UNITED STATES DISTRICT COURT

FOR THE

WESTERN DISTRICT OF MISSOURI

LOCAL RULES

Adopted by the Court
Effective October 6, 2010

PREFACE

What may initially appear to be a major transformation of the Local Rules adopted in 1946 and frequently amended is simply a renumbering, to comply with Judicial Conference standards. The major objective is to create as much uniformity between districts in the numbering of rules as may be feasible. The minor objective is to rearrange the Local Rules to correspond with the numbering of the Federal Rules of Civil Procedure, insofar as there is correlation. Certain gaps in numbering will reserve space for additional local rules that correspond to the Federal Rules of Civil Procedure.

Citations should be to “Local Rule ___“ or “L.R. ____.”

Revised Local Rules

Local Rule Number	Local Rule Name	Adopted/Revision Date(s)
3.1	Divisional Venue in Civil Actions – Renumbered from 3.2	October 6, 2010
3.1	Disclosure of Corporation Interests – Renumbered to 7.1	October 6, 2010
3.1	Disclosure of Corporation Interests	May 14, 1999;
3.1(c)	Disclosure of Corporation Interests – Changes and Updates	December 1, 2009
3.2	Divisional Venue in Civil Actions – Renumbered to 3.1	October 6, 2010
3.2	Divisional Venue in Civil Actions	February 27, 2004
3.2	Divisional Venue in Civil Actions Rescinded by the Court en banc	September 7, 2000
3.2	Divisional Venue in Civil Actions	August 11, 2000
5.1	Mandatory Electronic Filing	June 29, 2007
6.1	Time Computation	December 1, 2009
7.0	Pleadings and Motions – Renumbered from 7.1	October 6, 2010
7.1	Disclosure of Corporation Interests – Renumbered from 3.1	October 6, 2010
7.1	Pleadings and Motions – Renumbered to 7.0	October 6, 2010
7.1(d); 7.1(e)	Pleadings and Motions – Suggestions in Opposition; Reply Suggestions	December 1, 2009; June 17, 2002
7.1(f)	Pleadings and Motions – Length of Suggestions	April 1, 2001
9.1	Social Security Practice	April 2, 1998
9.1(a)	Social Security Practice – The Complaint	April 1, 2001
9.1(d)	Social Security Practice – The Answer	April 1, 2004
9.1(e)	Social Security Practice – Filing and Service of Briefs	December 1, 2009
9.2(h)	Petitions for Habeas Corpus and Motions Pursuant to 28 U.S.C. Section 2255 (Attacking a sentence imposed by this Court) by Persons in Custody – Deleted and subsequent subsections re-alphabetized	October 6, 2010
9.2(i)	Petitions for Habeas Corpus and Motions Pursuant to 28 U.S.C. Section 2255 (Attacking a sentence imposed by this Court) by Persons in Custody	December 1, 2009
16.1(a)	Civil Actions – Scheduling – General Principles	October 6, 2010
16.1(c)	Civil Actions – Scheduling – Actions Exempt from these Procedures; Proposed Scheduling Order/Discover Plan Required	April 1, 2001
16.1(d)	Civil Actions – Scheduling – Proposed Scheduling Order/Discover Plan Required; Plaintiff's Counsel Shall Take Lead in Preparation of Proposed Scheduling Order/Discovery Plan	December 1, 2009; April 1, 2001
16.1(f)7	Civil Actions – Scheduling – Content of the Proposed Scheduling Order	June 29, 2007
16.4	Trial Settings	October 6, 2010
16.5	Alternative Dispute Resolution	April 1, 2001
26.1(a); 26.1(b)	Discovery – Meeting of the Parties; Initial Disclosures; Discovery Shall Commence After Meeting of the Parties; Filing of Motions Does Not Automatically Stay Discovery or Disclosure Requirements	April 1, 2001
54.1	Bill of Costs – Renumbered from 83.2	October 6, 2010

56.1	Summary Judgment Motions	December 21, 1998
56.1(b)	Summary Judgment Motions – Suggestions in Opposition to Summary Judgment	October 6, 2010; June 17, 2002
56.1(c)	Summary Judgment Motions – Reply Suggestions in Support of Summary Judgment	December 1, 2009; June 17, 2002
58.1(d)	Entry of Judgments and Orders	October 6, 2010
58.2(a)	Entry of Judgments and Orders	December 1, 2009
72.1	Duties and Powers of Full-Time and Part-Time United States Magistrate Judges	December 21, 1998
72.1(c)1	Duties and Powers of Full-Time and Part-Time United States Magistrate Judges – Recommendations Regarding Case Dispositive Motions	October 6, 2010
72.1(j)	Duties and Powers of Full-Time and Part-Time United States Magistrate Judges – Other Duties	October 6, 2010
72.1(k)	Duties and Powers of Full-Time and Part-Time United States Magistrate Judges – Assignment of Matters to Magistrate Judges	October 6, 2010
72.1(m)	Duties and Powers of Full-Time and Part-Time United States Magistrate Judges – Selection of Chief Magistrate Judge, Territorial Assignments and Administrative Provisions	October 6, 2010
73.1	Special Provisions for the Disposition of Civil Cases by a Magistrate Judge on Consent of the Parties in Accordance with Section 636(c), Title 28, United States Code Rescinded by the Court en banc	September 20, 2003
74.1(a)1; 74.1(a)2; 74.1(a)4	Magistrate Judges – Procedure for Review – Review and Appeal	December 1, 2009
77.2(a)	Orders by the Clerk	December 1, 2009
79.2	Custody of Exhibits	October 6, 2010
80.1	Court Reporters' Transcripts	October 6, 2010; December 1, 2009; June 5, 2008; February 10, 2003
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83.5(p)	Bar Admission - Certificate of Good Standing	October 6, 2010; January 8, 2007; December 1, 2005; September 1, 2005
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LOCAL CIVIL RULES

3.1 CIVIL DIVISIONAL VENUE

(a) Divisions within the Western District of Missouri. The United States District Court for the Western District of Missouri 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, 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 shall 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 Western District of Missouri, the action shall be filed in the division where at least one plaintiff resides, or where the claim for relief arose.

(c) **Location of Proceedings.** In all cases, the Court retains discretion to fix the location where any courtroom proceedings shall be held.

(d) **Other Venue Statutes.** This Local Rule shall be construed consistently with the text and definitions contained in 28 U.S.C. § 1391(c), (d), (e) and (f), 1392, 1446(a), 1404(a) and 1406(a) and (b).

5.1 MANDATORY ELECTRONIC FILING

Unless otherwise expressly provided for by these rules or by court order or by exceptional circumstances preventing electronic filing, all litigants and other interested parties represented by legal counsel shall electronically file all pleadings and documents (including initiating documents) in connection with a case on the Court's electronic filing system in accordance with the CM/ECF CIVIL AND CRIMINAL ADMINISTRATIVE PROCEDURES MANUAL, available on the Court's web site.

SERVICE OF DOCUMENTS BY ELECTRONIC MEANS

Documents may be served through the court's transmission facilities by electronic means to the extent and in the manner authorized by the CM/ECF Administrative Manual approved by the court. Transmission of the Notice of Electronic Filing through the court's transmission facilities constitutes service of the filed document upon each party in the case who is registered as a Filing User. Any other party or parties shall be served documents according to these Local Rules and either the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure.

6.1 TIME COMPUTATION

Computing any time period specified in these Local Rules shall be done in the same manner as provided in Federal Rule of Civil Procedure 6.

7.0 PLEADINGS AND MOTIONS

(a) **Filing by Attorneys of a Civil Cover Sheet in Each Civil Case.** Any attorney filing a pleading in a civil action asserting a claim for relief, or an amended pleading in a civil action asserting a new claim for relief, shall complete and file a civil cover sheet with the district court Clerk in the form currently prescribed by the Court and available online and in the Office of the Clerk.

(b) **Motions.** Unless oral argument is ordered by the Court, motions will be ruled upon the written motion, supporting suggestions, opposing suggestions and reply suggestions.

(c) **Suggestions in Support of Motions.** The moving party shall serve and file with the party's motion a brief written statement of the reasons in support of the motion.

(d) **Suggestions in Opposition.** Within 14 days from the time the motion is filed, each party opposing the motion shall serve and file a brief written statement of the reasons in opposition to the motion. For time limits concerning summary judgment motions, see Rule 56.1.

(e) **Reply Suggestions.** Within 14 days from the time the suggestions in opposition are filed, a reply brief may be filed. For time limits concerning summary judgment motions, see Rule 56.1.

(f) **Length of Suggestions.** Suggestions shall be concise. A party's primary authorities shall be emphasized. Suggestions in support of or in opposition to a motion shall be no longer than 15 double-spaced typewritten pages, exclusive of facts presented in accordance with Rule 56.1, without permission of the Court. Reply suggestions shall be limited to 10 double-spaced pages, unless otherwise authorized by the Court. Suggestions exceeding 10 pages in length shall have a table of contents and table of authorities. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there. Either a proportionally spaced or a monospaced font may be used. A proportionally spaced font must be 12-point or larger. A monospaced font may not contain more than 10½ characters per inch.

(g) **Oral Arguments.** A request for oral arguments shall be separately stated at the conclusion of the motion or written suggestions.

(h) **Discovery Motions.** For additional requirements concerning discovery motions *see* Rule 37.1.

(i) **Summary Judgment Motions.** For additional requirements concerning Summary Judgment Motions *see* Rule 56.1.

7.1 DISCLOSURE OF CORPORATION INTERESTS

(a) **Certificate of Interest.** Every non-governmental corporate party in a civil or criminal case must file a certificate of interest. Information provided in the certificate may be used by the judge assigned to a case for the sole purpose of determining whether recusal is necessary or appropriate. The certificate shall be filed with the party's first pleading or entry of appearance. The certificate of interest may be filed under seal if so ordered by the court.

(b) **Content.** The certificate of interest shall identify all parent companies of the corporation, subsidiaries (except wholly owned subsidiaries), and affiliates that

have issued shares to the public. When a negative or not applicable response is required, the certificate shall so state.

(c) **Changes and Updates.** If a change in any of the items listed in paragraph (b) of this rule occurs after the certificate is filed and before time has expired for filing a notice of appeal from a final judgment in the case, an amended certificate shall be filed within 7 days of the change.

9.1 SOCIAL SECURITY PRACTICE

The review of final decisions by the Commissioner of Social Security shall begin with the filing of a complaint, followed by the filing of the record on appeal, defendant's answer, plaintiff's brief, defendant's brief and plaintiff's reply brief.

(a) **The Complaint.** Review of a final decision of the Commissioner of Social Security is obtained by filing a complaint with the Clerk of the Court within the time prescribed by law. The caption of the complaint shall include the name of each party seeking review, the name of the defendant designated in the applicable statute, and identify the final decision or part of the final decision to be reviewed. The complaint shall also contain a citation to the statute by which jurisdiction is claimed, a short and plain statement of the claim showing that the plaintiff is entitled to relief, and a demand for the relief the plaintiff seeks. If two or more persons are entitled to seek judicial review of the same order and their interests are such as to make joinder proper, they may file a joint complaint. Complaint forms, in the form attached to this Rule, may be obtained from the Clerk of the Court.

(b) **Case Designation.** Any complaint for review of a decision of the Commissioner of Social Security shall also contain the designation "SSA" in the case number to indicate the nature of the case as an appeal from a decision of the Commissioner of Social Security.

(c) **Service of Process.** Service of process shall be in the manner provided by Rule 4, Federal Rules of Civil Procedure.

(d) **The Answer.** Defendant shall file an answer to the complaint within 60 days after the United States Attorney is served with the complaint.

(e) **Filing and Service of Briefs.** The plaintiff shall serve and file a brief within 40 days after the date on which the answer is filed. The defendant shall serve and file a brief within 40 days after service of the brief of the plaintiff. The plaintiff may serve and file a reply brief within 21 days after service of the brief of the defendant. The briefs shall be divided into "Facts" and "Argument" sections with each issue separately designated in the Argument section. The argument portion of the initial brief and the responding brief shall not exceed 15 pages in length and the argument portion of the reply brief shall not exceed 10 pages in length. Extensions of time for filing and serving briefs shall not be granted except for

good cause shown. The case shall be submitted when all briefs have been filed. The decision of the court will be rendered upon the briefs and the record, without oral argument, unless otherwise directed by the court.

(f) The Record on Review.

l. Date of Filing. The defendant shall file the record with the Clerk of the Court within 90 days after service of the complaint, unless a different time is provided by order of the court.

2. Composition. The final decision sought to be reviewed, all decisions by an Administrative Law Judge and all pleadings, evidence and orders shall constitute the record on appeal from a decision of the Commissioner of Social Security, unless otherwise provided by order of the Court.

3. Omissions From or Misstatements in the Record on Review. If anything material to any party is omitted from or misstated in the record, the parties may supply the omission or correct the misstatement by stipulation, or the court may at any time direct that the omission or misstatement be corrected and, if necessary, that a supplemental record be prepared and filed. Any party who discovers a material omission from or misstatement in the record shall immediately notify the Court and all other parties.

(g) Applicability of Other Rules. The parties shall give the same notice of the filing of pleadings, records and other documents as is required by Rule 5, Federal Rules of Civil Procedure. The provisions of this rule shall control over the provisions of any Local Rule in conflict.

9.2 PETITIONS FOR HABEAS CORPUS AND MOTIONS PURSUANT TO 28 U.S.C. SECTION 2255 (Attacking a sentence imposed by this Court) BY PERSONS IN CUSTODY

(a) General. In the absence of exceptional circumstances, petitions for a writ of habeas corpus pursuant to 28 U.S.C. Section 2254 and 28 U.S.C. Section 2241 and motions filed pursuant to 28 U.S.C. Section 2255 (attacking a sentence imposed by this Court), by persons in custody, shall be in writing, signed and verified. Such petitions and motions shall be on forms available on request from the Clerk's Office.

