LOCAL RULES

OF

CIVIL PRACTICE AND PROCEDURE

OF THE

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF DELAWARE

(Amended Effective _____)

Preface to the 2016~~09~~ Amendments

It has been seven ~~two~~ years since the Local Rules of Civil Practice and Procedure were amended by the Court. Since the last amendments were made effective, the Federal Rules of Civil Procedure have been amended in several respects, including rules relating to computation of time. The amendments made herein are meant to reflect these amendments and to address other practices of the Court and of the Bar.

The Judges of the Court take this opportunity to thank the members of the Bar named below who gave the Court their time and advice regarding this project.

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I. SCOPE OF THE RULES

RULE 1.1. **Scope of the Rules.**

(a) Title and Citation. The rules that follow shall be known as the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware (hereinafter referred to as "the Rules"). The Rules shall be cited as "D. Del. LR __."

(b) Effective Date. The Rules become effective on _____. The Rules supercede any local rules effective prior thereto and shall govern all civil proceedings pending on the effective date, unless otherwise ordered.

(c) Application. The Rules shall be construed consistent with 1 U.S.C. §§ 1-5 and shall be followed insofar as they are not inconsistent with the Federal Rules of Civil Procedure (hereinafter "Fed. R. Civ. P."). The Rules, as well as all procedures promulgated by either the Clerk of Court ("the Clerk") or any Judge's chambers, shall be on the Court's website at **www.ded.uscourts.gov.**

(d) Modification. The application of the Rules in any case or proceeding may be modified by the Court in the interests of justice.

RULE 1.2. **Availability of the Local Rules.**

(a) Copies. Copies of the Rules, as amended and with any appendices attached hereto, can be viewed on and downloaded from the Court's website, **www.ded.uscourts.gov.** Paper copies are available from the Clerk for a reasonable charge to be determined by the Court.

(b) Amendments. Consistent with Fed. R Civ. P. 83 and 28 U.S.C. § 2071, notice shall be provided of:

(1) Any amendments to the Rules;

(2) The ability of the public to comment thereon; and

(3) Final adoption of the amendments.

RULE 1.3. **Sanctions.**

(a) In General. Sanctions may be imposed, at the discretion of the Court, for violations of the Rules, as well as for violations of the Fed. R. Civ. P. and any order of the Court. Such sanctions may include, but are not limited to, costs, fines and attorneys' fees imposed on the offending party and that party's attorney.

(b) Substantive Sanctions. In addition to financial penalties, failure of counsel to comply with the Rules relating to trial preparation may be considered an abandonment or a failure to prosecute or defend diligently, and judgment may be entered against the defaulting

party either with respect to a specific issue or the entire case. Likewise, failure of counsel to comply with the Rules relating to motions may result in the determination of the motion against the offending party.

II. COMMENCEMENT OF ACTION; PROCESS; SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

RULE 3.1. **Civil Cover Sheet.**

(a) In General. Except for civil actions initiated by prisoners who are not represented by counsel, every party initiating a civil action in the Court shall complete and file with the Clerk a civil cover sheet, a form available from the Clerk. To the extent that counsel for a plaintiff has not completed the entire civil cover sheet accurately, counsel for a defendant shall bring such missing or inaccurate information to the attention of the Clerk, all parties, and the Court.

(b) Indication of Related Actions. Counsel for a plaintiff in a civil action shall indicate on the civil cover sheet if said action is related to any other civil action previously decided or pending in this or any other federal district court. Civil actions are related if they:

(1) Arise from the same or substantially identical transactions, happenings, or events as the case at bar;

(2) Involve the same or substantially the same parties or property;

(3) Involve the same patent or the same trademark; or

(4) For other reasons would entail substantial duplication of labor if heard by different judges.

RULE 3.2. **Patent Cases.**

In all patent cases, copies of the patents at issue shall be attached and filed with the complaint.

RULE 4.1. **Service of Process.**

(a) Summons. Except as to those cases proceeding pursuant to 28 U.S.C. § 1915(d), upon or after the filing of a complaint, plaintiff or plaintiff's counsel must present to the Clerk, for the Clerk's signature and seal, a completed form of summons for each named defendant. Upon issuance, the Clerk shall provide the summons to plaintiff or plaintiff's counsel who shall be responsible for prompt service of the summons and a copy of the complaint on each named defendant.

(b) Affidavit of Mailing. In an action in which the plaintiff serves process pursuant to 10 Del. C. § 3104, or § 3113, plaintiff or plaintiff's counsel shall file an affidavit stating that a nonresident defendant has been served by mail and has either accepted or refused the notice required by statute. The affidavit, along with the defendant's return receipt, shall be filed within 14 days of the receipt by plaintiff or by plaintiff's counsel of that return receipt. The affidavit and return receipt need not be served upon the parties.

RULE 5.1. **Filing.**

(a) Unless specifically exempted by Court order or rule, all documents submitted for filing with the Court shall be filed in accordance with the Court's Administrative Procedures Governing Filing and Service by Electronic Means, which may be amended from time to time by the Court (the "CM/ECF Procedures").

(b) When computing time periods for filing pursuant to Fed. Civ. P. 6(a)(3), the Clerk's Office shall be deemed inaccessible at any time when the Clerk's office is closed due to inclement weather.

RULE 5.1.1. **General Format of Papers Presented for Filing.**

(a) General Format. To the extent applicable and consistent with CM/ECF Procedures, all pleadings, motions, and other papers presented for filing shall be on 8½ by 11 inch white paper and shall be plainly typewritten or printed and double-spaced, except for quoted material and footnotes. All printed matter must appear in at least 12 point type and all margins shall not be less than 1 inch. Each page shall be numbered consecutively. Such papers shall set forth the date of filing and a brief descriptive title indicating the purpose of the paper. Unless otherwise ordered, the name, Delaware state bar identification number, address, telephone number, and email address of local counsel shall be typed or printed under the signature line.

(b) Exceptions. This rule does not apply to:

(1) Exhibits submitted for filing;

(2) Letters submitted to the Court;

(3) Documents filed in removed actions prior to removal from the state courts.

(c) Additional requirements applicable to briefs, memoranda of points and authorities and appendices are set forth in D. Del. LR 7.1.3.

RULE 5.1.2. **The Filing of Nonconforming Papers.**

If a document is filed that does not conform to the Rules governing the form of papers, the Court, in its discretion:

(a) May give notice to the filing party that no action will be taken by the Court on the matter raised in the paper until the defect is corrected; or

(b) Take such other action as the Court deems appropriate.

RULE 5.1.3. **Filing Documents under Seal.**

Documents placed under seal must be filed in accordance with CM/ECF Procedures, unless otherwise ordered by the Court.

RULE 5.2. **Service.**

(a) CM/ECF. If all parties to a case are participants in CM/ECF, the Court's Notice of Electronic Filing ("NEF"), automatically generated for each document filed, shall serve as the certificate of service; *i.e.*, no separate certificate of service shall be filed.

(b) Non-CM/ECF. If the parties to a case are **not** all participants in CM/ECF, or if a document is not filed electronically because, e.g., it is filed under seal or is voluminous, the original of any pleading or other paper filed with the Court and required to be served shall have attached either:

(1) A certificate of service by a member of the Bar of this Court; or

(2) In *pro se* cases, a certification by the *pro se* party showing how service has been made.

RULE 5.3. **Originals and Copies of Filed Documents.**

When a party electronically files a document, the electronically filed copy is deemed the original. One paper copy of the following papers shall be furnished to the Clerk, unless otherwise ordered by the Court: pleadings, stipulations, motions, responses to motions, briefs, memoranda of points and authorities, appendices, and proposed pretrial orders in conformance with D. Del. LR 16.3(c).

RULE 5.4. **Discovery Materials.**

(a) Service With Filing. In cases involving *pro se* parties, all requests for discovery under Fed. R. Civ. P. 26, 30, 31, 33 through 36, and answers and responses thereto, shall be served upon other counsel or parties and filed with the Court.

