If timely filed, the Court en banc—or a district judge, if so designated by the Court en banc—must make a de novo determination of the magistrate judge's order. The Court en banc—or the district judge designated to make a de novo determination—may accept, reject, or modify, in whole or in part, the order issued by the magistrate judge, or recommit the matter to the magistrate judge with instructions.

99.2 ESTABLISHING PANEL OF EXPERTS AND PROCEDURES FOR DETERMINATION OF MENTAL COMPETENCY

(a) Purpose of Rule. The purpose of this Rule is to establish a panel of experts and to prescribe the procedure to be followed in connection with examinations ordered pursuant to 18 U.S.C. §§ 4241 or 4242, and any other examination that may be ordered pursuant to other laws.

(b) Establishment of Panel of Experts. The District must establish a panel of competent, licensed, or certified psychiatrists or psychologists. A list of the psychiatrists and psychologists on the panel must be on file with the Clerk and with the Chief United States Probation and Pretrial Services Officer. The District may add to such list other competent experts in mental diseases who may, from time to time, be designated to serve with and assist a particular psychiatrist and/or psychologist in connection with a particular examination.

(c) Procedures for Order of Examination. In ordering an examination under this Rule, the Court may authorize the Chief United States Probation and Pretrial Services Officer to make proper arrangements with a psychiatrist and/or psychologist designated by the Court from the approved panel for such examination. If the defendant is in custody, the United States Marshal may deliver the defendant to the office of the designated examiner and afterward return the defendant to the place of confinement.

(d) Preparation and Protection of Social History. Except for examinations conducted at a federal penal institution, the Chief United States Probation and Pretrial Services Officer must prepare a social history of the defendant for use by the examiner, if so requested by the examiner. Fed. R. Crim. P. 12.2(c) protects the social history and any statements made by the defendant in connection with that social history.

99.3 SPECIAL GRAND JURIES

(a) **Purpose of Rule.** The purpose of this Rule is to establish directives and procedures calculated to insure compliance with 18 U.S.C. §§ 3331–3334, and to avoid the dissemination of any information concerning or contained in any report submitted by a special grand jury impaneled under those statutory sections until and unless such report has been ordered accepted by the Court and ordered filed as a public record in accordance with those statutory sections.

(b) **Release of Information Concerning Special Grand Jury Reports.** No member of a special grand jury, and no other person who may have information concerning any special grand jury report, may reveal any information concerning the contents of a special grand jury report, until and unless such report has been accepted and ordered filed by the Court as a public record in accordance with 18 U.S.C. §§ 3331–3334. The release of any information concerning the contents of a special grand jury report before such time presents a reasonable likelihood that the release of such information could interfere with fair trials in pending or future cases and would otherwise prejudice the proper administration of justice.

(c) **Application of Rule 99.7.** Rule 99.7 fully applies to the release of any information by lawyers and other employees of the federal, state, city or county employees participating in or associated with any investigation being made by a special grand jury. Such persons are expressly prohibited from making any public judicial or extra-judicial statement concerning the contents of any special grand jury report until and unless such report is ordered accepted and ordered filed as a public record in accordance with the provisions of 18 U.S.C. §§ 3331–3334. At that time, such persons' statements are limited to the contents of the report approved by the Court for filing.

(d) **Procedures Concerning Submission of Special Grand Jury Reports.** If a special grand jury, upon completing its original term, desire to submit a report authorized by 18 U.S.C. § 3333, it must file a motion in accordance with the following procedures:

1. The proceeding must be entitled "In the Matter of a Report Submitted by Special Grand Jury Impaneled on [INSERT DATE]."

2. The special grand jury's motion must allege that its report is submitted upon the completion of its original term, that such report has the concurrence of a majority of its members, and that, in its judgment, such report is based upon facts revealed in the course of an investigation authorized by 18 U.S.C. § 3332(a) and is supported by the preponderance of the evidence.

3. The special grand jury must place its submitted report in a sealed envelope marked "Exhibit A" and labeled "Report Submitted by Special Grand Jury." It must place

in another sealed envelope, marked "Exhibit B" and labeled "Supporting Data," the facts revealed in the course of its investigation which it believes supports its report by the preponderance of evidence. The supporting data may consist of a transcript of proceedings before the special grand jury and exhibits presented to the special grand jury.