(b) Mandatory Information. The following information shall be supplied by every petitioner:

1. Petitioner's full name and prison number (if any);

2. The name of the respondent (petitioner's custodian);

3. The place of petitioner's detention;

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

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

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

7. Whether a finding of guilty was made after a plea of (1) guilty, (2) not guilty, or (3) nolo contendere;

8. In the case of a petitioner who was found to be guilty following a plea of not guilty, whether the finding was made (1) by a jury or (2) by a judge without a jury;

9. Whether or not petitioner appealed from the judgment of conviction or from the imposition of sentence, and, if so, the name of each court to which the petitioner appealed, the results of such appeals, the date of such results, and (if known), citations of any written opinions or orders entered therein;

10. Whether petitioner was represented by an attorney at any time during the course of petitioner's arraignment and plea, trial (if any), sentencing, and appeal (if any), or preparation, presentation or consideration of any petition, motions or applications which the petitioner filed with respect to this conviction; if so, the name and address of such attorney(s) and the proceedings at which petitioner was so represented; and

11. If petitioner seeks leave to proceed in forma pauperis, whether the affidavit attached to the form has been completed.

(c) **Additional Information (Petitioner in State Custody).** The following additional information shall be supplied by a petitioner in state custody seeking a writ of **habeas corpus** pursuant to 28 U.S.C. Section 2254 or 28 U.S.C. Section 2241:

1. If petitioner did not appeal from the judgment of conviction or the imposition of sentence, the reasons why said petitioner did not do so;

2. In concise form, the grounds upon which petitioner bases the allegation that the petitioner is being held in custody unlawfully, the facts which support each of these grounds, and whether any such grounds have been previously presented to any court, state or federal, by way of any petition, motion or application; if so, which grounds have been previously presented and in what proceedings; and

3. Whether petitioner has filed in any court, state or federal, previous petitions, applications, or motions with respect to this conviction; if so, the

name and location of each court, the specific nature of the proceedings therein, the disposition thereof, the date of such disposition, and (if known), citations of any written opinions or orders entered therein.

(d) **Additional Information (Petitioner in Federal Custody).** The following additional information shall be supplied by a petitioner in federal custody who is seeking a writ of **habeas corpus**, pursuant to 28 U.S.C. Section 2241:

1. Whether petitioner has filed in any court, state or federal, previous petitions for **habeas corpus**, motions (pursuant to 28 U.S.C. Section 2255) to vacate sentence, or any other petitions, motions or applications with respect to this conviction; if so, the name and location of any and all such courts, the specific nature of the proceedings therein, the disposition thereof, the date of each such disposition, and (if known) citations of any written opinions or orders entered therein;

2. In concise form, the grounds upon which petitioner bases the allegation that petitioner is being held in custody unlawfully, the facts which support each of these grounds, and whether any such grounds have been previously presented to any federal court by way of petition for writ of **habeas corpus**, motion pursuant to 28 U.S.C. Section 2255, or any other petition, motion or application; if so, which grounds have been previously presented and in what proceedings; and

3. If a previous motion pursuant to 28 U.S.C. Section 2255 was not filed, or if such a motion was filed and denied, the reasons why petitioner's remedy by way of such motion is inadequate or ineffective to test the legality of his detention.

(e) **Additional Information - Petitioner Seeking Relief Under 28 U.S.C. Section 2255.** The following additional information shall be supplied by a petitioner in federal custody who is seeking relief by motion pursuant to 28 U.S.C. Section 2255:

1. The name of the judge who imposed sentence;

2. In concise form, the grounds upon which petitioner bases the allegation that the sentence which was imposed upon petitioner is invalid, the facts which support each of these grounds, whether any such grounds have been presented to any federal court on a previous petition for writ of **habeas corpus**, motion pursuant to 28 U.S.C. Section 2255, or any other petition, motion or application, and, if so, which grounds have been previously presented and in which proceedings; and

3. Whether petitioner has filed in any court petitions for **habeas corpus**, motions pursuant to 28 U.S.C. Section 2255, or any other petitions, motions or applications with respect to this conviction; if so, the name and location of each such court, the specific nature of the proceedings therein,

the disposition thereof, the date of each such disposition and (if known), citations of any written opinion or orders entered therein.

(f) **In Forma Pauperis Affidavit.** Where a petition or motion is taken **in forma pauperis**, petitioner shall complete the **forma pauperis** affidavit attached to the back of the form and shall set forth information which establishes that said petitioner will be unable to pay the fees and costs of the **habeas corpus** or 28 U.S.C. Section 2255 proceeding.

(g) **Submission of Petitions & Motions to Clerk of Court.** Petitions and motions shall be addressed to the Clerk of the District Court for the Western District of Missouri. Petitioners shall send to the Clerk an original and one copy of the completed petition or motion form. A petition or motion addressed to an individual judge shall be directed to the Clerk of the Court for assignment pursuant to the rules of this Court, provided that motions under 28 U.S.C. Section 2255 shall, if possible, be assigned to the sentencing judge.

In the event a petition or motion does not substantially comply with the aforementioned requirements of form and content, the Clerk of the Court shall provisionally file the petition or motion and notify the prisoner of the defects giving the prisoner a reasonable time to correct said defects and resubmit the petition or motion.

(h) **Filing of Traverse.** A traverse of the response to an order to show cause shall be filed by the petitioner or movant within 7 days after service of or notice of the filing of the response, unless the time for filing the traverse is extended by a judge or a United States Magistrate Judge. In the absence of a timely traverse, all facts well pleaded in the response to the order to show cause shall be deemed admitted by the petitioner or movant, unless for good cause shown an extension of time for filing the traverse is obtained and the traverse is filed within the extended time.

(i) **Duty of the U. S. Attorney.** Upon the filing of a motion pursuant to 28 U.S.C. Section 2255, a petition for writ of habeas corpus, a petition under the civil rights statutes or a petition for injunctive relief, it shall become the duty and responsibility of the United States Attorney or other counsel representing the United States of America in each instance where the United States (or its agent, servant or employee) is a party, to obtain whatever order of court may be appropriate and necessary to secure the appearance of any movant, petitioner, or other person (including but not limited to a material witness), who is in state or federal custody, at all proceedings where said person's appearance is necessary.

(j) **Duty of Counsel Representing State of Missouri.** Upon the filing of a petition for writ of habeas corpus, a petition under the civil rights statutes or a petition for injunctive relief, it shall become the duty and responsibility of the Attorney General of the State of Missouri or other counsel representing the State of Missouri, in each instance where the State of Missouri (or its agent, servant or employee) is a party, to obtain whatever order of court may be appropriate and necessary to secure the appearance of any petitioner or other person (including but

not limited to a material witness), who is in state or federal custody, at all proceedings where their appearance is necessary.

16.1 CIVIL ACTIONS-SCHEDULING

(a) **General Principles.** Unless otherwise ordered, this Local Rule is applicable to all civil actions pending in this district, except for the actions exempted by Rule 16.1(c). Counsel are responsible for completing discovery in the shortest time reasonably possible with the least expense and without the necessity of judicial intervention.

Rule 16(b), Federal Rules of Civil Procedure, requires that a scheduling order be entered in every action, except those specifically exempted, limiting the time (1) to join other parties and to amend the pleadings; (2) to file motions; and (3) to complete discovery. A scheduling order shall be entered within the time set out in Rule 16.1(b). Counsel should have the initial responsibility for suggesting reasonable dates for the scheduling order.

Upon completion of discovery, post-discovery pretrial procedures will be scheduled pursuant to Rule 39.1 and the action will be set for trial. Post-discovery pretrial procedures and the trial setting will be coordinated whenever possible.

(b) **Scheduling Order Deadline; Method of Calculation.** A scheduling order shall be entered no later than 90 days after the appearance of a defendant or 120 days after the complaint has been served on a defendant, whichever is earlier.

The following guidelines apply to the calculation of the scheduling order deadlines:

1. The 90-day period begins to run on the date on which any defendant files any paper in the action.

2. The 120-day deadline applies if no defendant has appeared within 30 days after the complaint was first served on a defendant and begins to run on the date the complaint was first served on any defendant.

(c) **Actions Exempt From These Procedures.** Categories of actions exempted from compliance with these procedures are specified in Rule 26(a)(1)(E), Federal Rules of Civil Procedure. Exemptions in particular cases are further subject to orders of the Court.

(d) **Proposed Scheduling Order/Discovery Plan Required; Plaintiff's Counsel Shall Take Lead in Preparation of Proposed Scheduling Order/Discovery Plan.** The parties shall file a proposed scheduling order complying with Rule 16.1(f), together with the discovery plan required by this Rule, 14 days after the meeting required by Rule 26.1(a). The discovery plan shall be included as part of the proposed scheduling order. After the meeting required by Rule 26.1(a) of these Rules, counsel for plaintiff is responsible for preparing a draft of the

proposed scheduling order/discovery plan. The draft prepared by plaintiff's counsel shall be presented to counsel for all other parties for additions and modifications. In pro se cases not exempt under Rule 26(a)(1)(E), Federal Rules of Civil Procedure, counsel for defendant(s) shall take the lead in preparing the proposed scheduling order/discovery plan. Counsel should fully and openly communicate with each other so that a joint proposed scheduling order/discovery plan is submitted. If all counsel do not agree on a proposed scheduling order/discovery plan, separate proposed scheduling orders/discovery plans should not be filed. Disagreements concerning a proposed scheduling order/discovery plan, if unresolved by the good faith efforts of counsel, should be stated in the proposed scheduling order/discovery plan.

(e) **Sanctions for Failing to Cooperate in Preparing a Proposed Scheduling Order/Discovery Plan.** The failure of a party or a party's counsel to participate in good faith in the framing of the proposed scheduling order/discovery plan may result in the imposition of appropriate sanctions. *See* Rules 16(f) and 37(g), Federal Rules of Civil Procedure.

(f) **Content of the Proposed Scheduling Order.** The proposed scheduling order referred to in Rule 16.1(d)) shall:

1. Propose a date limiting joinder of parties;

2. Propose a date limiting the filing of motions to amend the pleadings (It is suggested that counsel consider in most actions a date approximately 180 days after the filing of the complaint.);

3. Propose a date limiting the filing of motions [It is suggested that counsel in most actions consider proposing that (a) all discovery motions be filed on or before the date proposed for the completion of discovery; and (b) subject to the provisions of Rule 12(h)(2), Federal Rules of Civil Procedure, all dispositive motions be filed within 30 days after the date proposed for the completion of discovery.];

4. Propose a discovery plan for the completion of all discovery, as required by 16.1(d) of these Rules, including the date by which all discovery shall be completed. Counsel should not propose a date for the completion of discovery which is known to be without any reasonable basis. *See* Rules 26.1(c) and 26.1(d); and

5. Estimate the number of days necessary to try the action with reasons supporting the estimate.

6. Suggest an agreeable trial date for the court's consideration.

7. State whether any party anticipates requesting a protective order. In the meeting required by Rule 26(f), Federal Rules of Civil Procedure, the parties shall discuss specific areas of written discovery and deposition testimony which may be the subject of a request for protective order. Any

party which anticipates requesting a protective order shall serve on every other party a proposed protective order and a proposed stipulation for its entry no later than the date of serving initial disclosures required in Rule 26(a)(1), Federal Rules of Civil Procedure. Any party seeking a protective order without first having followed the requirements of this Local Rule shall state the cause within any motion for protective order later filed with the Court.

16.2 PRETRIAL CONFERENCES

All pretrial conferences will be held as ordered by the Court. Reasonable notice of the time and place thereof will be given to counsel.

Counsel may request the Court to hold a pretrial conference. A pretrial conference may be initiated by order of Court.

The attorney who will actually handle the trial shall participate in all pretrial conferences unless excused by the Court. Trial counsel are required to 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 deadline established by a scheduling order will be extended only upon a good cause finding by the Court. In the absence of disabling circumstances, the deadline for completion of all discovery will not be extended unless there has been active discovery. Delayed discovery will not justify an extension of discovery deadlines. A motion to extend any deadline in a scheduling order shall demonstrate a specific need for the requested extension, and should be accompanied by a detailed proposed amendment to the previously entered scheduling order. The date for completion of discovery will be extended only if the remaining discovery is specifically described and scheduled, e.g., the names of each remaining deponent and the date, time and place of each remaining deposition.

16.4 TRIAL SETTINGS

Whenever possible, trial settings will be closely coordinated with the completion of post-discovery pretrial procedures pursuant to Rule 39.1.

16.5 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. Alternative dispute resolution proceedings include any process or procedure, other than adjudication by a presiding judge, in which a neutral third party participates to assist in the resolution of issues in controversy through processes such as the Early Assessment Program adopted by the Court en banc, mediation or minitrial. In addition to participation in the Early Assessment Program which is mandated, in certain divisions, by the General Order of the Court en banc in all cases except those specifically exempted under the Order, litigants in all civil cases shall consider the use of an alternative dispute resolution

process at an appropriate stage in the litigation. The presiding judge in any civil action may require the litigants to participate in an alternative dispute resolution process at any stage of the litigation deemed appropriate.

26.1 DISCOVERY

(a) Meeting of the Parties; Initial Disclosures. The meeting of the parties required by Rule 26(f), Federal Rules of Civil Procedure, should take place as soon as practicable, but not fewer than 30 days before the Court's scheduling order is to be entered under Rule 16.1(b) of these Rules. The initial disclosures required under Rule 26(a)(1), Federal Rules of Civil Procedure should be made at this meeting, but must be made no later than 14 days after the meeting. Counsel who fail to investigate their actions and who fail to make initial disclosures as provided by these Rules may be subject themselves to sanctions.

(b) Discovery Shall Commence After Meeting of the Parties; Filing of Motions Does Not Automatically Stay Discovery or Disclosure Requirements.

1. Parties required to meet and confer may not seek discovery from any source before such meeting, except by agreement or by order of the Court.

2. Absent an order of the Court to the contrary, the filing of a motion, including a discovery motion, a motion for summary judgment, or a motion to dismiss, does not excuse counsel from complying with this Rule, with any disclosure requirement under this Rule or the Federal Rules of Civil Procedure, or with any scheduling order entered in the action.

(c) Content of Discovery Plan. The discovery plan required by Rule 16.1(d) shall:

1. Propose a date by which all discovery will be completed, and state the facts, such as the complexity of the issues, which counsel considered in arriving at the proposed deadline for the completion of all discovery;

2. State the subjects on which discovery may be needed, the status of all discovery to date, a description of all discovery each party intends to initiate prior to the close of discovery, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

3. State the date by which the initial disclosures required by Rule 26(a)(1), Federal Rules of Civil Procedure, were made or will be made, and propose what changes, if any, should be made in the timing, form, or requirement for disclosures under Rule 26(a), Federal Rules of Civil Procedure, these Rules, or a standing order. *See* Rule 26(f)(1), Federal Rules of Civil Procedure.