(b) Service Without Filing. Consistent with Fed. R. Civ. P. 5(a), in cases where all parties are represented by counsel, all requests for discovery under Fed. R. Civ. P. 26, 30, 31, 33 through 36 and 45, and answers and responses thereto, and all required disclosures

under Fed. R. Civ. P. 26(a), shall be served upon other counsel or parties but shall not be filed with the Court. In lieu thereof, the party requesting discovery and the party serving responses thereto shall file with the Court a "Notice of Service" containing a certification that a particular form of discovery or response was served on other counsel or opposing parties, and the date and manner of service.

(1) Filing the notice of taking of oral depositions required by Fed. R. Civ. P. 30(b)(1) and 30(b)(6), and filing of proof of service under Fed. R. Civ. P. 45(b)(3) in connection with subpoenas, will satisfy the requirement of filing a "Notice of Service."

(2) The party responsible for service of the request for discovery and the party responsible for the response shall retain the originals and become the custodians of them. The party taking an oral deposition shall be custodian of the original deposition transcript; no copy shall be filed except pursuant to subparagraph (3). Unless otherwise ordered, in cases involving out-of-state counsel, local counsel shall be the custodians.

(3) If depositions, interrogatories, requests for documents, requests for admissions, answers, or responses are to be used at trial or are necessary to a pretrial or post trial motion, the verbatim portions thereof considered pertinent by the parties shall be filed with the Court when relied upon.

(4) When discovery not previously filed with the Court is needed for appeal purposes, the Court, on its own motion, on motion by any party, or by stipulation of counsel, shall order the necessary material delivered by the custodian to the Court.

(5) The Court on its own motion, on motion by any party, or on application by a non-party, may order the custodian to file the original of any discovery document.

III. PLEADINGS AND MOTIONS

RULE 7.1.1. **Statement Required to be Filed with Nondispositive Motions.**

Except for civil cases involving *pro se* parties or motions brought by nonparties, every nondispositive motion shall be accompanied by an averment of counsel for the moving party that a reasonable effort has been made to reach agreement with the opposing party on the matters set forth in the motion. Unless otherwise ordered, failure to so aver may result in dismissal of the motion. For purposes of this Rule, "a reasonable effort" must include oral communication that involves Delaware counsel for any moving party and Delaware counsel for any opposing party.

RULE 7.1.2. **Motions.**

(a) In General. Unless otherwise ordered, all requests for relief shall be presented to the Court by motion. A moving party must clearly articulate within the body of the motion the relief requested and the grounds in support thereof, or must accompany the motion with either a supporting brief or a memorandum of points and authorities. Unless otherwise ordered, the responsive papers shall be in the form adopted by the moving party; *i.e.*, if the moving party files a motion accompanied by a brief, the responsive paper should be a brief. An appendix may be filed with any brief.

(b) Schedule. Unless otherwise ordered, once a motion has been deemed served, the response thereto shall be filed within 14 days, as calculated consistent with Fed. R. Civ. P. 6(a) and CM/ECF Procedures. Once the responsive papers have been deemed served, the moving party may file a reply within 7 days, as calculated consistent with Fed. R. Civ. P. 6(a) and CM/ECF Procedures. Except for the citation of subsequent authorities, no additional papers shall be filed absent Court approval.

(c) Bankruptcy Appeals. Bankruptcy appeals shall be exempt from the requirements of this Rule, and shall instead conform to the requirements of the Federal Rules of Bankruptcy Procedure and Part VIII of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

RULE 7.1.3. **Form and Contents of Briefs, Memoranda of Points and Authorities, and Appendices.**

(a) To the extent applicable and consistent with CM/ECF Procedures, papers shall comply with the following requirements regarding form, unless otherwise ordered:

(1) Covers. On the front cover of each brief, memorandum of points and authorities, and appendix, there shall be the name of the Court, the caption of the case, the civil action number, a description of the paper's nature, the date of filing, the name and designation of the party for whom the paper is filed, and the name, Delaware bar identification number, address, and telephone number of counsel by whom it is filed.

(2) Format. All briefs and memoranda shall be printed in at least 12 point type, and shall be double-spaced with at least 1 inch margins. To the extent paper copies of briefs, memoranda, and/or appendices are filed with the Court, they shall be firmly bound at the left margin.

(3) Page Numbering of Appendices. Pages of an appendix shall be numbered separately at the bottom. Transcripts and other papers reproduced in a manner authorized by this Rule shall be included in the appendix both with original and appendix pagination.

(4) Length. No opening or answering brief shall exceed 20 pages, and no reply brief shall exceed 10 pages, in each instance exclusive of any table of contents or table of citations.

(5) Form of Citations. Citations shall be made in accordance with "A Uniform System of Citation," published and distributed from time to time by the Harvard Law Review Association. Citations to the National Reporter System must be included, except as to United States Supreme Court decisions where the official citation shall be used.

(6) Citation by Docket Number. References to earlier-filed papers in any civil action shall include a citation to the docket item number as maintained by the Clerk in the following format: "D.I." followed by the docket item number of the paper.

(7) Unreported Opinions. If an opinion is cited which is neither reported in the National Reporter System nor available on either WESTLAW or LEXIS, a copy of such opinion shall be attached to the document which cites it or shall otherwise be provided to the Court.

(b) Contents of Memoranda of Points and Authorities. Memoranda of points and authorities shall include the legal propositions urged by the party, succinctly stated, as well as citations to those cases and legal authorities supporting each such legal proposition. No further legal argument shall be included.

(c) Contents of Briefs.

(1) Opening and Answering Briefs. The opening and answering brief shall contain the following, under distinctive titles, in the listed order:

(A) A table of contents setting forth the page number of each section, including all headings, designated in the body of the brief.

(B) A table of citations of cases, statutes, rules, textbooks and other authorities, alphabetically and/or numerically arranged. If a brief does not contain any citations therein, a statement to this effect should be placed under this heading.

(C) A statement of the nature and stage of the proceedings.

(D) A summary of argument, setting forth in separately numbered paragraphs the legal propositions upon which the party relies.

(E) A concise statement of facts, with supporting references to the record, presenting the background of the questions at issue. Each party shall be referred to as "plaintiff" or "defendant," as the case may be, or by the name or other appropriate designation which makes identity clear. The answering counterstatement of facts need not repeat facts recited in the opening brief.

(F) An argument, divided under appropriate headings distinctly setting forth separate points.

(G) A short conclusion stating the precise relief sought.

(2) Reply Briefs. The party filing the opening brief shall not reserve material for the reply brief which should have been included in a full and fair opening brief. There shall not be a repetition of materials contained in the opening brief. A table of contents and a table of citations, as required above, shall be included in the reply brief.

(d) Contents of Appendices. Each appendix shall contain a paginated table of contents and may contain such parts of the record relevant to the questions presented. The portions of the record included in the appendix shall be arranged in chronological order. Duplication of material shall be avoided. If evidence in a foreign language is included in any appendix, an English translation (along with a certification that the translation is true and correct) shall also be included in the appendix.

(e) Joint Appendix. The parties may agree on a joint appendix, which shall be bound separately.

(f) Bankruptcy Appeals. Bankruptcy appeals shall be exempt from the requirements of this Rule, and shall instead conform to the requirements of the Federal Rules of Bankruptcy Procedure and Part VIII of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, provided, however, that this Court may accept documents that do not meet all of the requirements of Federal Rule of Bankruptcy Procedure 8015.