4. The motion must pray for an appropriate order either: A. Accepting and filing such report as a public record; or
B. If the report is one submitted pursuant to 18 U.S.C. § 3333(a)(1), directing further proceedings to be conducted in accordance with law.

5. The Clerk must immediately transmit the motion and any attached exhibits to the Court for further proceedings in accordance with. Unless the Court orders otherwise, no person may reveal the contents of Exhibit A or Exhibit B directly or indirectly

6. The Court must, after direction of in accordance with further proceedings, enter its order as to whether the report submitted by the special grand jury should or should not be accepted and ordered filed as a public record.

(e) Sanctions for Violations of this Rule. If any person violates this Rule in any manner, the Court may initiate contempt proceedings under Fed. R. Crim. P. 42.

99.4 REPORT BY PERSONS ADMITTED TO BAIL

Any person admitted to bail must report to the United States Probation and Pretrial Services Office immediately prior to any court proceeding which such person is required to attend.

99.5 INDUCING VIOLATIONS OF, AND MODIFYING, CONDITIONS OF BAIL, PROBATION, OR SUPERVISED RELEASE

(a) Applicability. This Rule applies to persons released on bail, on probation, on supervised release, or in one or more of those circumstances concurrently, provided that:

1. The supervision of the probation or supervised release is being conducted by the United States Probation and Pretrial Services Office; or

2. The order fixing the conditions of bail has been entered by a judge or by the Court of Appeals in an appeal from a judgment in a criminal action entered in the District.

(b) Generally. No attorney, officer, agent, or employee of the United States may request, cause, or attempt to cause any person specified in Rule 99.5(a) to violate any condition of bail, probation, or supervised release, including using such a person under circumstances that violate one or more of the conditions of bail, probation, or supervised release.

(c) Requesting a Modification of Conditions of Bail, Probation, or Supervised Release. A United States Probation Or Pretrial Officer or counsel of record may submit a request for modification of one or more conditions of bail, probation, or supervised release to the Court or to the appropriate probation officer. The request must state the exceptional facts which justify such a request. In an emergency, any judge may grant such a request.

(d) Granting of Request for Modification of Conditions of Bail, Probation, or Supervised Release. If possible and if time permits, prior to granting any request under Rule 99.5(c), the judge must consult with the Chief United States Probation and Pretrial Services Officer or the probation officer assigned to supervision of the person. If the judge

grants the request, he or she may issue a sealed order modifying the conditions of bail, probation, or supervised release, as the circumstances require.

(e) Procedures Not Prohibited by Rule. With regard to persons under arrest, in custody, on bail pending trial, sentencing or appeal, on probation, or supervised release, this Rule does not prohibit:

1. On the initiative of the person or his or her attorney, an officer, agent, or employee of the United States, interviewing, "debriefing," questioning, or taking a voluntary statement from the person concerning intelligence or information on any subject, whether or not it relates to the offense or offenses of which the person was convicted, or to the alleged offense or offenses on which the person is awaiting trial, sentencing, or appeal;

2. Making searches and seizures, determined by an attorney, officer, agent, or employee of the United States to be lawful, including searches or seizures from the person, subject to later determination by the Court of lawfulness thereof; and

3. Appearances and testimony by the person in any lawful discovery or investigative proceedings as a witness, formally or informally, including appearance or appearances as a witness before a grand jury.

99.7 "FREE PRESS FAIR TRIAL" DIRECTIVES

(a) Duties of Counsel.

1. Statements Interfering with the Due Administration of Justice. No attorney or law firm may release, or authorize the release of, information or opinion which a reasonable person would expect to be disseminated by any means of public communication, in connection with pending or imminent criminal litigation with which the attorney or law firm is associated, if there is reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

2. Statements with Respect to a Grand Jury. With respect to a grand jury or other pending investigation of any criminal matter, the attorney participating in or associated with the investigation may not make any extrajudicial statement which a reasonable person would expect to be disseminated, by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

3. Statements Related to the Accused. 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, no attorney or law firm associated with the prosecution or defense may 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:

A. The prior criminal record—including arrests, indictments, or other charges of crime—or the character or reputation of the accused, except that the counsel 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, counsel associated with the prosecution may release any information necessary to aid in the accused's apprehension or to warn the public of any dangers the accused may present, but these prohibitions apply only when the release of such information poses a serious and imminent threat of interference with the fair administration of justice;

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

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

D. The identity, testimony, or credibility of prospective witnesses, except that the attorney or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law, and the release of any such information does not pose a serious and imminent threat of interference with the fair administration of justice;

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

F. Any opinion as to the accused's guilt or innocence or as to the merits of the case, when such an opinion would pose a serious and imminent threat of interference with the fair administration of justice.