4. Propose, if necessary, any additional limitations on discovery that should be imposed, or any changes to the limitations on discovery imposed by these Rules or the Federal Rules of Civil Procedure. *See* Rule 26(f)(3), Federal Rules of Civil Procedure.

5. Propose, if necessary, any other orders that should be entered by the Court. *See* Rule 26(f)(4), Federal Rules of Civil Procedure.

The information furnished pursuant to subsections 1, 2, and 3 should be sufficiently detailed to inform the Court why the period of time proposed for completing discovery is believed necessary. The specificity of the information furnished pursuant to subsections 1 and 2 shall increase in direct relation to the extent to which the deadline for completion of discovery exceeds 180 days after a defendant has been served. In other words, the longer the time proposed for discovery, the greater detail counsel shall furnish in support of the request. Consideration should be given to proposing dates prior to the close of discovery for the completion of specific phases of discovery. Counsel should keep in mind the general principles governing discovery set forth in the Federal Rules of Civil Procedure and Rule 16.1(a)**.**

(d) **Preliminary Discovery Plan.** The Court recognizes that in some actions it may be impossible for the parties to file a realistic discovery plan when it is due under Rule 16.1(d). If the parties believe that it is impossible to propose a date for the completion of discovery which has a reasonable basis, the parties should file a preliminary discovery plan which conforms to Rule 26.1(c). Date for completion of all discovery should be suggested and a date should be proposed by which a plan will be filed fully complying with Rule 26.1(c).

Counsel proposing a preliminary discovery plan shall explain in detail why a deadline for completion of all discovery cannot be proposed. Only in extraordinary situations and upon a showing of good cause will a preliminary plan be accepted.

(e) **Discovery Conference.** If requested prior to or at the time a proposed scheduling order is filed, or if ordered by the Court on its own motion after reviewing a proposed scheduling order, a discovery conference pursuant to Rule 16(a), Federal Rules of Civil Procedure, will be held before entering a scheduling order.

(f) **Limits on Stipulations.** Parties may not eliminate by stipulation any of the disclosures required by Rule 26, Federal Rules of Civil Procedure, this rule, or any General Order of this Court. Parties who want to eliminate a particular disclosure requirement shall file a joint written motion setting forth the proposed change and showing good cause for such change.

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

The party answering interrogatories, complying with disclosure requirements, or responding to requests to admit, produce, or inspect, shall set forth each question, or disclosure requirement, or request immediately before the answer or response.

26.4 NON-FILING OF DISCOVERY DOCUMENTS

The following discovery documents:

1. Initial disclosures under Rule 26(a)(1), Federal Rules of Civil Procedure;

2. Disclosure of expert testimony under Rule 26(a)(2), Federal Rules of Civil Procedure;

3. Depositions under Rule 30 and 31, Federal Rules of Civil Procedure;

4. Interrogatories, and answers thereto, under Rule 33, Federal Rules of Civil Procedure;

5. Requests for production or inspection, and responses thereto, under Rule 34, Federal Rules of Civil Procedure;

6. Requests for admissions, and responses thereto, under Rule 36, Federal Rules of Civil Procedure

shall be served upon opposing counsel and parties, but shall not be filed with the Court, except upon order of the Court. However, a certification of service shall be filed and in respect to depositions, the reporter, when the transcript is completed, shall 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.

If relief is sought under any of the Federal Rules of Civil Procedure, copies of only the discovery matters in dispute shall be filed with the Court contemporaneously with any motion filed under said rules.

30.1 DEPOSITIONS

(a) **Public Inspection.** Except as otherwise provided by law or court order, any deposition when filed in the Clerk's Office shall be deemed to be a public record and shall be available for public inspection to the same extent as any other paper in the case file.

(b) **Examining a Witness.** Except as provided by law, ordered by the Court, or pursuant to an agreement of the parties, not more than one counsel for each litigant shall be entitled to examine any one witness during depositions.

(c) **Non-stenographic Recordings.** Depositions authorized by Rule 30, Federal Rules of Civil Procedure, may be recorded by the use of non-stenographic means, including sound or sound-and-visual means, without leave of Court and without stipulation of the parties. When a non-stenographic recording method is used, the parties shall observe the following rules:

1. If the deposition is to be recorded by non-stenographic means, or by both stenographic and non-stenographic means, every notice or subpoena for

the taking of the deposition shall state the method or methods to be used and shall state the name, address and employer of the recording technician or technicians. If a party upon whom notice for the taking of a deposition has been served desires to have the testimony additionally recorded by other than stenographic means, he or she shall serve notice on the opposing party and the witness that the proceedings are to be recorded and the method to be used. Such notice shall be served not less than 3 days prior to the date designated in the original notice for the taking of the depositions and shall state the name, address and employer of the recording technician.2. Where a party intends, in any proceeding before the Court, to use deposition testimony which has been recorded only by non-stenographic means, a written transcription of the deposition or part to be so used shall be prepared, submitted to the witness for signature, unless the witness and the parties waive signature, and to the Court in accordance with Rule 26(a)(3)(B) and Rule 32(c), Federal Rules of Civil Procedure.

2. More than one camera or recording device may be used, either in sequence or simultaneously.

3. The attorney for the party requesting non-stenographic recording of the deposition shall take custody of and be responsible for the safeguarding of the recording and shall, upon request, permit the examination thereof by the opposing party, and if requested, shall provide a copy of the recording at the cost of the party requesting the copy.

4. Unless otherwise ordered by the Court or stipulated by the parties, the expense of non-stenographic recording is to be borne by the party utilizing it and shall not be taxed as costs.

37.1 DISCOVERY MOTIONS

(a) Except when authorized by an order of the Court, the Court will not entertain any discovery motions, until the following requirements have been satisfied:

1. Counsel for the moving party has in good faith conferred or attempted to confer by telephone or in person with opposing counsel concerning the matter prior to the filing of the motion. Merely writing a demand letter is not sufficient. Counsel for the moving party shall certify compliance with this rule in any discovery motion. *See* Rule 26(c), Federal Rules of Civil Procedure and *Crown Center Redevelopment Corp. v. Westinghouse Elec.*, 82 F.R.D. 108 (W.D. Mo. 1979); and

2. If the issues remain unresolved after the attorneys have conferred in person or by telephone, counsel shall arrange with the Court for an immediate telephone conference with the judge and opposing counsel. No written discovery motion shall be filed until this telephone conference has been held.

38.1 DEMAND FOR JURY TRIAL

In all cases where a demand for a jury trial is made, the demand shall be separately stated at the conclusion of the appropriate pleading, or may be made in a separate document endorsed "Demand for Jury Trial." *See* Rule 38(b), Federal Rules of Civil Procedure.

39.1 PREPARATION FOR TRIAL

Upon completion of discovery, or before if deemed appropriate, the Court will establish dates for various post-discovery pretrial filings such as the pretrial disclosures required by Rule 26(a)(3), Federal Rules of Civil Procedure, stipulations of uncontroverted facts, proposed voir dire questions where appropriate, and trial briefs.

47.1 CHALLENGE TO JURY PANEL

In civil cases each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purpose of making challenges, or the Court may allow additional peremptory challenges and permit them to be exercised separately or jointly. Any party authorized to make a request for additional peremptory challenges to the array or panel of jurors called in such cases shall make such request, in writing, at least 30 days before the date of trial setting. Such request shall be filed with the Clerk of the Court, who shall immediately notify the judge of the Court before whom the cause is set for trial, that the Court might act upon the request and, if granted, arrange for adding to the panel the additional jurors necessary to provide for the peremptory challenges allowed.

A failure by any party to make such request in writing and within the time herein specified shall be deemed a waiver of the right to request additional peremptory challenges.

51.1 PROPOSED INSTRUCTIONS AND VERDICT FORMS

(a) Proposed jury instructions and verdict forms submitted under Rule 30, Federal Rules of Criminal Procedure, or Rule 51, Federal Rules of Civil Procedure, shall be distributed as follows:

1. an original and one copy shall be delivered to the appropriate courtroom deputy;

2. one copy shall be filed with the Clerk's office;

3. one copy shall be served on each party.

(b) At the top of the original and each copy of each instruction shall appear the words "Instruction No. _____." Neither "Plaintiff" nor "Defendant" shall precede "Instruction No. ____."

(c) At the bottom of each copy the party tendering it shall state who is submitting the instruction and the number of the instruction (e.g., Plaintiff's Instruction No. 1)

and the source and authority for the instruction. The original shall be "clean" with no identification of the source or the party submitting the instruction.

54.1 BILL OF COSTS

(a) **District Court Costs.** A party seeking an award of costs shall file a verified bill of costs, upon a form provided by the Clerk, no later than 21 days after entry of final judgment pursuant to Fed.R.Civ.P. 58. Each party objecting to a bill of costs shall file, within 14 days of being served, a memorandum stating specific objections. Within 14 days after being served with the memorandum, the moving party may file a reply memorandum. The Clerk shall tax costs as claimed in the bill if no timely objection is filed. Costs shall be paid directly to counsel 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.

If an appeal is filed following the filing of a verified bill of costs, the taxing of such costs shall be suspended until the issuance of the mandate by the Court of Appeals. See section (b) below.

(b) **Costs on Appeal Taxable in the District Court.** Costs allowable pursuant to Fed.R.App.P. 39(e) will be taxed in accordance with section (a) of this rule, provided a bill of costs or amended bill of costs is filed within 21 days of the issuance of the mandate by the Court of Appeals.

56.1 SUMMARY JUDGMENT MOTIONS

(a) The suggestions in support of a motion for summary judgment shall begin with a concise statement of uncontroverted material facts. Each fact shall be set forth in a separately numbered paragraph. Each fact shall be supported by reference to where in the record the fact is established. *See* Rule 56(e).

Suggestions in opposition to a motion for summary judgment shall begin with a section that contains a concise listing of material facts as to which the party contends a genuine issue exists. Each fact in dispute shall be set forth in a separate paragraph, shall refer specifically to those portions of the record upon which the opposing party relies, and, if applicable, shall state the paragraph number in movant's listing of facts that is disputed. All facts set forth in the statement of the movant shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the opposing party.

All facts on which a motion or opposition is based shall be presented in accordance with Rule 56 of the Federal Rules of Civil Procedure. Affidavits or declarations shall be made on personal knowledge and by a person competent to testify to the facts stated. Where facts referred to are contained in another document, such as a deposition, interrogatory answer or admission, a copy of the relevant excerpt from the document shall be attached.

(b) **Suggestions in Opposition to Summary Judgment.** Within 21 days from the time the motion is filed, each party opposing the motion shall serve and file a brief written statement of the reasons in opposition to the motion.

(c) **Reply Suggestions in Support of Summary Judgment.** Within 14 days from the time the suggestions in opposition are filed, a reply brief may be filed.

58.1 ENTRY OF JUDGMENTS AND ORDERS

(a) In all cases the notation of judgments and orders in the civil docket by the Clerk will be made at the earliest practicable time. The notation of judgments will 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) Orders under Rule 77.2 will be noted in the civil docket immediately after the Clerk has signed them. The Clerk may require any party obtaining a judgment or order which does not require approval as to form by the judge to supply him with a draft thereof.

(c) No judgment or order, except orders grantable as a matter of course by the Clerk under Rule 77.2 and judgments which the Clerk is authorized by the Federal Rules of Civil Procedure to enter without direction of the Court, will be noted in the civil docket until the Clerk has received from the Court a specific direction to enter it. Unless the Court's direction is given to the Clerk in open court and noted in the minutes, it should be evidenced by the signature or initials of the judge on the form of judgment or order.

(d) Every order and judgment shall be filed in the Clerk's office.

58.2 SETTLEMENT OF JUDGMENTS AND ORDERS BY THE COURT

(a) Within 7 days after the announcement of the decision of the Court awarding any judgment or order which requires settlement and approval as to form by the judge, the prevailing party shall, if so directed by the Court, prepare a draft of the order or judgment embodying the Court's decision and serve a copy thereof upon each party who has appeared in the action and mail or deliver a copy to the Clerk. Any party thus receiving the proposed draft of judgment or order shall within 7 days thereafter serve upon the prevailing party and mail or deliver to the Clerk a statement of said party's approval or disapproval as to the form of the draft and, in the latter instance, a statement of said party's objections and the reasons therefore and a draft of the order or judgment which said party proposes as a substitute for the transmitted draft. At the expiration of 14 days after the announcement of the decision, the Clerk will submit to the judge for such further proceedings as are necessary in the circumstances all drafts and accompanying papers which the Clerk has received.

(b) No judgment need by signed by the judge, but an initialed approval on the draft of judgment will be sufficient evidence of direction to enter it and authorization to the Clerk to note the judgment forthwith in the civil docket.

66.1 RECEIVERSHIPS

In the exercise of the authority vested in the District Courts by Rule 66 of the Federal Rules of Civil Procedure, this Rule is promulgated for the administration of estates by receivers 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 these Rules.

Nothing in this Rule is intended to affect or repeal any special provisions made by the General or Special Bankruptcy Rules.

(a) **Inventories.** Unless the Court otherwise orders, a receiver or similar officer, as soon as practicable after appointment and not later than 30 days after said person has taken possession of the estate, shall file an inventory of all the property and assets in said person's possession or in the possession of others who hold possession as said person's agent, and, in a separate schedule, an inventory of the property and assets of the estate not reduced to possession by said person but claimed and held by others.

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

(c) **Compensation of Receivers, Attorneys, and Others.** The compensation of receivers or similar officers, of their counsel, and of all those who may have been appointed by the Court to aid in the administration of the estate shall be ascertained and awarded by the Court in its discretion. Such an allowance shall be made only on such notice to creditors and other persons in interest as the Court may direct. The notice shall state the amount claimed by each applicant.

(d) **Administration of Estates.** In all other respects the receiver or similar officer shall administer the estate as nearly as may be in accordance with the practice in the administration of estates in bankruptcy, except as otherwise ordered by the Court.

72.1 DUTIES AND POWERS OF FULL-TIME AND PART-TIME UNITED STATES MAGISTRATE JUDGES

This Rule describes and defines the general, specific, and additional duties of full-time and part-time United States Magistrate Judges in the Western District of Missouri.