RULE 7.1.4. **Oral Argument.**

Oral argument on any motion may be scheduled upon the application of a party, or *sua sponte* by Court order. An application for oral argument shall be in writing and shall be made no later than 7 days after service of a reply brief. An application for oral argument may be granted or denied, in the discretion of the Court. Bankruptcy appeals shall be exempt from the requirements of this Rule, and shall instead conform to the requirements of the Federal Rules of Bankruptcy Procedure and Part VIII of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

RULE 7.1.5. **Reargument.**

(a) Motions for reargument shall be sparingly granted. If a party chooses to file a motion for reargument, said motion shall be filed within 14 days after the Court issues its opinion or decision, with the exception of motions filed pursuant to Fed. R. Civ. P. 59(e), which shall be filed in accordance with the time limits set forth in Fed. R. Civ. P. 59(e). The motion shall briefly and distinctly state the grounds there fore. Within 14 days after filing of

such motion, the opposing party may file a brief answer to each ground asserted in the motion. Motions for reargument and any answers thereto shall not exceed 10 pages. The Court will determine from the motion and answer whether reargument will be granted.

(b) Motions for reargument on a ruling made by a Magistrate Judge pursuant to Fed. R. Civ. P. 72 are not permitted. A party seeking review of an order, decision or recommendation disposition issued by a Magistrate Judge pursuant to Fed. R. Civ. P. 72 shall be limited to the filing of objections permitted under Fed. R. Civ. P. 72 and D. Del. LR 72(b). ~~, and shall not be permitted to file a motion for reargument before either the Magistrate Judge or the District Court Judge pursuant to D.Del. LR 7.1.5(a).~~ In conformance with D. Del. LR 72(b), a party filing such objections shall identify the appropriate standard of review in presenting such objections.

(c) Bankruptcy appeals shall be exempt from the requirements of this Rule, and shall instead conform to the requirements of the Federal Rules of Bankruptcy Procedure and Part VIII of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

RULE 9.2. **Request for Three-Judge District Court**.

If a party believes a civil action or proceeding must be heard by a three-judge district court, the notation "Three-Judge District Court Requested" or the equivalent shall be included on the front page immediately following the title of the first pleading filed in such action or proceeding. The basis for the request shall be set forth in the pleading or in a brief statement attached thereto. The words "Three-Judge District Court Requested" or the equivalent on a pleading is a sufficient request under 28 U.S.C. § 2284.

RULE 9.4. **Pleading Claim for Unliquidated Damages.**

(a) Demand for damages. A pleading setting forth a claim for relief in the nature of unliquidated monetary damages shall state in the *ad damnum* clause a demand specifying the nature of the damages claimed, e.g., "compensatory," "punitive," or both, but shall not claim any specific sum. The statement of jurisdiction required by Fed. R. Civ. P. 8(a)(1) shall set forth any minimum amount needed to invoke jurisdiction of the Court, but no other.

(b) Statement of damages. Within 14 days after service of a written request by another party, the party filing the pleading shall furnish the requesting party with a written statement of the amount of damages claimed. Unless required by Court order, such statement shall not be filed with the Court.

RULE 15.1. **Form of a Motion to Amend and Its Supporting Documentation.**

A party who moves to amend a pleading shall attach to the motion:

(a) The proposed pleading as amended, complete with a handwritten or electronic signature; and

(b) A form of the amended pleading which shall indicate in what respect it differs from the pleading which it amends, by bracketing or striking through materials to be deleted and underlining materials to be added.

If the motion to amend is granted, the proposed amended pleading, as executed above, shall be docketed by the Court as the amended pleading. Service shall be accomplished consistent with the Fed. R. Civ. P. and these Rules.

RULE 16.1. **Fed. R. Civ. P. 16(b) Scheduling Conference.**

(a) Parties to confer. When, in its discretion, the Court directs counsel for the parties and any unrepresented parties to participate in a Fed. R. Civ. P. 16(b) scheduling conference, the parties shall confer prior to the conference to discuss pretrial management issues, including the possibility of settlement.

(b) Matters to consider. Matters to be considered at the scheduling conference may include, in addition to the items specified in Fed. R. Civ. P. 16(b) and 16(c), the following matters:

(1) The schedule applicable to the case, including a trial date, if appropriate;

(2) The number of interrogatories and requests for admissions to be allowed by any party and the number and location of depositions;

(3) How discovery disputes are to be resolved;

(4) The briefing practices to be employed in the case, including what matters are or are not to be briefed and the length of briefs; and

(5) The possibility of settlement.

RULE 16.2. **Exemptions from Fed. R. Civ. P. 16(b) and 26(f).**

The following categories of action are exempt from the scheduling conference and order requirements of Fed. R. Civ. P. 16(b) and 26(f):

(a) All actions in which one of the parties appears *pro se* and is incarcerated;

(b) All actions for judicial review of administrative decisions of government agencies or instrumentalities where the review is conducted on the basis of the administrative record;

(c) Prize proceedings, actions for forfeitures and seizures, for condemnations, or for foreclosure of mortgages or sales to satisfy liens of the United States;

(d) Bankruptcy appeals;

(e) Proceedings for admission to citizenship or to cancel or revoke citizenship;

(f) Proceedings for *habeas corpus* or in the nature thereof, whether addressed to federal or state custody;

(g) Proceedings to compel arbitration or to confirm or set aside arbitration awards;

(h) Proceedings to compel the giving of testimony or production of documents under a subpoena or summons issued by an officer, agency or instrumentality of the United States not provided with authority to compel compliance;

(i) Proceedings to compel the giving of testimony or production of documents in connection with discovery, or testimony *de bene esse*, or for perpetuation of testimony for use in a matter pending or contemplated in a United States District Court of another District;

(j) Proceedings for the temporary enforcement of orders of the National Labor Relations Board;

(k) Civil actions for recovery of erroneously paid educational assistance; and

(l) Proceedings for execution on a judgment pursuant to Fed. R. Civ. P. 64 or 69 or 28 U.S.C. Chapter 127.

RULE 16.3. **Pretrial Conference and Procedure.**

(a) In general. Unless otherwise ordered, in all civil cases for which a trial is scheduled, a pretrial conference shall be held. If no trial date has been scheduled, any party may request a pretrial conference following the completion of discovery and any scheduled motion practice.

(b) Attendance by counsel. Unless otherwise ordered, counsel who will conduct the trial are required to attend the pretrial conference. Failure to so attend or to otherwise cooperate in trial preparation may result, after notice, in the imposition of sanctions.

(c) Proposed pretrial order. Prior to the pretrial conference, counsel for all parties shall meet and confer in order to premark and exchange all trial exhibits and otherwise discuss the contents of the proposed pretrial order, which shall include the following:

(1) A statement of the nature of the action, the pleadings in which the issues are raised (e.g., third amended complaint and answer) and whether counterclaims, crossclaims, etc., are involved;

(2) The constitutional or statutory basis of federal jurisdiction, together with a brief statement of the facts supporting such jurisdiction;

(3) A statement of the facts which are admitted and require no proof;

(4) A statement of the issues of fact which any party contends remain to be litigated;

(5) A statement of the issues of law which any party contends remain to be litigated, and a citation of authorities relied upon by each party;

(6) A list of premarked exhibits which each party intends to offer at trial, along with citations to the Federal Rules of Evidence to note any objections thereto lodged by any other party;

(7) The names of all witnesses a party intends to call to testify, whether the witness will testify in person or by deposition and, if by deposition~~signation~~, a list of deposition designations;

(8) A brief statement of what plaintiff intends to prove in support of plaintiff's claims, including the details of the damages claimed or of other relief sought;

(9) A brief statement of what the defendant intends to prove as defenses;

(10) Statements by counterclaimants or crossclaimants comparable to that required of plaintiff;

(11) Any amendments of the pleadings desired by any party with a statement whether it is unopposed or objected to and, if objected to, the grounds therefore;

(12) A certification that the parties have engaged in a good faith effort to explore the resolution of the controversy by settlement;

(13) Any other matters which the parties deem appropriate.

(d) Unless otherwise ordered or agreed to by the parties and approved by the Court:

(1) The plaintiff shall provide a draft pretrial order to all other parties no less than 30 days before the pretrial order is to be filed with the Court. The draft shall include proposed language for the sections of the pretrial order jointly submitted by all parties, as well as the sections relating to the plaintiff's case. If the parties have not yet exchanged trial exhibits, the plaintiff shall provide all other parties with a copy of, or reasonable access to, the plaintiff's proposed trial exhibits.