4. **Brief and General Statements.** Rule 99.7(a)(3) does not preclude the attorney or law firm during this period, in the proper discharge of the attorney's or the firm's official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against the accused.

5. **Statements during Trial.** During a trial of any criminal matter, including the period of selection of the jury, no attorney or law firm associated with the

prosecution or defense may 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 such communication poses a serious and imminent threat of interfering with the fair administration of justice, except that the attorney or law firm may quote from or refer without comment to public records of the court in the case.

6. **More Restrictive Rules.** This Rule does not preclude:

A. A judge from forming or applying more restrictive rules than those above if they relate to the release of information about juvenile or other offenders;

B. Legislative, administrative, or investigative bodies from holding hearing or lawfully issuing reports; or

C. Any attorney from replying to charges of misconduct that are publicly made against that attorney.

(b) **Duties of Court Personnel.** Unless the Court orders otherwise, no supporting personnel connected in any way with the District or its operation—including marshals, deputy marshals, court clerks or deputies, bailiffs, secretaries, court reporters, and employees or subcontractors retained by the court-appointed official reporters—may disclose to any person any information to a pending grand jury proceeding or criminal case that is not a part of the public records of the District. This prohibition applies specifically to divulging information concerning arguments and hearings held in chambers or otherwise outside the presence of the public.

(c) **Special Orders in Certain Cases.** In a widely publicized or sensational case, the Court, on motion of any party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses which might 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 deems appropriate for inclusion in such an order.

99.8 GUIDELINE SENTENCING

(a) **Generally.** An officer from the United States Probation and Pretrial Services Office must, without unreasonable delay, prepare a defendant's presentence investigation report and compute the applicable United States Sentencing Commission Guidelines, unless the Court:

1. Waives the presentence investigation under Fed. R. Crim. P. 32(b)(1); or

2. Finds that there is sufficient information in the record to enable the meaningful exercise of sentencing authority in accordance with 18 U.S.C. § 3553.

(b) **Interviewing the Defendant.** The probation officer who interviews a defendant as part of a presentence investigation must, on request, give the defendant's attorney notice and a reasonable opportunity to attend the interview.

(c) **Disclosing the Preliminary Report.** Immediately after completion, the probation officer must provide the preliminary presentence investigation report to the defendant, defense counsel, and the United States, in accordance with 18 U.S.C. § 3552(d).

(d) **Reviewing the Report with the Defendant.** Defense counsel must review the report with, and explain it to, the defendant.

(e) **Making Objections.** Defense counsel, a pro se defendant, or the United States may object to anything in the preliminary presentence investigation report. The objections must:

1. Be submitted in writing within 14 days after disclosure of the preliminary presentence investigation report;

2. Be sent to the United States Probation and Pretrial Services Office and served on all other parties;

3. Contain separately numbered paragraphs;

4. List any and all objections believed material to application of the Sentencing Guidelines, including factual information, sentencing classifications, guideline ranges, and policy statements which are contained in the presentence investigation report; and

5. List any additional matters which the submitter believes should be included in, or deleted from, the presentence investigation report.

(f) **Investigating Objections.** Upon receiving timely written objections, the probation officer must immediately conduct a further investigation and make such revisions to the presentence investigation report as the probation officer deems appropriate. The probation officer may meet with each counsel or pro se defendant to discuss any unresolved factual issues.

(g) **Submitting the Final Report.** The probation officer must submit the final presentence investigation report to the sentencing judge, the defendant, defense counsel, and the United States within 14 days after receiving objections, or 14 days after disclosing the preliminary presentence investigation report if no objections were received. The report must include an addendum which sets forth clearly and fairly any unresolved objections, and the comments of the probation officer.