(a) **Duties Under Section 28 U.S.C., Sec. 636(a).**

1. Each full-time United States Magistrate Judge and each part-time United States Magistrate Judge, unless otherwise limited or prohibited by a special or general order of the Court en banc, are hereby authorized to exercise all powers and perform all duties now or hereafter prescribed by Section 636(a), Title 28, United States Code, and shall:

   a. Exercise all the powers and duties conferred or imposed upon United States Magistrate Judges and formerly conferred or imposed upon United States Commissioners by law and the Federal Rules of Criminal Procedure;

   b. Administer oaths and affirmations, impose conditions of release under Section 3146, Title 18, United States Code, and take acknowledgments, affidavits, and depositions; and

   c. Conduct extradition proceedings in accordance with Section 3184, Title 18, United States Code.

(b) Determination of Non-Dispositive Pretrial Matters [28 U.S.C. Sec. 636(b)(1)(A)]. Each full-time United States Magistrate Judge and each part-time United States Magistrate Judge, unless otherwise limited or prohibited by a special or general order of the Court en banc, are hereby designated, authorized, and empowered to hear and determine any procedural or discovery motion or other pretrial matters in a civil or criminal case, other than the motions which are specified in Rule 72.1(c).

(c) Recommendations Regarding Case Dispositive Motions [28 U.S.C. Sec. 636(b)(1)(B)].

1. Each full-time United States Magistrate Judge and each part-time United States Magistrate Judge, unless otherwise limited or prohibited by a special or general order of the Court en banc, are hereby designated, authorized, and empowered to conduct any necessary evidentiary hearing or other proceedings and submit to a judge of the Court a report containing proposed findings of fact and recommendations for disposition by the judge of the following pretrial motions or matters in civil and criminal cases:

   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 Rule 11 of the Federal Rules of Criminal Procedure; and

k. Motions, pursuant to 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 he is unable to understand the nature of the proceedings against him or to assist properly in his defense.

2. A magistrate judge may determine any preliminary matters and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this section of the Rule.

(d) **Processing Prisoner Cases Under 28 U.S.C. Section 2254 and 2255.** Each full-time United States Magistrate Judge and each part-time United States Magistrate Judge, unless otherwise limited or prohibited by a special or general order of the Court en banc, are hereby designated, authorized, and empowered to perform any and all of the duties imposed upon a judge by the rules governing proceedings in the United States district courts under Sections 2254 and 2255, Title 28, United States Code. In so doing, under an order of reference made pursuant to Title 28, United States Code, Section 636(b)(1)(B), a magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceedings and shall submit to a judge a report containing proposed findings of fact and recommendations for disposition of the petition by the judge. Any order disposing of the petition may only be made by a judge.

(e) **Processing Prisoner Cases under 28 U.S.C. Section 2241.** Each full-time United States Magistrate Judge and each part-time United States Magistrate Judge, unless otherwise limited or prohibited by a special or general order of the Court en banc, are hereby designated, authorized, and empowered to perform any and all of the duties imposed upon a judge by Section 2241, et. seq., Title 28, United States Code. In so doing, under an order of reference made pursuant to Title 28, United States Code, Section 636(b)(1)(B), a magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendation for disposition of the petition by the judge. Any order disposing of the petition may only be made by a judge.

(f) **Processing Prisoner Cases Under 42 U.S.C. Section 1983.** Each full-time United States Magistrate Judge and each part-time United States Magistrate Judge, unless otherwise limited or prohibited by a special or general order of the Court en banc, are hereby designated, authorized, and empowered, under an order of reference made pursuant to Title 28, United States Code, Section 636(b)(1)(B), a magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendation for disposition of petitions filed by prisoners challenging their conditions of confinement. Any order disposing of the petition may only be made by a judge.

(g) **Special Master Reference.** Each full-time United States Magistrate Judge and each part-time United States Magistrate Judge, unless otherwise limited or prohibited by a special or general order of the Court en banc, are hereby designated, authorized, and empowered to serve as special master in appropriate civil cases in accordance with Section 636(b)(2), Title 28, United States Code, and Rule 53 of the Federal Rules of Civil Procedure. Upon the consent of the parties, a magistrate judge may be designated by a judge to serve as a special master in any case, notwithstanding the limitations of Rule 53(b) of the Federal Rules of Civil Procedure.

(h) **Conduct of Trials and Disposition of Civil Case Upon Consent of the Parties [28 U.S.C. Sec. 626(c)].** Upon the consent of the parties, each full-time United States Magistrate Judge and each part-time United States Magistrate Judge, unless otherwise limited or prohibited by a special or general order of the Court en banc, hereby designated, authorized, and empowered to conduct any and all proceedings in any civil case which is filed in or transferred to this district, including the conduct of a jury or non-jury trial, and may order the entrance of a final judgment in accordance with Section 636(c), Title 28, United States Code. In the course of conducting such proceedings upon consent of the parties, 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.

(i) **Process Applications or Petitions for Enforcement of Internal Revenue Service Summons.** Each full-time United States Magistrate Judge and each part-time United States Magistrate Judge, unless otherwise limited or prohibited by a special or general order of the Court en banc, are hereby designated, authorized, and empowered to process and hear applications or petitions for enforcement of summonses issued pursuant to Section 6420(e)(2), 6421(f)(2), 6424(d) and 7602, Title 26, United States Code, in accordance with the provisions of Section 7604, Title 26, United States Code. In so doing, under an order of reference made pursuant to Title 28, United States Code, Section 636(b)(1)(A), a magistrate judge may issue an order to show cause and any other preliminary orders and conduct any necessary evidentiary hearing or appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for disposition of the application or petition by the judge. Any order disposing of the petition may only be made by a judge.

(j) **Other Duties.** Each full-time United States Magistrate Judge and each part-time United States Magistrate Judge, unless otherwise limited or prohibited by a special or general order of the Court en banc, are hereby designated, authorized, and empowered to:

1. 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 judges;

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

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

4. Receive grand jury returns in accordance with Rule 6(f) of the Federal Rules of Criminal Procedure and issue orders for the issuance of warrants of arrest and summonses;

5. Accept waivers of indictment, pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure;

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

7. Accept petit jury verdicts in civil and admiralty cases in the absence of a judge;

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

9. 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;

10. Approve sureties, both corporate and individual, to proffer bail, surety, and other bonds to the court and make orders that previously approved sureties 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;

11. 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 Section 148(d), Title 46, United States Code;

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

13. Conduct proceedings for initial commitment of narcotic addicts under Title III of the Narcotic Addict Rehabilitation Act;

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

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

16. Discharge indigent prisoners or persons imprisoned for non-payment of a fine and/or costs, pursuant to Section 3569, Title 18, United States Code;

17. Institute prosecutions against persons for violation of Section 1990, Title 42, United States Code, and Sections 5506 to 5516 and 5518 to 5532 of the Revised Statutes, pursuant to Section 1987, Title 42, United States Code;

18. Order presentence investigations, with the consent of defendant, to be commenced in respect to defendants who have not been convicted but have signified an intention to enter a plea of guilty or nolo contendere;

19. 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 Section 153(h), Title 47, United States Code, including a telephone company, to provide assistance to a named federal investigative agency in accomplishing the installation of traps, traces, and pen registers;

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

21. Issue search warrants for searches and seizures which are not within the purview of Rule 41 of the Federal Rules of Criminal Procedure;

22. Issue warrants of arrest for persons who have been determined, pursuant to Section 3149, Title 18, United States Code, to be material witnesses;

23. Preside over naturalization ceremonies and administer the oath required by Section 1448(a), Title 8, United States Code, and submit a written list of persons who took the oath to a district judge;

24. Settle or certify the nonpayment of seamen's wages in accordance with the provisions of Sections 603 and 604, Title 46, United States Code; and 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 the provisions of Section 258(a), Title 22, United States Code;

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 as is not inconsistent with the Constitution and the laws of the United States.

(k) Assignment of Matters to Magistrate Judges.

1. Civil Cases.

a. Applications or Petitions for Enforcement of Internal Revenue Service Summonses Filed in the Western and St. Joseph Divisions. All applications or petitions for the enforcement of Internal Revenue Service summonses filed in the Western and St. Joseph Divisions of the Court shall be randomly assigned by the Clerk of Court, upon the filing of the application or petition, to a magistrate judge stationed in the Western Division for processing and handling in accordance with Section (i) of this Rule.

b. Applications or Petitions for Enforcement of Internal Revenue Service Summonses Filed in the Southern and Southwestern Divisions. All applications or petitions for the enforcement of Internal Revenue Service summonses filed in the Southern and Southwestern Divisions of the Court shall be assigned by the Clerk of Court, upon the filing of the application or petition, to the magistrate judge stationed in Springfield, Missouri, for processing and handling in accordance with Section (i) of this Rule.

c. Applications or Petitions for Enforcement of Internal Revenue Service Summonses Filed in the Central Division. All applications or petitions for the enforcement of Internal Revenue Service summonses filed in the Central Division of the Court shall be assigned by the Clerk of Court, upon the filing of the application or petition, to the magistrate judge stationed in Jefferson City, Missouri, for processing and handling in accordance with Section (i) of this Rule.

d. Motions for Examination of Judgment Debtors Filed in the Western and St. Joseph Divisions. All motions for examination of judgment debtors filed in the Western and St. Joseph Divisions of the Court shall be randomly assigned by the Clerk of Court, upon the filing of the motion, to a magistrate judge stationed in the Western Division, for the purpose of presiding over the examination.

e. Motions for Examination of Judgment Debtors Filed in the Southern and Southwestern Divisions. All motions for examination of judgment debtors filed in the Southern and Southwestern Divisions of the Court shall be assigned by the Clerk of Court, upon the filing of the motion, to the magistrate judge stationed in Springfield, Missouri, for the purpose of presiding over the examination.

f. Motions for Examination of Judgment Debtors Filed in the Central Division. All motions for examination of judgment debtors filed in the Central Division of the Court shall be assigned by the Clerk of Court, upon the filing of the motion, to the magistrate judge stationed in Jefferson City, Missouri, for the purpose of presiding over the examination.

2. General. Nothing in this Section shall preclude the Court, or a judge thereof, from reserving any proceeding for conduct by a judge, rather than by a magistrate judge. The Court en banc, moreover, may, by order, modify the method of assigning proceedings to a magistrate judge as changing conditions may warrant.

(l) Procedures Before a Magistrate Judge.

1. General. In performing duties for the Court, a magistrate judge shall conform to all applicable provisions of federal statutes and rules, to the general procedural rules of this Court, and to the requirements specified in any order of reference from a judge.

(m) Selection of Chief Magistrate Judge, Territorial Assignments and Administrative Provisions.

1. Under the supervision of the chief judge of this district, the chief magistrate judge, with the assistance of the Clerk of Court, shall be responsible for the assignment and reassignment of civil, admiralty, and criminal actions and proceedings to magistrate judges.

2. In case of doubt about any administrative action, the chief magistrate judge shall secure directions from the chief judge of the district, or if the chief judge is unavailable, from the senior regular active judge who is available.

3. Ordinarily a part-time magistrate judge with an official station in a division shall perform the general duties and powers of a part-time magistrate judge in proceedings to be performed in the division in which the magistrate judges official station is located unless otherwise specially ordered by the Chief United States Magistrate Judge, the Court en banc, or a judge of this Court. The order of a judge shall prevail over the order of any magistrate judge in case of conflict; provided, however, a jointly appointed part-time magistrate judge for the Western and Eastern Districts of Missouri, with an official station at Fort Leonard Wood, Missouri, may perform such duties in or arising from actions or omissions occurring only within the territorial jurisdiction specified in the order appointing said part-time magistrate judge or as may be expanded by any subsequent joint supplemental order or orders of the United States District Court for the Western and Eastern Districts of Missouri.

4. Ordinarily the full-time magistrate judge with official station at Springfield, Missouri, shall perform all duties to be performed in the Southern and Southwestern Divisions of the district or in connection with actions and proceedings arising therein.

5. Ordinarily the full-time magistrate judges with official stations at Kansas City, Missouri, shall perform all duties to be performed in the Western and St. Joseph Divisions of the district or in connection with actions and proceedings arising therein.

6. Ordinarily the full-time magistrate judge with official station at Jefferson City, Missouri, shall perform all duties to be performed in the Central Division of the district or in connection with actions and proceedings arising therein.

7. Any full-time magistrate judge may perform any duty or exercise any power granted, conferred, or imposed by this Rule in any division of this district or in any action or proceeding arising herein.

8. In the absence of exceptional circumstances requiring a temporary emergency assignment, the assignment by a district judge of duties and functions to a magistrate judge shall be approved by the Court en banc as a part of a system of assignment or by special order.

74.1 MAGISTRATE JUDGES - PROCEDURE FOR REVIEW

(a) Review and Appeal.

1. Appeal of Non-Dispositive Matters [28 U.S.C. Sec. 636(b)(1)(A)]. Any party may appeal from a magistrate judge's order determining a motion or matter under Rule 72.1(b), *supra*, within 14 days after issuance of the magistrate judge's order, unless a different time is prescribed by the magistrate judge or a judge. Such party shall file with the Clerk of Court, and serve on the magistrate judge and all parties, a written statement of

appeal which shall specifically designate the order, or part thereof, appealed from and the basis for any objection thereto. A judge of the court shall consider the appeal and shall set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law. The judge may also reconsider *sua sponte* any matter determined by a magistrate judge under this Rule.

2. Review of Case-Dispositive Motions, Internal Revenue Service Enforcement Cases, and Prisoner Litigation [28 U.S.C. Sec. 636(b)(1)(B)]. Any party may object to a magistrate judge's proposed findings, recommendations, or report under Rule 72.1(c)(d)(e)(f), *supra*, within 14 days after being served a copy thereof. Such party shall file with the Clerk of Court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations, or report to which objections are made and the basis for such objections. Upon a showing of excusable neglect or good cause, the district judge or magistrate judge may extend the time for making objections for an additional 21 days. A party may respond to another party's objections within 14 days after being served with a copy thereof. The district judge to whom the case is assigned shall 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 district judge, however, need conduct a new hearing only in his discretion or where required by law, and may consider the record developed before the magistrate judge, making his own determination on the basis of that record. The district judge may also receive further evidence, recall witnesses, or recommit the matter to the magistrate judge with instructions. A waiver of the right to appeal will result as to any issue which has been determined by the magistrate judge and which has not been presented to the district judge by timely written objections.