(2) No less than 14 days before the pretrial order is to be filed with the Court, all other parties shall provide the plaintiff and each other party with their responses to the plaintiff's draft order. Such responses shall include the party's response to the plaintiff's proposed language for the sections of the pretrial order to be jointly submitted by all parties, as well as the sections relating to the party's case. If the parties have not yet exchanged trial exhibits, the party shall provide plaintiff and each other party with a copy of, or reasonable access to, the party's proposed trial exhibits.

(3) The parties shall thereafter meet and confer in good faith such that the plaintiff may file the pretrial order in conformity with this Rule.

(4) At least 7 days prior to the pretrial conference, the plaintiff shall file with the Clerk an executed copy of the proposed pretrial order, which shall include the matters described in subsection (c) above, as well as the following language:

> "This order shall control the subsequent course of the action, unless modified by the Court to prevent manifest injustice."

RULE 16.4. **Requests for Extensions of Deadlines.**

Unless otherwise ordered, a request for an extension of deadlines for completion of discovery or postponement of the trial shall be made by motion or stipulation prior to expiration of the date deadline, and shall include the following:

(a) The reasons for the request; and

(b) Either a supporting affidavit by the requesting counsel's client or a certification that counsel has sent a copy of the request to the client.

IV. PARTIES

RULE 23.1. **Designation of "Class Action" in the Caption.**

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

V. DEPOSITIONS AND DISCOVERY

RULE 26.1. **Form of Certain Discovery Papers.**

(a) Sequential Numbering. Each party shall number sequentially each interrogatory or request it submits; the responses thereto shall be numbered consistently. Each subpart of an interrogatory or request shall be counted as a separate interrogatory or request.

(b) Form of Responses. The party answering, responding, or objecting to interrogatories or requests served pursuant to Fed. R. Civ. P. 33, 34 or 36 may state any general objections and then shall quote each such interrogatory or request in full immediately preceding the substance of the answer, response, or objection thereto.

RULE 26.2. **Confidentiality.**

If any documents are deemed confidential by the producing party and the parties have not stipulated to a confidentiality agreement, until such an agreement is in effect, disclosure shall be limited to members and employees of the firm of trial counsel who have entered an appearance and, where appropriate, have been admitted *pro hac vice*. Such persons are under an obligation to keep such documents confidential and to use them only for purposes of litigating the case.

RULE 30.1. **Reasonable Notice for Taking Depositions.**

Unless otherwise ordered by the Court, "reasonable notice" for the taking of depositions under Fed. R. Civ. P. 30(b)(1) and 30(b)(6) shall be not less than 10 days.

RULE 30.2. **Deposition Motions.**

Pending resolution of any motion under Fed. R. Civ. P. 26(c) or 30(d), or such other form of application for relief as the Court may prescribe, neither the objecting party, witness, nor any attorney is required to appear at a deposition to which a motion is directed until the motion is resolved.

RULE 30.3. **Who May Attend Deposition.**

Unless otherwise ordered by the Court, or agreed to by all parties, a deposition may be attended only by:

(a) The deponent;

(b) Counsel for any party and members and employees of their firms;

(c) A party who is a natural person;

(d) An individual who has been designated by counsel to represent a party that is not a natural person;

(e) Counsel for the deponent; and

(f) Any consultant or expert designated by counsel for any party.

If a protective order has been entered, any person who is not authorized under the order to have access to documents or information designated confidential may be excluded while a deponent is being examined about such confidential document or information.

RULE 30.4. **Procedures for Recording Depositions.**

(a) Beginning. An oral deposition to be electronically or magnetically recorded shall begin by the operator stating on the record:

(1) The operator's name and address;

(2) The name and address of the operator's employer;

(3) The date, time and place of the deposition;

(4) The caption of the case;

(5) The name of the deponent; and

(6) The party on whose behalf the deposition is being taken.

(7) The officer before whom the deposition is taken shall then identify himself or herself and swear the deponent on the record.

(b) Conclusion. At the conclusion of the deposition, the operator shall state on the record that the deposition is concluded. When the length of the deposition requires the use of more than one electronic file or recorded media, the end of each file or recorded media and the beginning of each succeeding file or recorded media shall be announced on the record by the operator.

(c) Timing by Digital Clock. The deposition shall be timed by a digital clock on the record which shall record and show continually each hour, minute and second of the deposition.

(d) Custody. Counsel for the party taking the deposition shall take custody of and be responsible for the safeguarding of the recorded media. The custodian shall permit the viewing of the electronic file or recorded media, and shall provide a copy of such upon the request and at the cost of a party.

RULE 30.5. **Original Deposition Transcripts.**

It shall be the duty of the party on whose behalf the deposition was taken to make certain that the officer before whom it was taken has delivered the original transcript to such party.

RULE 30.6. **Depositions Upon Oral Examination.**

From the commencement until the conclusion of deposition questioning by an opposing party, including any recesses or continuances, counsel for the deponent shall not consult or confer with the deponent regarding the substance of the testimony already given or anticipated to be given, except for the purpose of conferring on whether to assert a privilege against testifying or on how to comply with a court order.

RULE 37.1. **Discovery Motions to Include the Discovery at Issue.**

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

VI. TRIALS

RULE 38.1. **Notation of "Jury Demand" on the Pleading.**

If a party demands a jury trial by endorsing it on a pleading, as permitted by Fed. R. Civ. P. 38(b) , a notation shall be placed in the caption of the pleading stating "Demand For Jury Trial" or the equivalent. This notation will serve as a sufficient demand under Fed. R. Civ. P. 38(b).

RULE 40.1. **Assignment of Cases; Duty Judge**.

(a) Assigned Judge. Each case will be assigned to a Judge. All matters pertaining to a case will be heard by the Judge to whom it has been assigned, unless otherwise ordered.

(b) Duty Judge. Each week on a rotating basis, one judge will be designated as "Duty Judge." The Duty Judge may perform the following functions, among others:

(1) Act upon any motion for a preliminary injunction, temporary restraining order or other relief in a case which has not yet been assigned to a Judge;

(2) Act in lieu of the Judge to whom a case is assigned, whenever the assigned Judge is absent from the courthouse and cannot feasibly return prior to the expiration of the time within which judicial action is required;

(3) Admit attorneys to the Bar of this Court.

RULE 41.1. **Dismissal for Failure to Prosecute.**

Subject to the provisions of Fed. R. Civ. P. 23 and 23.1, in each case pending wherein no action has been taken for a period of 3 months, the Court may, on its motion or upon application of any party, and after reasonable notice and opportunity to be heard, enter an order dismissing such case unless good reason for the inaction is given. After any such application or notice from the Court, no application for a continuance or any proceeding taken under the discovery rules shall be deemed to toll the operation of this Rule.

RULE 43.1. **Witnesses Conferring with Counsel During Testimony.**

Once direct examination of a witness is concluded and until cross examination of that witness is concluded, counsel offering the witness on direct examination shall not:

(a) Consult or confer with the witness regarding the substance of the witness' testimony already given or anticipated to be given, except for the purpose of conferring on whether to assert a privilege against testifying or on how to comply with a court order; or

(b) Suggest to the witness the manner in which any questions should be answered.

RULE 47.1. **Voir Dire of Jurors.**

(a) Voir Dire Conducted by the Court. Unless otherwise ordered by the Court:

(1) The voir dire of the petit jury panel shall be conducted by the Court:

(2) Any party desiring special voir dire questions of the jury panel must file a suggested form of voir dire questions at least 3 business days before the pretrial conference.

(b) Challenges. After all challenges for cause have been exercised and determined, the deputy clerk shall draw and announce the members of the panel as to which peremptory challenges may be exercised. Except when the Court has directed otherwise, peremptory challenges to which each party may be entitled under 28 U.S.C. § 1870 shall be exercised as follows: The plaintiff and defendant each may exercise 3 challenges, with plaintiff having the first, third and fifth opportunities to challenge and the defendant having the second, fourth, and last opportunities.