(h) **Preparing a Sentencing Recommendation.** At the same time the probation officer submits the presentence investigation report under Rule 99.8(g), the probation officer must also submit a confidential sentencing recommendation to the Court. The sentencing recommendation must be contained in a confidential memorandum. Unless the Court orders otherwise, this memorandum may not be further disclosed.

(i) **Submitting Unresolved Objections to the Court.** Within 7 days after the preliminary presentence investigation report is submitted under Rule 99.8(g), defense counsel, a pro se defendant, or the United States may submit to the Court, with copies to opposing counsel and to the United States Probation and Pretrial Services Office, notice of any unresolved objection or other matter pertaining to the presentence investigation report.

Opposing counsel may then submit a response, and the probation officer may submit comments, to the additional objection as appropriate.

(j) **The Court Need Not Consider Objections That Do Not Comply with Rule 99.8(e).** At the sentencing hearing, the Court will consider only unresolved objections raised under Rule 99.8(e), unless the Court finds good cause to allow an objection to be raised without complying with Rule 99.8(e).

(k) **Modifying Deadlines.** Upon a showing of good cause, the Court may modify the times set forth in this Rule.

(l) **Construction with Fed. R. Crim. P. 32.** This Rule must be construed consistently with Fed. R. Crim. P. 32.

(m) **Providing the Report on Appeal.** If an appeal is taken under 18 U.S.C. § 3742, the Clerk must advise the United States Probation and Pretrial Services Office, which must provide a copy of the presentence investigation report to be maintained under seal as a part of the Court file.

99.9 CRIMINAL MATTERS HANDLED BY MAGISTRATE JUDGE

(a) **Disposition of Misdemeanor Cases.** Unless otherwise limited or prohibited by an order of the Court en banc, each magistrate judge is designated, authorized, and empowered to:

1. Try persons accused of, and sentence persons convicted of, misdemeanors committed within or transferred to the District in accordance with 18 U.S.C. § 3401 and Fed. R. Crim. P. 58;

2. Direct the United States Probation and Pretrial Services Office to conduct a presentence investigation in any misdemeanor case; and

3. Conduct a jury trial in any misdemeanor case where the defendant so requests and is so entitled under the Constitution and laws of the United States.

(b) **Assignment of Criminal Matters to Magistrate Judges.**

1. **Misdemeanor Cases.** In a misdemeanor case, upon the filing of an information, complaint, violation notice, or return of an indictment, the Clerk must randomly assign the case to a magistrate judge in accordance with Rule 72.1(f).

2. **Felony Cases.** In a felony case, upon the return of an indictment or the filing of any information, the Clerk must refer the case to a magistrate judge in accordance with Rule 72.1(f), and the assigned district judge must enter an order of reference.

99.10 PAYMENT OF FIXED SUM IN LIEU OF APPEARANCE IN SUITABLE TYPES OF MISDEMEANOR CASES

(a) **Purpose of Rule; Forms; Definitions.** This Rule is adopted pursuant to Fed. R. Crim. P. 58 to promote the more efficient administration of justice and improve the effectiveness of court administration. The Court en banc may adopt any form related to the implementation of this Rule, including a violation notice form, and may establish the procedures to be followed in issuing, filing, and processing violation notices. As used in this Rule, "charge," "offense," and "violation" mean the violation set forth on the face of the violation notice.

(b) **Payment of Fixed Sum in Lieu of Personal Appearance for Specified Misdemeanors.** A defendant who is charged with committing a misdemeanor specified in Rule 99.10(c)—whether chargeable under an applicable federal statute or regulation or an applicable state statute or regulation by virtue of the Assimilative Crimes Act, 18 U.S.C. § 13—may, prior to or at the time fixed for appearance, pay a fixed sum to the Clerk in lieu of personal appearance before the Court. Upon receiving this payment, the Clerk must terminate the proceeding. By making this payment, the defendant signifies that he or she:

1. Does not contest the charge;

2. Does not request a trial before a judge;

3. Agrees that the payment is the equivalent of a plea of guilty; and

4. Agrees that the amount so paid is forfeited to the United States.

(c) **Schedules.** The following schedules set out the misdemeanor offenses for which a fixed sum may be paid in lieu of personal appearance, and the sums to be paid:

1. Schedule "A" entitled "Schedule of Cash Payments That May Be Made in Lieu of Appearance for Violation of Regulations Promulgated by the Secretary of the Interior to Regulate the Occupancy and Use of National Parks, Reservations, and Monuments."