3. Special Master Reports [28 U.S.C. Sec. 636(b)(2)]. Any party may seek a review of, or action on, a special master's report filed by a magistrate judge in accordance with the provisions of Rule 53(e) of the Federal Rules of Civil Procedure.

4. Appeals From Judgments in Misdemeanor Cases [18 U.S.C. Sec. 3402]. A defendant may appeal a judgment of conviction by a magistrate judge after trial in a misdemeanor case by filing a notice of appeal within 14 days after entry of the judgment, and by serving a copy of the notice upon the United States Attorney. The scope of appeal shall be the same as on an appeal from a judgment of the district court to the court of appeals.

5. Appeal from Judgments in Civil Cases Disposed on Consent of the Parties [28 U.S.C. Sec. 636(c)]. *See* Rule 73.1(d)(1).

77.2 ORDERS BY THE CLERK

The Clerk of this Court is authorized to grant, sign, and enter the following orders without further direction by the Court, but any order so entered may be suspended, altered, or rescinded by the Court for cause shown:

(a) Orders on consent extending once for 14 days the time within which to plead or otherwise defend or to make any motion (except a motion for a new trial) if the time originally prescribed to plead, defend, or move has not expired.

(b) Orders on consent of client and former counsel for the substitution of attorneys.

(c) Orders on consent satisfying a judgment or an order for the payment of money, annulling bonds, and exonerating sureties.

(d) Any other of the orders referred to in Rule 77(c) of the Federal Rules of Civil Procedure which do not require allowance or order of the Court.

79.1 WITHDRAWAL OF FILES

(a) **Procedure for Withdrawal.** Papers on file in the office of the Clerk 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 shall 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) **General**. All exhibits, including models and diagrams, introduced in evidence upon the hearing of any cause or motion shall, after being marked for identification, remain in the Clerk's custody until after the judicial proceeding.

(b) **Withdrawal.** After trial or as soon as possible, but within 14 days after a verdict is rendered or a judgment is entered, the offering attorney must withdraw all exhibits in the Clerk's custody and give the Clerk a receipt for the exhibits.

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

(i) retain exhibits withdrawn from the Clerk's custody for at least 1 year after the judgment is final and is therefore no longer subject to appellate review;

(ii) preserve the retained exhibits in the same condition they were in when offered into evidence;

(iii) if an opposing attorney requests the exhibits, make them available for examination and use at reasonable times and places; and

(iv) upon request, promptly return the exhibits to the Clerk.

(d) **Sanctions.** Sanctions may be awarded for the failure to abide by this rule. Despite entry of judgment, the court retains jurisdiction over the parties and attorneys for purposes of enforcing this rule.

(e) **Destruction.** After the judgment is no longer subject to appellate review, the attorney may destroy or otherwise dispose of the exhibits without further authorization. If the attorney does not claim and withdraw the exhibits, the Clerk may destroy or otherwise dispose of any exhibits not claimed and withdrawn. On the date the Clerk destroys the exhibits, the clerk enters a remark on the docket sheet reflecting the date of destruction.

80.1 COURT REPORTERS' TRANSCRIPTS

When any official Court Reporter has completed the preparation of any transcript of any proceeding in this Court, the Court Reporter shall electronically file the certified transcript, as required by Section 753(b), Title 28, United States Code.

The transcript will be made available to the public in the following manner:

1. A transcript provided to the court by a court reporter or transcriber will be available at the office of the clerk, for inspection only, for a period of 90 days after it is delivered to the clerk. During this 90-day period, a copy of the transcript may be purchased by counsel, parties or the general public from the court reporter or transcriber at the rate established by the Judicial Conference. Purchase by members of the general public shall be subject to completion of the redaction process set forth in paragraphs (2), (3), and (4) below, unless otherwise ordered by the Court.

2. Within 7 days of the transcript being electronically filed, each party wishing to redact personal data identifiers, as required by Federal Rules Criminal Procedure 49.1 and Federal Rules Civil Procedure 5.2, from the electronic transcript must inform the Court by filing a Notice of Intent to Redact. Any party wishing to redact additional information, must do so by motion to the Court.

3. Within 21 days of the transcript being electronically filed, any party having filed a Notice of Intent to Redact must file with the clerk's office 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 of the transcript being electronically filed, the Court Reporter or transcriber must perform the requested redactions and file a redacted version of the transcript with the Clerk of Court. The original unredacted electronic transcript will be retained by the Clerk of Court as a restricted document.

5. After the initial 90-day period has ended, the filed redacted transcript (or the original if no redactions are requested) will be available for inspection and

copying in the clerk's office and for download from the Court's CM/ECF system through the judiciary's PACER system or from the Court Reporter or transcriber.

The Clerk of Court shall develop a written policy and procedures document which will cover the information in this rule in more detail.

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

(a) **Cases Pending During Tenure as a Law Clerk.** No attorney who has been employed as a law clerk to a judge or magistrate judge of this Court shall appear or perform any work in any case which was pending before that judge or magistrate judge during the tenure of the attorney as a law clerk. A violation of this Rule may result in the disqualification of the attorney and his or her employer in the case. The employer of a former law clerk shall implement appropriate procedures to assure that the attorney does not appear in or work on any case which was pending before the judge or magistrate judge during his or her tenure as a law clerk.

(b) **Newly-Filed Cases.** For two years after a law clerk leaves the employment of a judge of the court, the former law clerk should not work on any newly-filed case that is assigned to the judge. If a complaint that the law clerk has prepared or has assisted in preparing a case that is assigned at the time of filing to the judge, the law firm shall promptly call that fact to the attention of the judge and the judge shall recuse. If the law clerk participated in any way in the preparation of the defense of the case before it was assigned to the judge, the law firm shall promptly call that fact to the attention of the judge and the judge shall recuse. In the event that the law clerk begins work on a newly-filed case <u>after</u> the case has been assigned to the judge, the law firm shall promptly call that fact to the attention of the judge and the law clerk and the employing firm, if any, shall be disqualified from further participation in the case.

83.3 COURTHOUSE DECORUM

(a) **Addressing the Court.** Counsel shall stand while addressing the Court, and while examining witnesses unless otherwise permitted by the Court.

(b) **Examining a Witness.** Not more than one counsel for each litigant shall be entitled to examine any one witness without permission of the Court.

(c) **Grand Jury.** While a grand jury is convening, no one shall remain in a location within the courthouse for the purpose of observing or monitoring persons who enter and leave the grand jury chambers. This rule shall not apply to (1) grand jurors; (2) witnesses; (3) the government's attorneys, agents, and employees; (4) court personnel; (5) private 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 the court to be present.

83.4 PHOTOGRAPHING, BROADCASTING AND TELEVISING IN COURTROOMS & ENVIRONS

(a) **When Photographing & Broadcasting Are Not Permitted.** The taking of photographs in any courtroom or its environs in this district, or radio or television broadcasting (or making of audio or video tapes) in any courtroom or its environs, during the progress of or in connection with judicial proceedings, including proceedings before a United States Magistrate Judge, whether or not court is actually in session, is prohibited except as hereinafter provided, and regardless of whether or not such hearing or proceeding takes place on federal property, in the private office of the chambers of a judge or magistrate judge or otherwise.

(b) **When Photographing & Broadcasting Are Permitted.** Still or motion pictures, and audio and video tapes, of ceremonies and interviews, including administration of oaths to executive, legislative, and judicial officers, may be made with portable hand-held equipment in the press room and in the executive, legislative, and judicial officers' quarters and chambers located in the courthouse and environs, with leave of the officer in charge thereof; provided that there shall be no simultaneous broadcast or telecast thereof and provided further that the ceremonies and interviews are not connected with any judicial proceedings. "Judicial proceedings," as used herein shall include all judicial proceedings, whether civil or criminal, and whether pending, on appeal, or terminated.

(c) **Definition of "Environs".** "Environs," as used in this Rule, shall include the entire United States Courthouse at 400 East 9th Street, Kansas City, Missouri and the entire United States Courthouse at Jefferson City, St. Joseph, Springfield, and Joplin, Missouri including but not limited to post offices, offices, and driveways, parking spaces, steps, docks, and entrances to and exits from said buildings. Unless specifically ordered by a district judge in respect to a particular case, the United States Marshal may permit photographs with hand-held equipment in the back driveway parking areas when, in his judgment, there is no security problem involved.

(d) **Non-applicability of Rule.** This Rule shall 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 the presiding judge.

83.5 BAR ADMISSION

(a) **Roll of Attorneys.** The Bar of this Court shall consist of those attorneys-at-law (hereinafter called "attorney" or "counsel") heretofore and those hereafter admitted to practice before the Court.

(b) **Eligibility and Qualifications.**

1. Any attorney who is a member of the Missouri Bar in good standing, or admitted to practice before the United States District Court for the District of Kansas and is regularly engaged in the practice of law shall be admitted

to practice upon motion of an attorney of this Bar who is currently in good standing and has been a member of this Bar for a minimum of five years, and upon taking the proper oath and the entry of the attorney's name on the Roll of Attorneys.

2. Any attorney who has passed the Missouri Bar Examination and who has been admitted to practice by the Supreme Court of Missouri in the current calendar year, and who intends to engage regularly in the practice of law, or serve as a law clerk to a federal judge or a judge of a state court of record, shall be eligible for admission to the Bar of this Court, provided, however, that any such attorney may not, without special leave, appear as counsel in this Court unless he or she maintains a law office and is regularly engaged in the practice of law or is associated with or employed by an attorney or attorneys admitted to the Bar of this Court. The form of application shall be modified for use by applicants being currently admitted to the Missouri Bar by the Supreme Court of Missouri. The Clerk of this Court shall ascertain that an applicant admitted under this paragraph has met all character requirements of the Supreme Court of Missouri. Appropriate certification of that fact will be accepted by this Court in lieu of the certificate required under Rule 83.5(d).

3. Any attorney who is a member of the Missouri Bar in good standing who has not been regularly engaged in the practice of law for the preceding two years, who desires to be admitted to this Bar, may file a petition with the Clerk in the form and manner set forth in Rule 83.5(d) and also state the reasons for seeking admission. The Clerk shall submit such petition to any judge, who may, for good cause shown, grant it, or may appoint some member of this Bar to examine the attorney's reason for seeking admission, and legal training, prior experience in the practice of the law, and fitness to become a member of this Bar, and report to the Court the examiner's conclusions and findings. Upon the filing of the report, the judge appointing the examiner shall dispose of any such petition so filed, as to the judge shall be just and right. The judge denying any such petition may, for good cause shown, reconsider the same. A subsequent petition, filed after denial of an earlier petition, shall be presented only to the judge denying the earlier petition so long as that judge remains an active member of this Court.

(c) Standards for Professional Conduct.

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

2. Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Code of Professional Responsibility adopted by this Court shall

constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Code of Professional Responsibility adopted by this Court is the Code of Professional Responsibility adopted by the highest court of the state in which this Court sits, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of bar associations within the state.

(d) **Procedure for Admission.** Each applicant for admission shall file with the Clerk a written petition in form provided by the Clerk, setting forth name, age, and office address; the date the applicant was admitted to practice by the Supreme Court of the State of Missouri or the United States District Court for the District of Kansas, and that applicant is not in default in payment of any fee required by the Rules of the Missouri Supreme Court or the United States District Court for the District of Kansas, for the then current year. The petition shall be accompanied by the certificate of two members of this Bar, of 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. The Clerk will examine the petition and certification and, if in compliance with this Rule, the petition will be presented to a judge. The applicant will make suitable arrangement thereafter with the Court for appearance and admission in open court. When a petition is called in open court, one of the members of this Bar shall move the admission of the petitioner. If admitted, the applicant shall, in open court, take the following oath:

"I do solemnly swear (or affirm) that:

I will support the Constitution of the United States and the Constitution of the State of Missouri. I will maintain the respect due to Courts of Justice and judicial officers.

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land.

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with my client's business except from my client or with my client's knowledge and approval.

I will abstain from all offensive personalities, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged.

I will never reject from any consideration personal to myself the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice.

SO HELP ME GOD !"

After taking the oath, the attorney shall sign the Roll of Attorneys and pay to the Clerk the fee as posted in the Clerk's Office.

(e) **Continuing Legal Education Requirement.** Rescinded by Court en banc on December 7, 2000.

(f) **Annual Fee.** Every attorney admitted to practice in the Western District of Missouri shall pay an annual fee as set from time to time by the Court en banc, but not to exceed $10.00. This fee shall be paid in the manner designated by the Clerk of Court. (A reinstatement fee of $50.00 will be required for all fees received after March 31st.)

(g) **Failure to Comply.** Failure to pay the Annual Fee (Local Rule 83.5(f)) will result in loss of the right to practice before this Court by placing the subject attorney on inactive status and disabling the attorney's CM/ECF password if applicable.

(h) **Bar Fund.** The fund created by the fees hereinabove required shall be kept by the Clerk in a separate account, and shall be disbursed by the Clerk under the direction and order of the Court en banc.

(i) **Periodic Assessment of Attorneys; Registration Statements.**

1. Every attorney admitted to practice before this Court shall upon admission pay to the Clerk of Court an initial disciplinary registration fee in an amount to be determined by Order of the Court which shall be used, until this Court determines that an additional assessment will be required, for the payment of costs incurred in the disciplinary administration and enforcement under these Rules.

2. Payment of the disciplinary registration fee shall be a condition precedent to the granting of any application for admission *pro hac vice* by any attorney not otherwise admitted to the Bar of this Court.

3. If an attorney has paid a registration fee in another court of the United States pursuant to the adoption, of that court, of disciplinary rules similar to this local rule, then said attorney shall not be required to pay the registration fee required under (d) above.

4. An attorney who has retired or is not engaged in the practice of law before this Court may advise the Clerk of Court, in writing, that said attorney desires to assume inactive status and said attorney is not required to pay the fee required under (f) above. Upon the filing of a notice to assume

inactive status, the attorney shall no longer be eligible to practice law in this Court and shall be removed from the rolls of those classified as active until, and unless, said attorney requests and is granted reinstatement to the active rolls by the Clerk of Court.

5. The fund created by the disciplinary registration fee hereinabove required shall be maintained in a separate account held by the Clerk of Court, as trustee, for the payment of expenditures incurred, pursuant to Rule 83.6(i) and not on behalf of the United States.