RULE 47.2. **Communications with Jurors.**

Unless otherwise permitted to do so by the Court, a lawyer shall not communicate with a prospective juror, or with a juror after discharge of the jury.

RULE 48.1. **Number of Jurors.**

The jury in all civil jury cases shall consist of not fewer than 6 and not more than 12 members, except that the parties may stipulate that the jury in any such case shall consist of any number less than 6.

RULE 51.1. **Instructions to the Jury and Special Verdicts and Interrogatories**.

Unless otherwise ordered by the Court:

(a) Instructions 3 Business Days Before Pretrial Conference. Prior to the pretrial conference of any jury trial, counsel for all parties must confer about the instructions and, at least 3 business days before the pretrial conference, counsel for plaintiff shall file written instructions reasonably anticipated to be made upon which all parties agree. If there are differences that cannot be resolved, each party shall submit its own form of proposed jury instructions in the specific area or areas where there is disagreement, accompanied by citation to supporting authority.

(b) Format. The written instructions shall contain a table of contents. All proposed jury instructions shall carry a descriptive title and all pages of the proposed jury instructions shall be numbered in such a way as to identify, next to each number, whether it has been submitted jointly, by plaintiff(s) or by defendant(s).

(c) Special Verdict or Interrogatories 3 Business Days Before Pretrial Conference. Any party desiring a special verdict or interrogatories, as provided for in Fed. R. Civ. P. 49, must file a suggested form of special verdict or suggested interrogatories at least 3 business days before the pretrial conference.

VII. JUDGMENTS

RULE 54.1. **Taxation of Costs**.

(a) Costs.

(1) Unless otherwise ordered by the Court, the prevailing party shall be entitled to costs. The party shall, within 14 days after the time for appeal has expired or within 14 days after the issuance of the mandate of the appellate court, file a bill of costs. Failure to comply with the time limitations of this Rule shall constitute a waiver of costs, unless the Court otherwise orders or counsel are able to agree on the payment of costs. In the latter case, no bill of costs need be filed.

(2) The bill of costs shall clearly describe each item of cost and comply with the provisions of 28 U.S.C. § 1924.

(3) Within 14 days after service by any party of a bill of costs, any other party may serve and file specific objections to any item, with detailed justification.

(4) Not less than 28 days after receipt of a party's bill of costs, the Clerk, after consideration of any objections, shall tax costs and serve copies of the bill of costs as allowed on all parties in accordance with Fed. R. Civ. P. 5.

(b) Items Taxable as Costs.

(1) In General. Costs shall be taxed in conformity with the provisions of 28 U.S.C. §§ 1920, 1921, and 1923~~.~~, and such other provisions of law as may be applicable and the remaining paragraphs of subpart (b) of this Rule.

(2) Transcripts Fees. The costs of the originals of a trial transcript, a daily transcript and ~~of~~ a transcript of matters prior or subsequent to trial, furnished to the Court, are taxable when requested by the Court or prepared pursuant to stipulation. Mere acceptance by the Court does not constitute a request. Copies of transcripts for counsel’s own use are not taxable.

(3) Deposition Costs. The reporter's reasonable charge for the original and one copy of a deposition and the reasonable cost of taking a deposition electronically or magnetically recorded are taxable only where a substantial portion of the deposition is used in the resolution of a material issue in the case. Charges for counsel's copies and the expenses of counsel in attending depositions are not taxable, regardless of which party took the deposition. Notary fees incurred in connection with taking depositions are taxable.

(4) Witness Fees, Mileage and Subsistence. The rates for witness fees, mileage and subsistence are fixed by 28 U.S.C. § 1821. Such fees are taxable even though the witness does not take the stand, provided the witness attends Court. Witness fees and

subsistence are taxable only for the reasonable period during which the witness is within the district.

Subsistence to the witness under 28 U.S.C. § 1821 is allowable if the distance from the Court to the residence of the witness is such that mileage fees would be greater than subsistence fees, if the witness were to return to his/her residence from day to day.

No party shall receive witness fees for testifying in its own behalf, but this shall not apply where a party is subpoenaed to attend Court by the opposing party. Witness fees for officers of a corporation are taxable if the officers are not defendants and recovery is not sought against the officers individually. Unless otherwise provided by statute, fees of expert witnesses are not taxable in an amount greater than that statutorily allowable for ordinary witnesses. The reasonable fee of an interpreter is taxable if the fee of the witness involved is taxable.

(5) Exemplification and Copies of Papers. The cost of copies of an exhibit necessarily attached to a document required to be filed and served is taxable. The cost of one copy of a document is taxable when admitted into evidence. The cost of copies obtained for counsel's own use is not taxable. The fee of an official for certification or proof concerning the nonexistence of a document is taxable. The reasonable fee of a translator is taxable if the document translated is taxable. Notary fees are taxable if actually incurred, but only for documents which are required to be notarized and filed.

The cost of patent file wrappers and prior art patents are taxable at the rate charged by the Patent Office. Expenses for services of persons checking Patent Office records to determine what should be ordered are not taxable.

(6) Cost of Maps and Charts. The cost of maps and charts is taxable if they are admitted into evidence. The cost of photographs, 8" x 10" in size or less, is taxable if admitted into evidence, or attached to documents required to be filed and served on opposing counsel. Enlargements greater than 8" x 10" are not taxable except by order of the Court. The cost of models, compiling summaries, computations, and statistical comparisons are not taxable.

(7) Fees to Masters. Fees to masters shall be assessed in accordance with Fed. R. Civ. P. 53(a).

(8) Removed Cases. In a case removed from the state court, costs incurred in the state court prior to removal, including but not limited to the following, are taxable in favor of the prevailing party in this Court:

(A) Fees paid to the clerk of the state court;

(B) Fees for services of process in the state court;

(C) Costs of exhibits attached to documents required to be filed in the state court.

(9) Admiralty. Fees for compensation for keepers of boats and vessels attached or libeled are taxable in accordance with 28 U.S.C. § 1921.

(10) Bonds. The reasonable premiums or expenses paid on bonds or security stipulations shall be allowed when furnished by requirements of the law or rule of Court, by an order of the Court or where required to enable a party to receive or preserve some right accorded the party in an action or proceeding.

(11) Other Costs. Claims for costs other than those specifically mentioned in the preceding paragraphs of subpart (b) of this Rule ordinarily will not be allowed, unless the party claiming such costs substantiates the claim by reference to a statute or binding court decision.

(c) Party Entitled to Costs. The determination of the prevailing party shall be within the discretion of the Court in all cases except where such determination is inconsistent with statute or the Fed. R. Civ. P. or the rules of the appellate courts. If each side recovers in part, ordinarily the party recovering the larger sum will be considered the prevailing party. The defendant is the prevailing party upon a dismissal or summary judgment or other termination of the case without judgment for the plaintiff on the merits. No costs shall be allowed to either party if the Court is unable to determine the prevailing party.

(d) Review of Costs. In accordance with Fed. R. Civ. P. 54(d), the opposing party may, within 7 days of service, file a motion for review of the decision of the Clerk in the taxation of costs.

(e) Appellate Costs. The certified copy of the judgment or the mandate of the Court of Appeals, without further act by the District Court, is sufficient basis for issuance by the Clerk of a writ of execution to recover costs taxed by the appellate court.

RULE 54.2. **Jury Cost Assessment**.

Juror costs, including Marshal’s fees, mileage and per diem, may be assessed against the parties and/or their counsel in any civil action that is settled or otherwise resolved less than 3 full business days before jury selection is scheduled to begin.

RULE 54.3. **Award of Attorney's Fees.**

(a) Judgment on Less than all Claims. Where a judgment is not a final judgment on all claims, failure to apply for attorneys' fees shall not prevent a party from applying for fees after entry of final judgment.