2. Schedule "B" entitled "Schedule of Cash Payments That May be Made in Lieu of Appearance for Violation of Regulations Promulgated by the Secretary of Agriculture to Regulate the Occupancy and Use of National Forests, and for Violation of Statutes Relating to National Forests."

3. Schedule "C" entitled "Schedule of Cash Payments That May be Made in Lieu of Appearance for Violation of Regulations Promulgated by the Administrator of General Services to Regulate the Occupancy and use of Public Buildings and Grounds."

4. Schedule "D" entitled, "Schedule of Cash Payments That May be Made in Lieu of Appearance for Violation of Regulations Promulgated by the Secretary of the Interior to Regulate Hunting and Fishing and the Occupancy and Use of Wildlife Refuge Areas, and for Violation of Statutes Relating to Fish and Wildlife."

5. Schedule "E" entitled "Schedule of Cash Payments That May be Made in Lieu of Appearance for Violation of Regulations Promulgated by the Secretary of the Army to Regulate the Occupancy and Use of Water Resources Development Projects."

6. Schedule "F" entitled "Schedule of Cash Payments That May be Made in Lieu of Appearance for Violation of Regulations Promulgated by the Administrator of Veterans' Affairs to Regulate the Occupancy and Use of Property, Buildings, and Facilities Under the Charge and Control of the Veterans Administration."

7. Schedule "G" entitled "Schedule of Cash Payments That May be Made in Lieu of Appearance for Violation of Regulations Promulgated by the Postmaster General to Regulate the Occupancy and Use for Real Property Under the Charge and Control of the Postal Service."

8. Schedule "H" entitled "Schedule of Cash Payments That May be Made in Lieu of Appearance for Violation of Statutes or Regulations Regulating Registration and Operation of Motor Vehicles, Hunting, Trapping, and Fishing on Military Installations."

9. Schedule "I" entitled "Schedule of Cash Payments That May be Made in Lieu of Appearance for Violation of Regulations Promulgated by the Secretary of the Interior to Protect, Manage, and Control Wild, Free- Roaming Horses and Burros and Maintain a Natural Ecological Balance on Lands Administered Through the Bureau of Land Management."

(d) **Access and Modifications to Schedules.** The schedules specified in Rule 99.10(c) are not published as a part of these Rules, but are incorporated into this Rule by reference. The Clerk must maintain copies of such schedules for examination by the public during regular business hours upon request in the Clerk's Office in Kansas City, Springfield, and Jefferson City. The Court en banc may issue an order amending or supplementing any such schedule, substituting a page bearing a new number or numbers and the effective date.

(e) **Mandatory Personal Appearances.** A defendant must personally appear before the Court, and may not pay a fixed sum in lieu of appearance, if the alleged violation:

1. Is not shown on a schedule specified in Rule 99.10(c);

2. Involves the operation of a motor vehicle which was involved in a collision;

3. Is for operating a motor vehicle while under the influence of an intoxicating liquor, narcotic, or controlled substance;

4. Is for leaving the scene of a motor vehicle accident;

5. Is for operating a motor vehicle while operator's or chauffeur's license is under suspension or has been revoked;

6. Is for operating a motor vehicle without being licensed to drive;

7. Is for exceeding the speed limit, except on a military installation, by more than 15 miles per hour when operating a motor vehicle;

8. Is for exceeding the speed limit, on a military installation by more than 20 miles per hour when operating a motor vehicle; or

9. Is for a second moving traffic violation occurring within the preceding 12-month period when operating a motor vehicle.

(f) **Arrests for Misdemeanor Violations.** If, in the opinion of the enforcement officer or agent, the circumstances surrounding an alleged violation are so aggravated that payment of the specified sum may not be adequate punishment for the offense, or if the offense is one specified in Rule 99.10(e), this Rule does not prohibit the officer or agent from arresting the alleged offender and taking the offender immediately before a magistrate judge, or requiring the person, upon written notice, to appear before the Court.