(j) **Inactive Status.** If a member of this Bar desires to become inactive in the practice of law before this Court, said member shall submit a request, in writing, to the Clerk of this Court. Members will also be deemed inactive automatically upon failure to pay any annual fees required hereunder.

If a member of this Bar has been granted or placed on inactive status and desires to be reinstated to active status, said member shall submit a request electronically or in writing accompanied by a payment of $50.00, to the Clerk of this Court. Upon receipt of notification of reinstatement the attorney may again practice in this Court, and will be expected to comply with Local Rule 83.5(f).

(k) **Local Counsel.** In any case, civil or criminal, in which a member of this Bar whose office is situated a great distance from the place of holding court in the division in which the action is ending, represents one or more parties, the judge to whom the action is assigned may, in his or her discretion, require the attorney to retain a local attorney, who is a member in good standing of this Bar, who can be available for unscheduled meetings and hearings.

(l) **Visiting Attorneys: Permission to Appear in a Particular Case.** Any attorney not a member of this Bar, but who is a member in good standing of the bar of any court of record, may be permitted to appear and participate in a particular case, civil or criminal, under the following conditions:

Any attorney residing outside of this district and admitted to practice before and then in good standing in the United States District Court in the district of residence, may, upon written motion, be permitted by this Court to appear and participate as an attorney in the trial of any action or the hearing of any motion, petition or other proceeding then pending before this Court, but only if the attorney associates with an active Missouri resident member in good standing of this Bar who shall participate in the preparation and trial of the case or presentation of the matter involved and on whom service of all papers may be made. An attorney seeking admission to practice pursuant to this provision shall file a Petition for Admission *Pro Hac Vice*, on a form supplied by the Clerk of Court (set forth on Appendix "A" to this Rule), accompanied by payment of the sum of $50.00. The Clerk of Court shall maintain a roll of attorneys so admitted. The Clerk of Court shall not accept for filing papers which do not contain the name of an attorney admitted to practice before this Court.

Unless the statement, *supra*, is filed with the initial pleading, or within 14 days thereafter, the Court, upon motion or on its own motion, may dismiss the action commenced in violation of this Rule. Upon compliance with the foregoing and introduction of the visiting attorney to the Court, the sponsoring attorney may be excused from further attendance and the visiting attorney will be permitted to appear for the purpose of the particular case, without enrollment. After being so excused from attendance, however, the sponsoring attorney shall retain all of the responsibilities of a counsel of record and shall continue to accept service of papers and to serve as a point of contact or communication between the Court and the party represented by the sponsoring attorney.

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

(n) **Government Attorneys and Federal Public Defenders.** Any attorney representing the United States Government, or any agency thereof, or employed by the Office of the Federal Public Defender, may appear and participate in particular cases in the attorney's official capacity without petition for admission. If the Government Attorney is not a resident of this District, the attorney shall designate the United States Attorney or the Assistant United States Attorney for this District, for the purpose of receiving service of all notices or papers in said action. Service of notice upon the designated District Attorney, or an Assistant, shall constitute service upon such non-resident Government Attorney.

(o) **Withdrawal of Counsel and Entry of Appearance of New Counsel.** Counsel may not be relieved from further representation of a client without obtaining leave of Court. Such leave will ordinarily be denied unless entry of appearance by substitute counsel is assured or has occurred.

(p) **A Certificate of Good Standing** attests to an attorney's admission to practice and current status of good standing before the bar. "Good Standing" indicates that the attorney is not currently suspended or disbarred, has registered timely with the Clerk's Office, and is current with payment of the $10.00 annual fee.

The fee for a Certificate of Good Standing is $15.00, and is payable to the Clerk, U.S. District Court. A request for a certificate shall be submitted electronically or mailed to the Clerk's Office and should include the fee. Non-electronic requests shall be in writing and shall contain the following information: (1) name and bar number of the attorney for whom the certificate is requested; and (2) name and mailing address of the requesting party.

83.6 ATTORNEY DISCIPLINE

The United States District Court for the Western District of Missouri, in furtherance of its inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it, or admitted for the purpose of a particular proceeding (*pro hac vice*),

promulgates the following Procedures of Disciplinary Enforcement superseding all of its other Procedures pertaining to disciplinary enforcement heretofore promulgated.

(a) Attorneys Convicted of Crimes.

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

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

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

4. Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Court may, in addition to suspending that attorney in accordance with the provisions of this Rule, institute a disciplinary process as provided in these Rules in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that any disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

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

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

(b) Discipline Imposed By Other Courts.

1. Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other Court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, promptly inform the Clerk of this Court of such action.

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

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

   b. an order to show cause directing that the attorney inform this Court within 30 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in Rule 83.5(c) that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.

3. In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this Court shall be deferred until such stay expires.

4. Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of (b) above, this Court shall impose the identical discipline unless the respondent-attorney demonstrates, or this Court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

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

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

c. that the imposition of the same discipline by this Court would result in grave injustice; or

d. that the misconduct established is deemed by this Court to warrant substantially different discipline.

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

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

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

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

1. Any attorney admitted to practice before this Court who shall be disbarred on consent or resign from the bar of any other Court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, shall, upon the filing with this Court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this Court and be stricken from the roll of attorneys admitted to practice before this Court. A voluntary resignation of the attorney from the bar of any state territory, commonwealth or possession of the United States where an investigation into allegations of misconduct is pending, does not terminate any disciplinary proceeding against that attorney in this Court.

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

(d) Disciplinary Proceedings.

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

determination that probable cause exists to believe that discipline is warranted, the Court may give notice of the grounds for discipline without the appointment of counsel.

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

3. To initiate a formal disciplinary proceeding, when counsel has been appointed, counsel must demonstrate to the Court that there is probable cause to believe that discipline is warranted. If a finding of probable cause is made by the Court, counsel shall file, with the Court, a complaint which contains a short and plain statement of each ground for discipline. The complaint shall be served on the attorney who shall have 30 days thereafter to file an answer which shall identify any disputed issues of fact and any matters in mitigation.

   If this Court determines that probably cause exists to believe that discipline is warranted without the appointment of counsel, the Court shall serve a complaint on the attorney in question containing a short and plain statement of each ground for discipline. The attorney shall have 30 days thereafter to file an answer which shall identify any disputed issues of fact and any matters in mitigation.

4. Upon the respondent-attorney's answer to the complaint, if any issue of fact is raised or the respondent-attorney gives notice of issues on which the respondent-attorney wishes to be heard in mitigation**,** this Court shall set the matter for prompt hearing before one or more judges of this Court, provided; however, that if the disciplinary proceeding is predicated upon the complaint of a judge of this Court, the hearing shall be conducted before a panel of three other judges of this Court appointed by the Chief Judge. If the Chief Judge is the complainant, the active district judge with the most seniority shall appoint the three judge panel. The judge or judges of this Court appointed to conduct a disciplinary hearing may consist of magistrate judges, active district judges or senior district judges. In the event the appointing judge determines that the disciplinary hearing involves issues related to practice before the Bankruptcy Court, the judge or judges appointed shall include at least one bankruptcy judge. The judge or judges appointed to conduct a disciplinary hearing shall report findings on disputed facts and issues heard in mitigation, together with its recommendation for appropriate discipline, if any, to the court. The court shall determine the appropriate discipline, if any.

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

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

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

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

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

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

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

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

(f) Resignation While Under Disciplinary Investigation or Prosecution.

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

(g) Reinstatement.

1. **After Disbarment or Suspension.** An attorney suspended for three months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the Chief Judge of the Court an affidavit of compliance with the provisions of the order of suspension. An attorney suspended for more than three months or disbarred may not resume

practice until reinstated by order of the Court.

2. **Time of Application Following Disbarment.** An attorney who has been disbarred, after hearing or by consent, may not apply for reinstatement, without leave of Court, until the expiration of at least five years from the effective date of the disbarment.

3. **Deposit of Costs of Proceeding.** Petitions for reinstatement under this Rule shall be accompanied by an advance deposit, in an amount to be set from time to time by the Court, towards payment of anticipated costs of the reinstatement proceeding. The actual amount of the cost of the reinstatement proceeding shall be fixed by the Court at the conclusion of the proceeding.

4. **Petitions for Reinstatement.** Petitions for reinstatement by a disbarred attorney or an attorney suspended for more than three months under this Rule shall be filed with the Chief Judge of this Court. Upon receipt of the petition, the Chief Judge shall assign the petition to one or more judges of this Court to conduct appropriate proceedings and to recommend to the Court appropriate disposition. If the original disbarment or suspension resulted from the complaint of a judge of this Court, the petition for reinstatement shall be assigned to a judge or judges other than the complaining judge. In addition, the Court, after consulting with the judge or judges to whom the petition was assigned, may appoint counsel to investigate the petition on behalf of the Court.

   If counsel is appointed under this Rule, the counsel appointed shall submit, within 45 days, a report and recommendation to the judge or judges to whom the petition has been assigned. After receipt of the report and recommendation of appointed counsel, the judge or judges to whom the petition has been assigned may schedule a hearing on the petition. If a hearing is scheduled, appointed counsel shall assure that all pertinent information bearing on the relief requested in the petition is presented to the Court. At the hearing, the disciplined attorney shall have the burden of demonstrating by clear and convincing evidence that the disciplined attorney has the necessary integrity, moral qualifications, and competency for readmission to practice before this Court. The judge or judges to whom the petition is assigned shall submit suggested findings and conclusions to the Court.

5. **Conditions of Reinstatement.** If the petitioning attorney is readmitted to practice before this Court, readmission may be 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 this Court.

6. **Successive Petitions.** No petition for reinstatement under this Rule shall be filed within one year following an order rejecting a petition for reinstatement.

(h) Service of Papers and Other Notices.

Service of a complaint instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail. Service of any papers or notices required by these Rules shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at the address shown on the most recent registration statement filed pursuant to Rule 83.5(i); or to counsel or the respondent-attorney at the address indicated in the most recent pleading or other document filed in the course of any proceeding; or at the respondent-attorney's last known address.

(i) Appointment of Counsel.

Whenever counsel is to be appointed, pursuant to these Rules, to investigate allegations of misconduct; prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this Court shall make the appointment on such conditions as the Court approves. The Court may appoint as counsel the counsel of the disciplinary agency of the highest court of the State of Missouri wherein the Court sits, or one or more members of the Bar of this Court, or an Assistant United States Attorney, to investigate allegations of misconduct or to prosecute disciplinary proceedings under these rules, provided, however, that the respondent- attorney or disciplined attorney may move to disqualify counsel so appointed who is or has been engaged as an adversary of the said attorney in any matter. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

(j) Payment of Fees and Costs.

At the conclusion of any disciplinary investigation or prosecution, if any, under these Rules, counsel may make application to this Court for an order awarding reasonable fees and reimbursing costs expended in the course of such disciplinary investigation or prosecution. The Court may require counsel at any time to submit a budget for approval by the Court.

Additionally, any costs incurred by this Court in administering the provisions of this Rule shall be paid upon order of the Chief Judge of this Court. Any payments made under this Rule will be made by the Clerk of Court, as trustee, from funds collected pursuant Rule 83.5(i) hereof. Such payments may be taxed as costs against any attorney disciplined by the Court

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

1. Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk of this Court shall determine whether the clerk of the court in which such conviction

occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk of this Court shall promptly obtain a certificate and file it with this Court.

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

3. Whenever it appears that any person convicted of any crime and has been disbarred, suspended, censured, or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other court, the Clerk of this Court shall, within 14 days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other court, a certificate of the conviction or a certified exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.

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

(l) **Jurisdiction.** Nothing contained in this Rule shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure.

(m) **Unauthorized Practice.** An attorney who, before admission, unless specially authorized by one of the judges, 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 becomes subject to appropriate punishment therefor, to be instituted in the same manner as provided in Rule 83.6.

83.7 FILING FEES

(a) **Suit by Indigent Person.** (Request to proceed in forma pauperis.)

1. 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 should be in the form provided by the Court. Alternatively, the affidavit must contain the same information called for by the court-approved form.

2. The Court or Clerk of Court shall review the affidavit, together with any other information filed with the Court that is relevant to the plaintiff's ability to prepay the filing fees and costs. If the applicant is confined in a municipal, state or federal institution, the Clerk of Court may request a copy of the applicant's inmate account, if it is not filed with the affidavit. Also, the defendant may be given an opportunity to show cause why plaintiff should not be granted leave to proceed in forma pauperis.

3. The Court or Clerk of Court shall determine whether the applicant is capable of paying the initial filing fee. A payment will not be required if to do so will cause the plaintiff to give up the basic necessities of life. If the applicant is incarcerated, and if the applicant's average monthly income or the balance in the inmate account is $1,200.00, the applicant shall be deemed capable of paying the complete filing fee unless some good reason is shown to the contrary. In calculating the average monthly income, the Court or Clerk of Court shall 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. If the Court or Clerk of 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 30 days unless a longer time is allowed by the Court. However, if a party does not pay the filing fee, the complaint may be dismissed by the Court for that reason. The Court may grant a person leave to proceed in forma pauperis after they have paid the filing fee.

4. If the Court or Clerk of Court concludes that the applicant is not capable of paying the full filing fee, the Court may, except in cases filed under 28 U.S.C. Sections 2254 and 2255, require the payment of a partial filing fee. The fee required should 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, a partial filing fee of 10% of the applicant's average monthly income for the six months immediately preceding the filing of the complaint may be imposed. In calculating the average monthly income, the Court or the Clerk of Court shall 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. A partial filing fee of less than $1.50 shall not be imposed. When the Court orders payment of a partial filing fee, payment of the amount will be required within 30 days, unless a longer period is allowed by the Court. The failure of a party to make a required payment will justify dismissal of the lawsuit.

5. If a filing fee is imposed on a person who has requested leave to proceed in forma pauperis, any party to the case will be allowed 21 days after being notified of the fee imposed to 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 will review promptly the objections and rule on the application for leave to proceed in forma pauperis.

6. In forma pauperis status may be reviewed and rescinded by the Court at any time. Some grounds for review and recision would be if the party becomes capable of paying the complete filing fee or if the Court determines the case is frivolous, or if the Court determines that the applicant has willfully misstated information in the application for leave to proceed in forma pauperis.