(b) Settled Cases. Applications for attorneys' fees in connection with settled cases shall be filed no later than 21 days after the settlement is approved by the Court. Where

Court approval is not sought, motions for fees shall be filed no later than 21 days after the settlement agreement is executed by the parties.

(c) Applicable Statute or Regulation. The time provisions specified above shall control unless an applicable statute or regulation provides a different period of time (e.g., ~~inter alia,~~ The Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(B)).

VIII. PROVISIONAL AND FINAL REMEDIES

RULE 58.1.1. **Entry of Judgment by Confession and Execution Thereon**.

(a) Judgment by confession as authorized by 10 Del. C. § 2306 shall be entered by the Clerk, provided that the following documents are filed:

(1) A notice directed to the Clerk that includes:

(A) A short and plain statement of the grounds upon which the Court's jurisdiction depends; and

(B) The following form signed by the person exercising the warrant of attorney:

"Please commence proceedings pursuant to D. Del. LR 58.1.1 to confess judgment on behalf of [Plaintiff] against [Debtor's Name] of [Address] for $ [Real Debt] and $_____ accrued interest to date together with interest thereon at __% per annum from _____ plus attorneys' fees of $_____ and costs of $_____.
Date: _____
Person exercising warrant of attorney"

(2) The original document authorizing confession of judgment together with a photocopy for the Clerk.

(3) In the case of a debtor who was a nonresident at the time of the execution of the original document authorizing confession of judgment, plaintiff shall also file the affidavit required by 10 Del. C. § 2306(c), together with a photocopy, for the Clerk.

(4) A completed notice letter as required by 10 Del. C. § 2306(b) for each debtor against whom judgment is requested.

(b) The Clerk shall return the original document authorizing confession of judgment and, if applicable, the original affidavit required by 10 Del. C. § 2306(c) to the plaintiff presenting it and file the copy or copies as the authority for commencing the procedure set forth in this Rule.

(c) The Clerk shall docket a “tentative” judgment as of the date of filing. Subsequently, the Clerk shall make a notation on the docket of the mailing and publication dates provided for in paragraphs (d) and (f).

(d) The notice letter required by paragraph (a)(4) shall be mailed by the plaintiff to each debtor by certified mail, return receipt requested, together with a copy of the instrument authorizing confession of judgment and, where applicable, a copy of the affidavit required by 10 Del. C. § 2306(c). An affidavit of mailing shall be filed by the plaintiff with the Clerk. The notice letter, on a form supplied by the Clerk, shall contain the following information:

(1) Plaintiff intends to obtain judgment against the debtor in the United States District Court for the District of Delaware based on the enclosed document for the following amounts:

Principal: _____
Accrued Interest: _____
Attorneys’ Fees: _____
Plus Interest and Costs: _____

(2) Plaintiff alleges the debtor has waived any rights to notice and hearing prior to the entry of judgment.

(3) The entry of such a judgment will result in a lien against all the debtor's real estate and the means in default of payment, whereby the Marshal can levy against and ultimately sell at public auction the debtor’s personal property and real estate for credit against the debt.

(4) In default of payment in appropriate cases, the Marshal may seize some portion of the debtor's wages for credit against the debt.

(5) The debtor may file with the Court (giving an address for the Clerk) an objection to the entry of judgment by a date 2 weeks following the date on which the notice letter for the entry of judgment was mailed. When the objection is filed, a hearing will be scheduled by the Court. At the hearing, the plaintiff will be required to prove that the debtor has effectively waived any rights to notice and a hearing prior to the entry of judgment.

(6) No objection is required but, if no objection is made, judgment will be entered by default.

(e) When service is effected by certified mail, the person exercising the warrant of attorney shall file the return receipt with the Clerk.

(f) If the certified mail sent pursuant to paragraph (d) is returned undelivered, the person exercising the warrant of attorney shall notify the Clerk accordingly in writing and shall accomplish service by publication of the notice provided for in paragraph (a)(4) once per week for 2 weeks in a newspaper of general circulation in the county in which the

instrument is to be recorded. If the residence of the debtor is other than the county in which the judgment is sought to be entered, then publication shall also be made once per week for 2 weeks in a newspaper of general circulation in the county in Delaware in which the debtor resides or is last known to have resided. The notice shall include the date on which debtor must file objections to the entry of judgment, which date shall be at least 2 weeks following the last publication. An affidavit of publication shall be filed by the plaintiff with the Clerk.

(g) Judgment shall be entered against a debtor who fails to object after service as provided for herein.

(1) If the debtor objects, a hearing date will be scheduled by the Court. At the hearing, the burden shall be on the plaintiff to prove that the debtor effectively waived any right to notice and a hearing prior to the entry of judgment against the debtor. Costs are to be assessed against the plaintiff if the plaintiff fails to carry that burden. Costs are to be assessed against the debtor if judgment is entered against the debtor.

(2) When a judgment is obtained pursuant to this Rule, a notation to that effect shall then be entered in the judgment records and said judgment shall be final to the same extent as a judgment entered after trial. The lien of said judgment shall relate back to the time of its original docketing.

(h) The following procedure must be complied with prior to the issuance of the first writ of execution on a confessed judgment:

(1) The judgment creditor shall file the following with the Clerk:

(A) A praecipe directed to the Clerk requesting the particular execution writ, together with a form of that writ obtained from the Superior Court of the State of Delaware.

(B) A notice letter as required by 10 Del. C. § 2306(j) for each debtor against whom execution is requested.

(2) The Clerk shall docket the praecipe. Subsequently, the Clerk shall make a notation on the docket of the mailing and publication dates as provided for in paragraph (h)(3) and (h)(5).

(3) The notice letter required by paragraph (h)(1)(B) shall be mailed by the plaintiff to each debtor by certified mail, return receipt requested. An affidavit of mailing shall be filed with the Clerk. The notice letter, on a form supplied by the Clerk, shall contain the following information:

(A) The judgment creditor has requested the Court to issue a writ of execution against the debtor based on the confessed judgment entered on a certain date.

(B) A writ of execution can be used to attach wages in appropriate cases and seize the debtor's personal property and real estate and ultimately sell them for credit against the debt.

(C) The debtor may file with the Court (giving an address for the Clerk) an objection to the issuance of the execution process by a date 2 weeks following the date on which the notice letter for the issuance of the execution process was mailed. When the objection is filed, a hearing will be scheduled by the Court. At said hearing, the debtor may raise any appropriate defenses.

(D) No objection is required but, if no objection is made, a warning that the writ of execution sought by the judgment creditor and other subsequent writs will be issued whereby the Marshal could attach the debtor's wages in appropriate cases, or seize the debtor's personal property and real estate and ultimately sell them for credit against the debt.

(E) The judgment creditor is claiming the debtor owes $_____ plus accrued interest of $_____ to the date of judgment, plus interest at the legal rate from the date of judgment plus attorneys' fees of $_____ plus costs.

(F) If the debtor has any questions about these matters, an attorney should be consulted immediately.

(4) When service is effected by certified mail, the plaintiff shall file the return receipt with the Clerk.

(5) If the certified mail sent pursuant to paragraph (h)(3) is returned undelivered, the judgment creditor shall notify the Clerk accordingly in writing and shall accomplish service by publication of the notice provided for in paragraph (h)(1)B once per week for 2 weeks in a newspaper of general circulation in the county in which execution is to occur. If the residence of the debtor is other than the county in which execution is sought, then publication shall also be made once per week for 2 weeks in a newspaper of general circulation in the county in Delaware in which the debtor resides or is last known to have resided. The notice shall include the date by which debtor must file objections to the issuance of the execution process, which date shall be at least 2 weeks following the last publication. An affidavit of publication shall be filed by the plaintiff with the Clerk.

(6) The writ of execution requested and any appropriate writ thereafter shall issue against a debtor who fails to object after service as provided for herein.

(7) If the debtor objects, a hearing date will be scheduled by the Court. At the conclusion of the hearing, the Court shall make such orders as are appropriate, including for the assessment of costs.

RULE 58.1.2. **Entry of Judgment by Confession in Open Court**.

(a) A judgment by confession may be entered in open court, either for money due or to become due, or to secure the obligee against a money contingent liability or both, on the application by the obligee or assignee of a bond, note or other obligation containing a warrant for an attorney-at-law or other person to confess judgment.

(b) Application for the entry of judgment by confession in open court shall be as follows:

(1) The plaintiff may appear at a time set by the Court, together with the defendant obligor.

(2) A court reporter shall make a record of the proceedings.

(3) The plaintiff shall provide the Court with the following:

(A) A notice in the form prescribed by D. Del. LR 58.1.1(a)(1).

(B) The original document authorizing confession of judgment, together with a photocopy for the Clerk and each defendant obligor against whom judgment is requested.

(4) The plaintiff shall prove:

(A) The genuineness of the obligation, the signature of the defendant obligor against whom judgment is sought and the identity of the defendant obligor appearing in the Court.

(B) The defendant obligor has effectively waived any constitutional rights concerning the entry of judgment and the right to execution thereon.

(5) The Court shall make such orders as are appropriate, including for the assessments of costs. Any judgment entered shall be final to the same extent as a judgment entered after a trial.

(c) Execution of judgments confessed hereunder shall be as provided for in D. Del. LR 58.1.1(h).

RULE 67.2. **Moneys Deposited in the Custody of the Court**.

(a) Cases Not Covered by Fed. R. Civ. P. 67 -- Registry Accounts. The funds shall be kept in a registry account and shall be deposited into an interest bearing account in accordance with the general policy governing registry funds, unless otherwise ordered by the Court.

(b) Cases Covered by Fed. R. Civ. P. 67. The party depositing the money shall prepare a proposed order to be submitted to the Court which instructs the Clerk to deposit the funds. All orders to deposit money must be personally served on either the Clerk, Chief Deputy Clerk or Financial Administrator. It is recommended that the Clerk's Office be contacted for information and copies of proposed orders for depositing funds with the Court.

(c) Money Invested at Interest. The Clerk shall make the investment promptly after being advised the check has cleared. If the funds deposited into the Court must be held pending verification that the institution depositing the funds has pledged sufficient collateral

pursuant to Treasury Circular No. 176, the Clerk shall have 7 days from the date of notice that the designated depository has complied with the collateralization requirements to make the investment, during which time the obligation to invest at interest shall not attach.

(d) Fee Deducted by the Clerk. In all cases or proceedings where money is to be invested at interest, the Clerk shall deduct from the income earned on the investment a fee, whenever such income becomes available and without further order of the Court. In cases where funds are ultimately disbursed to the United States or to agencies or officials thereof, the Clerk shall refund the registry fee to those agencies or officials of the United States upon application filed with the Court.

RULE 67.3. **Withdrawal of a Deposit Pursuant to Fed. R. Civ. P. 67.**

Any person seeking withdrawal of money which was deposited in the Court pursuant to Fed. R. Civ. P. 67 and which was subsequently deposited into an interest bearing account or instrument as required by Fed. R. Civ. P. 67, shall file a motion to withdraw the funds. In addition, the filing party shall file separately, under seal, a notice which includes the social security number or tax identification number of the ultimate recipient of the funds. This separate notice, without retention of a copy by the Court, shall be forwarded by the Court directly to the institution holding the money.

RULE 68.1. **Offers of Judgment Filed Only if Accepted.**

An offer of judgment made pursuant to Fed. R. Civ. P. 68 shall not be filed with the Court unless it is accepted, in which event filing may be made as provided for in that rule.

RULE 69.1. **Execution.**

Proceedings on executions shall be in accordance with Fed. R. Civ. P. 69. In all cases in which a party seeks a writ of execution, the parties shall submit the completed proposed form of the writ to the Clerk.

RULE 71A.1. **Condemnation Cases.**

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

IX. UNITED STATES MAGISTRATE JUDGES

~~IX. UNITED STATES MAGISTRATE JUDGES~~

RULE 72.1. **Magistrate Judges; Pretrial Orders.**

A Magistrate Judge is authorized to perform all judicial duties assigned by the Court that are consistent with the Constitution and the laws of the United States which include, but are not limited to, the following described civil duties. The method for assignment of duties to a Magistrate Judge shall be made in accordance with orders of the Court or by special designation or reference by a District Judge.

(a) Duties in Civil Matters.

(1) Alternative Dispute Resolution Processes. Conduct various alternative dispute resolution processes, including but not limited to judge-hosted settlement conferences, mediation, arbitration, early neutral evaluation, and summary trials (jury and nonjury).

(2) Nondispositive Motions. Hear and determine any pretrial motion or other pretrial matter, other than those motions specified in subsection (a)(3) below, in accordance with 28 U.S.C. §636(b)(1)(A) and Fed. R. Civ. P. 72.

(3) Dispositive Motions. Hear and conduct such evidentiary hearings as are necessary or appropriate and submit to a District Judge proposed findings of fact and recommendations for the disposition of motions for proposed injunctive relief (including temporary restraining orders and preliminary injunctions), for judgment on the pleadings, for summary judgment, to dismiss or permit maintenance of a class action, to dismiss for failure to state a claim upon which relief may be granted, to involuntarily dismiss an action, for judicial review of administrative determinations, for review of default judgments, and for review of prisoners' petitions challenging conditions of confinement, in accordance with 28 U.S.C. § 636(b)(1)(B) and (C) and Fed. R. Civ. P. 72.

(4) Civil Case Management.

(A) Exercise general supervision of the civil calendars of the Court, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the District Judges.

(B) Conduct scheduling and pretrial conferences as set forth in Fed. R. Civ. P. 16 and 26(f), which include but are not limited to scheduling, settlement, discovery, preliminary and final pretrial conferences, and entry of appropriate orders.

(5) Other Duties.

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

(B) Conduct examinations of judgment debtors, in accordance with Fed. R. Civ. P. 69.

(C) Issue warrants or entering orders permitting entry into and inspection of premises, and/or seizure of property, in noncriminal proceedings, as authorized by law, when properly requested by the IRS or other governmental agencies.

(D) Serve as a special master in an appropriate civil action pursuant to 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53. A Magistrate Judge may, where the parties consent, serve as a special master in any civil action. The entry of final judgment in the civil action, however, shall be made by a District Judge or at the direction of a District Judge with the consent of the parties.

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

(F) Supervise proceedings conducted pursuant to 28 U.S.C. § 1782 with respect to foreign tribunals and to litigants before such tribunals.

(G) Adjudicate nondispositive sanctions under the Fed. R. Civ. P., rules of this Court or applicable statutes.

(b) Objections to a Magistrate Judge's Rulings. Objections to an order, decision or recommendation disposition made by a Magistrate Judge pursuant to Fed. R. Civ. P. 72 shall identify the appropriate standard of review.

(c) Duties in Proceedings for Postconviction Relief. A Magistrate Judge may perform any or all of the duties imposed upon a District Judge by the rules governing proceedings in the United States district courts under § 2254 and § 2255 of Title 28, United States Code. In so doing, a Magistrate Judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a District Judge a report containing proposed findings of fact and recommendations for disposition of the petition by the District Judge. Any order disposing of the petition may only be made by a District Judge.

RULE 73.1. **Magistrate Judges; Trial by Consent.**

Where the parties consent, a Magistrate Judge may conduct a jury or nonjury trial in any civil action and order the entry of final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73-76. In the course of conducting proceedings in any civil action upon the consent of the parties, a Magistrate Judge may hear and determine any and all pretrial and post trial motions including case dispositive motions.

(a) The Clerk shall notify the parties in all cases that they may consent to have a Magistrate Judge conduct any or all proceedings in the case and order the entry of a final judgment.

(b) The Clerk shall not accept a consent form for filing unless it has been signed by all the parties in a case. Plaintiff shall be responsible for securing execution and filing of such a consent form. No consent form will be made available, nor will its contents be made known to any District Judge or Magistrate Judge, unless all stated parties have consented to the reference to a Magistrate Judge.