7. An application for in forma pauperis status shall constitute consent by the applicant and counsel that a portion of any recovery, as directed by the Court shall be paid to the Clerk, who will pay therefrom all unpaid fees of counsel and costs taxed against the plaintiff.

83.8 PRACTICE BY STUDENT INTERNS ENROLLED IN LAW SCHOOL

Any eligible law student acting under a supervising attorney shall be allowed to make an appearance and participate in proceedings in this Court pursuant to these rules.

(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 three semesters or the equivalent if the law school is on some other basis than a semester basis;

3. File with the Clerk of the Court a Notice of appearance in each case in which the student is participating or appearing as a law student intern. The notice shall be in the form prescribed by the Court and shall be signed by the supervising attorney and the student intern. When signing the notice of appearance, the law student intern must certify that he/she has read and agrees to abide by the rules of the Court, all applicable codes of professional responsibility, and all relevant federal practice rules. The supervising attorney shall also certify that he/she has advised the client(s) that the law student intern will make an appearance and the client(s) has/have consented to the participation of the law student intern.

4. Be introduced to the Court in which the student is appearing by an attorney admitted to practice in this Court.

(b) Restrictions. No law student admitted under these rules shall:

1. Request or receive any compensation or enumeration of any kind from the client, but this restriction does not prevent the supervising attorney or his or her law firm, a law school, a public defender or any agency of the government from paying compensation to the law student or prevent any

firm or agency from making such 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 with the Court 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 pursuant to this rule in any contested matter shall notify the Court of such intention at least 24 hours before the matter is scheduled to commence. If the Court should conclude that, for reasons sufficient to the Court, the participation by the student attorney would be inappropriate, the Court shall so advise the supervising attorney and the appearance shall not be made.

(d) **Termination.** The student's participation may be terminated by a judge of this Court at any time without notice or hearing and without a showing of cause. Notice of the termination may be filed with the Clerk of Court.

(e) **Supervising Attorney.** Any person acting as a supervising attorney under this Rule must be admitted to practice in this Court and shall:

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

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

3. 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

4. Be available for consultation with the client.

83.9 ASSIGNMENT OF CASES

Unless otherwise provided in an Administrative Directive approved by the Court en banc, the assignment of newly filed criminal and civil matters shall be by blind draw among the qualified judges. Judges shall be considered qualified unless they have given blanket recusal instructions to the Clerk in writing. However, any judge may enter an order in any case at the request of or in the event of unavailability of the judge to whom the case is assigned. Cases may be transferred between judges by mutual consent. Cases on a joint trial docket may be reassigned in order to promote their prompt and efficient disposition. If a case that has been dismissed is refiled, the refiled case shall be assigned to the judge last handling the dismissed case. Related cases, by mutual consent of the judges to whom the cases are assigned, shall be transferred to the judge with the earliest filed case, without regard to whether the earliest filed case is pending.

83.10 SANCTIONS FOR LATE NOTIFICATION OF SETTLEMENT

Whenever any civil action scheduled for jury trial is settled or otherwise disposed of in advance of the actual jury trial, then, except for good cause shown, jury costs, including Marshal fees, mileage, and per diem, may be assessed equally against the parties and their counsel, or otherwise assessed by the Court, unless the Clerk of the Court is notified before twelve noon of the last business day preceding the time when the action is scheduled for trial in time to advise the jurors that it will not be necessary for them to attend. Likewise, when any civil action is settled at trial in advance of the verdict, then, except for good cause shown, jury costs, including Marshal fees, mileage and per diem, may be assessed equally against the parties and their counsel, or otherwise assessed as directed by the Court.

83.11 ELECTRONIC COMMUNICATION DEVICES

(a) For purposes of this Rule, an electronic communication device includes any computer, personal digital assistant, cellular telephone, digital camera or camcorder, pager, two-way radio, or other electronic device.

(b) Law enforcement officers, United States Attorneys and staff, Federal Public Defenders and staff, bankruptcy panel trustees, Court employees and other tenants of the courthouse may bring electronic communication devices into the courthouse.

(c) Possession of electronic communication devices in the courthouse is otherwise prohibited, except by:

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

2. staff in the company of such lawyers; and

3. individuals who are granted specific permission by this Court.

All such individuals and electronic communication devices are subject to proper screening and security clearance before entry into the courthouse. Furthermore, lawyers are responsible for ensuring that their staff comply with all rules regarding use of electronic communication devices.

(d) No person who is allowed to possess an electronic communication device in the courthouse may allow it to be used by any unauthorized person or for any unauthorized purpose.

(e) Courtroom Use. Only laptop computers may be used in the courtroom. No other electronic communication device may be used or turned on in the courtroom except by members of the United States Marshal's Service, Court Security Officers and court personnel, unless specific permission is granted by this Court.

(f) No electronic communication device shall be used in violation of Rule 83.4 (Photographing, Broadcasting and Televising in Courtrooms and Environs).

(g) Any electronic communication device that is used in violation of this Rule or Rule 83.4 is subject to confiscation. In addition, in the discretion of the Court, additional sanctions, including financial sanctions, may be imposed.

LOCAL CRIMINAL RULES

99.1 BAIL AND SURETIES

(a) **Bail.** When a person is arrested in this district for the commission of a criminal offense, said person may be admitted to bail as provided in Rule 46, Federal Rules of Criminal Procedure, and Sections 3141, 3146, 3148, and 3149, Title 18, United States Code.

(b) **Justification of Sureties.** Any individual, corporation, partnership, or association offered as a surety and required to "justify," pursuant to Rule 46(d), Federal Rules of Criminal Procedure, shall do so before a United States Magistrate Judge appointed by this Court, unless otherwise ordered by a judge of this Court. If a judge of this Court or a United States Magistrate Judge is not readily available, the Clerk of the Court may take such justification and admit a defendant to bail in accordance with the order of the judicial officer issued pursuant to Section 3146(c), Title 18, United State Code.

(c) **Qualifications for Individual Sureties.** An individual shall not be "justified" and accepted as a surety on bond or undertaking in any criminal or civil action or proceeding in this Court unless said individual possesses the following qualifications:

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

2. The surety shall not have been convicted of any felony under the law of the United States or of any state;

3. The surety shall not be an attorney-at-law, a peace officer, marshal or deputy marshal, a constable or deputy constable, sheriff or deputy sheriff;

4. The surety shall not be the Clerk, a deputy clerk, other officer or employee of this Court;

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

6. The surety must be the owner of real estate 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 surety 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 shall file in connection with the surety's "justification" 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.** If any surety (individual, corporation, partnership, or association), or any agent, representative, servant, or employee thereof, conducts himself in the surety's business respecting the writing of bail, surety, or bonds of any type or character, so as to forfeit the confidence of this Court, or cause any judge or magistrate judge of this Court to lose confidence in the business integrity or moral manner by which the surety carries out the surety's business or undertakings, the Court en banc or any judge or magistrate judge of this Court expressing any such loss of confidence may enter an order directing that such surety, or any agent, representative, or employee thereof, be precluded from proffering bail, surety, or any other bonds to this Court. Provided, however, when a magistrate judge issues an order precluding a surety or any agent, representative, or employee thereof, from proffering bail, surety, or any other bonds to this Court, the magistrate judge shall set forth findings of fact and conclusions of law in the order. The magistrate judge shall file such order with the Clerk of the Court and forthwith mail or cause a copy of the order to be mailed to the surety. Any surety may, within 14 days after being served with a copy of such order of the magistrate judge, file a written specific objection to the order. The Court en banc or a judge of this Court, when so designated by the Court en banc, shall make a de novo determination of the order of the magistrate judge precluding a surety, or any agent, representative, or employee thereof, from proffering bail, surety, or other bonds to this Court to which a timely specific objection is filed. 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.

The "moral manner" by which a surety, or an agent, representative, or employee thereof, shall be measured is whether or not, in the opinion of the Court en banc of this Court or any judge or magistrate judge of the Court, the method of the conduct of the business of the surety will subject the court to calumny in any manner.

99.2 ESTABLISHING PANEL OF EXPERTS AND PROCEDURES FOR DETERMINATION OF MENTAL COMPETENCY TO STAND TRIAL AND/OR THE EXISTENCE OF INSANITY AT TIME OF THE OFFENSE

(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 Section 4241 or 4242 of Title 18, United States Code, and any other examination that may be ordered pursuant to other laws.

(b) **Establishment of Panel of Experts.** The Court shall establish a panel of competent, licensed or certified psychiatrists or psychologists. A list of the psychiatrists and psychologists on the panel shall be on file with the Clerk and

with the Chief of Probation and Pretrial Services of this Court. The Court 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.** When the Court orders an examination pursuant to this local rule, the order may authorize the Chief of Probation and Pretrial Services to make proper arrangements with a psychiatrist and/or psychologist designated by the Court from the approved panel for such examination. Should the accused be in custody, this standing order authorizes the United States Marshal to deliver the accused to the office of the examiner designated by the Court and to return the accused to the place of confinement after said examination.

Except for examinations conducted at a federal penal institution, the Chief Pretrial Officer shall be responsible for the preparation of a social history of the accused for use by the examiner, if so requested by the examiner. Any statements made by the accused in connection with that social history and the social history itself shall be considered within the protection of Rule 12.2 of the Federal Rules of Criminal Procedure.

99.3 DIRECTIVES AND PROCEDURES IN REGARD TO SPECIAL GRAND JURIES (Chapter 216, Title 18, United States Code)

(a) **Purpose of Rule.** The purpose of this rule is to establish directives and procedures calculated to insure compliance with all provisions of Chapter 216, Title 18, United States Code, and to avoid the dissemination of any information concerning or contained in any report submitted by a special grand jury impaneled under that Chapter until and unless such report has been ordered accepted by the Court and ordered filed as a public record in accordance with the provisions of that Chapter.

(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 shall reveal any information concerning the contents of a special grand jury report, which in every instance shall be submitted to the Court, until and unless such report has been accepted and ordered filed by the Court as a public record in accordance with Chapter 216, Title 18, United States Code. It is determined that 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.

The provisions of Rule 99.7 of this Court are fully applicable 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 by this Rule 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 Chapter 216, Title 18, United States Code. Then the statement is limited to the contents of the report approved by the Court for filing.

(c) **Procedures Concerning Submission of Special Grand Jury Reports.** Should a special grand jury, upon completion of its original term, desire to submit a report authorized by Section 3333, Title 18, United States Code, it shall submit such a report by the filing of an appropriate motion in accordance with the following procedures:

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

2. The special grand jury's motion submitting its report shall 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 subsection (a) of Section 3332 and is supported by the preponderance of the evidence.

3. The special grand jury shall place its submitted report in a sealed envelope marked "Exhibit A" and labeled "Report Submitted by Special Grand Jury" and place in another sealed envelope marked "Exhibit B" and labeled "Supporting Data," in which shall be included the facts revealed in the course of its investigation which it believes support its report by the preponderance of evidence as required by Section 3333(b)(1). 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 special grand jury's motion shall 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 Section 3333(a)(1), that further proceedings be directed in accordance with law.

5. The Clerk shall immediately transmit the special grand jury's motion and the exhibits attached thereto to the Court for further appropriate proceedings, according to law. No person shall reveal the contents of Exhibit A or Exhibit B directly or indirectly without express authority of court order.

6. The Court will, after direction of proper proceedings and appropriate consideration according to law, 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.

(d) **Sanctions for Violations of this Rule.** Any violation of this Rule by any person shall be punished by appropriate contempt proceedings pursuant to Rule 42 of the Rules of Criminal Procedure.

99.4 REPORT BY PERSONS ADMITTED TO BAIL

Any person admitted to bail shall report to the Office of the United States Marshal immediately prior to any court proceeding which said person is required to attend.

99.5 INTERVIEWING; SEARCHING; OR USING OF PERSONS WHO ARE UNDER ARREST; IN CUSTODY; OR ON BAIL PENDING TRIAL; SENTENCING; OR APPEAL; OR ON PROBATION OR PAROLE; BY COUNSEL; OFFICERS; AGENTS; OR EMPLOYEES OF THE UNITED STATES

(a) **General.** No counsel, officer, agent, or employee of the United States shall request, cause, or attempt to cause any person or persons (1) on probation, under supervision of the probation office of this Court, (2) on parole under the supervision of the probation office of this Court, or (3) on bail pending trial, sentence, or appeal under an order of a judge or magistrate judge of this Court or the Court of Appeals, to violate any condition of bail, probation, or parole, including but not limited to, use of such a person under circumstances that violate one or more of the conditions of bail, probation, or parole, provided that an informal or formal *ex parte* request may be made to the judge or magistrate judge having jurisdiction, for modification of such condition or conditions for lawful purposes.

(b) **Submission of Request for Modification of Conditions of Bail, Probation, or Parole.** Any request for modification of one or more conditions of bail, probation, or parole may be submitted informally or formally, confidentially *ex parte*, to the magistrate judge or judge having jurisdiction or to the appropriate probation officer in case of parole, stating the exceptional facts which justify such a request. In an emergency, any judge or magistrate judge of this Court may grant such a request.

(c) **Granting of Request for Modification of Conditions of Bail, Probation, or Parole.** If possible, prior to granting any request under Rule 99.5(b), the judge or magistrate judge shall, if time permits, consult with the Chief Probation Officer or the probation officer assigned to supervision of the person, before granting such a request, and shall by sealed order modify the conditions of bail, probation or supervision of parole by the probation office of this district as the circumstances shall require.

(d) **Procedures Not Prohibited by Rule.** Provided however, that, in respect to persons under arrest, in custody, on bail pending trial, sentencing or appeal, on probation, or parole, this rule shall not be construed to prohibit:

1. On the initiative of the person or counsel, an officer, agent, or employee of the United States interviewing the person, "debriefing" the person, questioning the person, or taking a voluntary statement from the person concerning intelligence or information on any subject relating to, or unrelated to, the offense or offenses of which the person was convicted, or the alleged offense or offenses on which the bail releasee is awaiting trial, sentencing, or appeal;

2. Making searches and seizures, determined by counsel, an officer, agent, or employee of the United States to be lawful, including, but not limited to, searches or seizures from the person or persons, subject to later determination by the Court of lawfulness thereof;

3. Appearances and testimony by the person in any lawful discovery or investigative proceedings as a witness, formally or informally, including, but not limited to, appearance or appearances as a witness before a grand jury.

(e) **To Whom Applicable.** This local rule shall apply to persons who are on probation, parole, or released on bail or in one or more of such circumstances concurrently, provided (1) that the supervision of the probation or parole is being conducted by the probation office of this Court, or provided (2) that the order fixing the conditions of bail has been entered (a) by a district judge or magistrate judge of this district or (b) by the Court of Appeals or a judge thereof in an appeal from a judgment in one or more criminal actions entered in this district.

99.6 EXPUNGING THE RECORD

Upon the filing of an order directing the record of a defendant be expunged in accordance with Section 404, Title II, Public Law 91 84 Stat. 1264, Section 844, Title 21, U.S.C.A., and future amendment thereof and supplements thereto, the Clerk of the district court shall obliterate the name of the individual from all indexes and withdraw the docket sheets and the file containing the papers of the criminal action from the court records.

The Clerk shall also notify the Administrative Office of the United States Courts, the court reporter, the Chief Probation Officer and the United States Magistrate Judge having custody of the record of the order, instructing each of them to make similar obliterations and withdrawals and delivery of the papers from their files to the Clerk of this Court.

All the papers shall thereupon be expunged by being placed in the sealed records of the court to be opened only upon order of court. If the sealed records are opened, they shall be resealed by order of court. All such sealed papers shall be physically destroyed after 10 years.
In appropriate cases, the Clerk shall timely initiate and submit to the judge to whom the case was last assigned, or his successor, an order in the following form:

	)	
STYLE OF CASE	)	Case Number
	)	

ORDER EXPUNGING THE RECORD

On motion by defendant _____ for an order of court expunging from the official records all recordation of arrest, indictment or information, trial findings of guilty and dismissal and discharge, the court finds that the defendant _____ pursuant

to the provisions of the Controlled Dangerous Substances Act, Section 404, Title II, Public Law 91-513, 84 Stat. 1264, Section 844, Title 21, U.S.C.A., is entitled to relief, It is therefore hereby

ORDERED that, in accordance with Section 404, Title II, Public Law 91-513, 84 Stat. 1264, Section 844, Title 21, U.S.C.A., the records of defendant _____ be expunged from the official records of this court, and the Clerk of the Court is hereby further

ORDERED to obliterate the name of the defendant from all indexes and to withdraw the docket sheets and the file containing the papers of this criminal action from the court records, and shall notify the Administrative Office of the United States Courts, the court reporter or reporters reporting the proceedings therein, the Chief Probation Officer and the magistrate judge or magistrate judges acting therein of the order, instructing them to make a similar obliteration and withdrawal of the papers in the above criminal action and to deliver all the papers and records therein to the Clerk of this Court. It is further

ORDERED that all the papers and records mentioned above shall thereupon be expunged by being placed in the sealed records of the court to be opened only upon order of court; and if the sealed records are opened they shall be resealed by order of court; and all such sealed papers shall be physically destroyed after 10 years.

(Judge)(Magistrate Judge),United States Court

Kansas City, Missouri

Dated:

99.7 "FREE PRESS FAIR TRIAL" DIRECTIVES

(a) **Duties of Attorneys.** It is the duty of the attorney or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by any means of public communication, in connection with pending or imminent criminal litigation with which an attorney or a 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.

With respect to a grand jury or other pending investigation of any criminal matter, an attorney participating in or associated with the investigation shall refrain from making 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.

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, an attorney or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication, relating to that matter and concerning:

1. The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the attorney 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, an attorney 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 only apply when the release of such information poses a serious and imminent threat of interference with the fair administration of justice;

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

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

4. The identity, testimony, or credibility of prospective witnesses, except that the 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;

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

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

The foregoing shall not be construed to 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.

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 shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial, which a reasonable person would expect to be disseminated by means of public communication if 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.

Nothing in this Rule is intended to preclude the formation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearing or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any attorney from replying to charges of misconduct that are publicly made against that attorney.

(b) **Duties of Court Personnel.** No supporting personnel connected in any way with this Court or its operation, including among others, marshals, deputy marshals, court clerks or deputies, bailiffs, secretaries, court reporters and employees or subcontractors retained by the court-appointed official reporters, shall disclose to any person, without specific authorization by the Court, any information to a pending grand jury proceeding or criminal case that is not a part of the public records of the Court. 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 may deem appropriate for inclusion in such an order.

99.8 GUIDELINE SENTENCING

(a) Unless the presentence investigation report is waived by the Court pursuant to Rule 32(b)(1), and the Court finds that there is sufficient information in the record to enable the meaningful exercise of sentencing authority pursuant to 18 U.S.C. 3553, the Probation Officer shall, without unreasonable delay, prepare a presentence investigation report and compute the applicable United States Sentencing Commission (USSC) Guidelines.

(b) On request, defendant's counsel is entitled to notice and reasonable opportunity to attend any interview of the defendant by the Probation Officer, in the course of the presentence investigation.

(c) Immediately after completion, the Probation Officer shall provide the preliminary presentence investigation report to the defendant and counsel for the defendant, and the United States, pursuant to Rule 32(b)(6) and 18 U.S.C. 3552(d).

(d) It shall be the obligation of defense counsel to review the report with, and explain it to, the defendant.

(e) If counsel for the defendant, a pro se defendant, or counsel for the government has an objection to anything in the presentence investigation report, the objecting party must submit the objection in writing to the Probation Office and to all other parties within 14 days after disclosure of the preliminary presentence investigation report. The objections, submitted in separately numbered paragraphs, shall list (1) any and all objections believed material to application of the Sentencing Guidelines, including factual information, sentencing classifications, sentencing guideline ranges, and policy statements which are contained in the presentence investigation report, and (2) any additional matters which the submitter believes should be included in, or deleted from, the presentence investigation report.

(f) After receiving timely written objections, as provided in Rule 99.8(e), the Probation Officer shall immediately conduct a further investigation and make such revisions to the presentence investigation report as may be deemed appropriate. The Probation Officer may meet with each counsel or pro se defendant to discuss any unresolved factual issues.

(g) The Probation Officer shall submit the presentence investigation report to the sentencing judge, the defendant, defense counsel, and counsel for the United States within 14 days of counsels' objections. The report, or the revised report, shall be accompanied by (1) an addendum which shall set forth clearly and fairly any objections that counsel or the pro se defendant have raised in writing, as provided in Rule 99.8(e), which remain unresolved, and (2) the comments of the Probation Officer.

(h) When the presentence investigation report is submitted as provided in Rule 99.8(g), the Probation Office shall submit a confidential sentencing recommendation to the Court. The sentencing recommendation shall be contained in a confidential memorandum. This memorandum shall not be further disclosed without a specific directive by the Court.

(i) The sentencing judge shall set the sentencing date not less than 7 days after receipt of the information as provided in Rule 99.8(g), unless waived by counsel and the defendant. The sentencing date, however, shall not be set less than 35 days from distribution of the preliminary presentence investigation report Rule 99.8(c) unless waived by the defendant and counsel.

(j) Counsel for the government or defendant or pro se defendant may submit to the Court, with copies to opposing counsel and the Probation Office, notice of any unresolved objection or other matter pertaining to the presentence investigation report within 21 days after receipt of opposing counsel's objections, or within 7 days after the presentence investigation report is submitted to the Court. Opposing counsel may submit a response, and the Probation Officer may submit comments, to the additional objection as may be deemed appropriate.

(k) The presentence investigation report submitted to the parties as provided in Rule 99.8(e) may be accepted by the Court as accurate except for those portions of the preliminary presentence investigation report objected to by a party as provided in Rule 99.8(e). At the sentencing hearing, the Court will consider only unresolved objections raised by a party or parties as provided in paragraph e unless the Court, upon a showing of good cause, allows an objection to be raised without compliance with Rule 99.8(e).

(l) The times set forth in this Rule may be modified by the Court upon a showing of good cause.

(m) Nothing within this Rule requires the disclosure of any portion of the presentence investigation report that is not permitted under Rule 32 of the Federal Rules of Criminal Procedure.

(n) If an appeal is taken pursuant to 18 U.S.C. 3742, the Clerk of Court shall advise the Probation Office, which will 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 (18 U.S.C. Sec. 3401).** Each full-time United States Magistrate Judge and each part-time United States Magistrate Judge, unless otherwise limited or prohibited by a special or general order of the Court en banc, are hereby designated, authorized, and empowered to:

1. Try persons accused of, and sentence persons convicted of misdemeanors committed within or transferred to this district in accordance with Section 3401, Title 18, United States Code;

2. Direct the probation service of the Court 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 entitled to trial by jury under the Constitution and laws of the United States.

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

1. Criminal Cases.

a. All misdemeanor cases filed in the Western and St. Joseph Divisions of the Court shall be randomly assigned by the Clerk of Court, upon the filing of an information, complaint, violation notice, return of an indictment or upon the transfer to this district under Rule 20 or Rule 21 of the Federal Rules of Criminal Procedure of an indictment, or information charging a misdemeanor, to a magistrate judge stationed at Kansas City, Missouri, who shall proceed in accordance with the provisions of Section 3401, Title 18, United States Code, and the Rules of Procedure for the Trial of Misdemeanors Before United States Magistrate Judges.

b. All misdemeanor cases filed in the Southern and Southwestern Divisions of the Court shall be assigned by the Clerk of Court, upon the filing of an information, complaint, violation notice, return of an indictment or upon the transfer to this district under Rule 20 or Rule 21 of the Federal Rules of Criminal Procedure of an indictment, or information charging a misdemeanor, to the magistrate judge stationed at Springfield, Missouri, who shall proceed in accordance with the provisions of Section 3401, title 18, United States Code, and Rules of Procedure for Trial of Misdemeanors Before United States Magistrate Judges.

c. All misdemeanor cases filed in the Central Division of the Court shall be assigned by the Clerk of Court, upon the filing of an information, complaint, violation notice, return of an indictment or upon the transfer to this district under Rule 20 or Rule 21 of the Federal Rules of Criminal Procedure of an indictment, or information charging a misdemeanor, to the magistrate judge stationed at Jefferson City, Missouri, who shall proceed in accordance with the provisions of Section 3401, title 18, United States Code, and Rules of Procedure for Trial of Misdemeanors Before United States Magistrate Judges.

d. Upon the return of an indictment or the filing of an information in the Western and St. Joseph Divisions, of the Court, all felony cases shall be referred by the Clerk of the Court to a magistrate judge stationed at Kansas City for the conduct of all pretrial matters. An order of reference from the presiding district judge to the magistrate judge shall be entered. . .

e. Upon the return of an indictment of the filing of an information in the Southern and Southwestern Divisions of the Court, all felony cases shall be referred by the Clerk of the Court to the magistrate judge stationed at Springfield, Missouri, for the conduct of all pretrial matters. An order of reference from the presiding district judge to the magistrate judge shall be entered.

f. Upon the return of an indictment or the filing of an information in the Central Division of the Court, all felony cases shall be referred by the Clerk of the Court to the magistrate judge stationed at Jefferson City, Missouri for the conduct of all pretrial matters. An order of reference from the presiding district judge to the magistrate judge shall be entered.

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

This Rule is adopted pursuant to Rule 58 of the Federal Rules of Criminal Procedure, to promote the more efficient administration of justice and improve the effectiveness of court administration.

A person who is charged with the commission of one of the hereinafter specified misdemeanors, 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. Section 13) may, prior to or at the time fixed for appearance, pay a fixed sum to the Clerk of the Court in lieu of personal appearance before a magistrate judge or district judge. Upon receipt by the Clerk of payment of a fixed sum in lieu of appearance, the proceeding shall be terminated. The payment of a fixed sum in lieu of appearance in accordance with the provisions of this Rule shall signify that the person charged with the misdemeanor offense (a) does not contest the charge, (b) does not request a trial before a magistrate judge or a district judge, (c) agrees that the payment shall be the equivalent of a plea of guilty, and (d) agrees that the amount so paid shall be forfeited to the United States of America.

The misdemeanor offenses for which a fixed sum may be paid in lieu of personal appearance before a magistrate judge or district judge and the sum to be paid are set forth in the following schedules and subsequent amendments thereof which are incorporated herein by reference and made a part hereof as if fully set out:

(a) 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."

(b) 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."

(c) 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."

(d) 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."

(e) 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."

(f) 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."

(g) 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."

(h) 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."

(i) 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."

Whenever any alleged violation (a) is not shown on the schedules hereto, or (b) involves the operation of a motor vehicle which was involved in a collision, or (c) is for operating a motor vehicle while under the influence of an intoxicating liquor, narcotic, or controlled substance, or (d) is for leaving the scene of a motor vehicle accident, or (e) is for operating a motor vehicle while operator's or chauffeur's license is under suspension or has been revoked, or (f) is for operating a motor vehicle without being licensed to drive, or (g) is for exceeding the speed limit, except on a military installation, by more than 15 miles per hour when operating a motor vehicle, or (h) is for exceeding the speed limit, on a military installation by more than 20 miles per hour when operating a motor vehicle, or (i) is for a second moving traffic violation occurring within the preceding 12-month period when operating a motor vehicle, the payment of a fixed sum in lieu of appearance and personal appearance before a magistrate judge or district judge is required of the person charged with such a violation. Further, 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 for which a mandatory appearance is required, the officer or agent is not by this Rule prohibited from arresting the alleged offender and taking said offender

immediately before a magistrate judge, or requiring the person, upon written notice, to appear before a magistrate judge or district judge.

The adoption of the form of violation notice and other forms to be utilized in the implementation of this Rule and the establishment of the procedures to be followed in issuing, filing, and processing violation notices will be by order or orders entered by the United States District Court en banc for the Western District of Missouri.

The words "charge," "offense," and "violation" as used herein shall mean the violation set forth on the face of the violation notice.

When a mandatory appearance is required, the person charged shall appear in the United States District Court for the Western District of Missouri before the designated magistrate judge or district judge.

Any schedule incorporated herein and made part hereof may be amended or supplemented by an order entered by the United States District Court en banc for the Western District of Missouri, substituting a page bearing a new number or numbers and the effective date.

The schedules incorporated herein and made a part hereof shall not be printed or published as a part of the Rules of the United States District Court for the Western District of Missouri, but copies of such schedules will be maintained for examination by the public during regular business hours upon request in the Office of the Clerk of Court in Kansas City, Springfield, and Jefferson City.