(c) The consent form shall be filed with the Clerk not later than the final pretrial conference, unless otherwise ordered.

(d) After the consent form has been executed and filed, the Clerk shall so advise the District Judge to whom the case has been assigned. At the direction of the District Judge, the Clerk shall prepare, for the District Judge's signature, an order referring the case to the Magistrate Judge. Once the case has been referred, a Magistrate Judge shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the Clerk to enter a final judgment in the same manner as if a District Judge presided.

X. DISTRICT COURTS AND CLERKS

RULE 77.1. **Hours of the Clerk's Office.**

The business hours of the Clerk's office shall be 8:30 a.m. to 4:0~~3~~0 p.m., Monday through Friday, except legal holidays.

RULE 77.2. **Orders and Judgments by the Clerk.**

(a) Orders by the Clerk. The Clerk is authorized, without further direction of a judge, to sign and enter orders specifically delineated as allowed to be signed by the Clerk under the Fed. R. Civ. P. , and also the following:

(1) Orders specifically appointing persons to serve process in accordance with Fed. R. Civ. P. 4.

(2) Orders on consent noting satisfaction of a judgment, providing for the payment of money, withdrawing stipulations, annulling bonds, exonerating sureties or setting aside a default.

(3) Orders of dismissal on consent, with or without prejudice, except in cases to which Fed. R. Civ. P. 23, 23.1 or 66 apply.

(4) Orders entering default for failure to plead or otherwise defend in accordance with Fed. R. Civ. P. 55.

(5) Any other orders which, pursuant to Fed. R. Civ. P. 77(c), do not require direction by the Court.

(6) Consent orders extending, for not more than 21 days in any instance, the time to file the record on appeal in the appellate court.

(b) Action by the Court. Any order entered by the Clerk under this Rule may be suspended, altered or rescinded by the Court upon cause shown.

RULE 79.1. **Custody and Return of Exhibits.**

(a) Custody. The Clerk shall have custody of every exhibit admitted in evidence, or which is the subject of an offer of proof. The Court may, upon stipulation or application, order an original exhibit returned to the party to whom it belongs with a copy of the exhibit approved and initialed by the opponent to be filed in place of the original.

(b) Return. Upon the conclusion of an action (as defined hereinafter) and unless the Court otherwise orders:

(1) Any party shall be entitled to have such exhibits returned to the party or person to whom they belong, without the necessity of filing any copies thereof; and

(2) The Clerk shall notify counsel to remove the exhibits within 30 days and, upon counsel's failure to do so, the Clerk may dispose of them as the Clerk sees fit and at the expense of counsel.

(c) Conclusion of an Action. An action shall be deemed concluded when:

(1) A stipulation is filed that serves to waive or abandon the right to a rehearing or new trial or to an appeal; or

(2) The time to file an appeal has expired; or

(3) The action has been fully resolved on appeal.

RULE 79.2. **Custody of Files and Documents not in Electronic Format.**

All files of the Court shall remain in the custody of the Clerk and no record or paper belonging to the Court's files shall be taken from the Clerk's custody without a special order of the Court and a proper receipt signed by the person obtaining the record or paper. No such order will be entered except in extraordinary circumstances.

RULE 80.1. **Court Reporting Fees.**

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

XI. MISCELLANEOUS PROVISIONS

RRULE 81.1. **Caption on Removed Cases.**

In a removed case, the caption on any pleading, including the petition, shall be identical, insofar as the parties are concerned, as in the state court.

RULE 81.2. **Cases Transferred or Removed to this Court.**

In any case transferred or removed to this Court, within 21 days of the filing of the case with the Clerk, the parties shall submit a statement identifying all pending matters which require judicial action.

RULE 83.2. **Photographs and Broadcasting.**

Broadcasting, televising, recording or taking of photographs in connection with any judicial proceedings within the United States Courthouse at Wilmington, Delaware, whether or not such judicial proceedings are actually in session, is prohibited, except that the Court may authorize:

(a) The use of electronic or photographic means as a presentation of evidence and for the perpetuation of a record; and

(b) The broadcasting, televising, recording or photographing of investiture, ceremonial or naturalization proceedings, law school moot court proceedings, and activities sponsored by the bar association for continuing legal education.

RULE 83.4. **Security of the Court.**

The Court or any Judge may, from time to time, make such orders or impose such requirements as may be reasonably necessary to assure the security of the Court and of all persons in attendance.

XII. ATTORNEYS

RULE 83.5. **Bar Admission**.

(a) The Bar of this Court. The Bar of this Court shall consist of those persons heretofore admitted to practice in this Court and those who may hereafter be admitted in accordance with these Rules.

(b) Admission. Any attorney admitted to practice by the Supreme Court of the State of Delaware may be admitted to the Bar of this Court on motion of a member of the Bar of this Court made in open court and upon taking the following oath and signing the roll:

> "I, _____, do solemnly swear (or affirm) that I will conduct myself, as an attorney and counselor of this Court, uprightly, and according to law; and that I will support the Constitution of the United States."

(c) Admission *Pro Hac Vice*. Attorneys admitted, practicing, and in good standing in another jurisdiction, who are not admitted to practice by the Supreme Court of the State of Delaware, may be admitted *pro hac vice* to the Bar of this Court in the discretion of the Court, such admission to be at the pleasure of the Court. Unless otherwise ordered by the Court, or authorized by the Constitution of the United States or acts of Congress, an applicant is not eligible for permission to practice *pro hac vice* if the applicant:

(1) Resides in Delaware; or

(2) Is regularly employed in Delaware; or

(3) Is regularly engaged in business, professional, or other similar activities in Delaware.

Any judge of the Court may revoke, upon hearing after notice and for good cause, a *pro hac vice* admission. The form for admission *pro hac vice*, which may be amended by the Court as prescribed by standing order, is appended to these rules.

(d) Association with Delaware counsel required. Unless otherwise ordered, an attorney not admitted to practice by the Supreme Court of the State of Delaware may not be admitted *pro hac vice* in this Court unless associated with an attorney who is a member of the Bar of this Court and who maintains an office in the District of Delaware for the regular transaction of business ("Delaware counsel"). Consistent with CM/ECF Procedures, Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. Unless otherwise ordered, Delaware counsel shall attend proceedings before the Court.

(e) Time to Obtain Delaware Counsel. A party not appearing *pro se* shall obtain representation by a member of the Bar of this Court or have its counsel associate with a member of the Bar of this Court in accordance with D. Del. LR 83.5(d) within 30 days after:

(1) The filing of the first paper filed on its behalf; or

(2) The filing of a case transferred or removed to this Court.

Failure to timely obtain such representation shall subject the defaulting party to appropriate sanctions under D. Del. LR 1.3(a).

(f) Association with Delaware counsel not required.

(1) Attorneys who are members in good standing of the bar of the highest Court of any state, territory, or the District of Columbia may, after submitting themselves to the jurisdiction of this Court in writing, act as an attorney in this Court on behalf of the United States or any of its departments, agencies or officials (in their official or individual capacities).

(2) Attorneys who are admitted to the Bar of this Court and in good standing, but who do not maintain an office in the District of Delaware, may appear on behalf of parties upon application to the Court.

RULE 83.6. **Attorney Discipline.**

(a) Attorneys Convicted of Crimes.

(1) Upon the filing of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted of a serious crime in any Court of the United States or the District of Columbia, or of any state, territory , commonwealth or possession of the United States:

(A) The Court shall enter an order immediately suspending that attorney from the practice of law before the Court. A copy of such order shall be served upon the attorney.

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

(C) The term "serious crime" shall include any felony and any lesser crime, a necessary element of which 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." The elements of the crime of conviction shall be determined by the statutory or common law definition of such in the jurisdiction where the judgment was entered.

(D) The Court shall, in addition to suspending that attorney, also refer the matter to counsel for the institution of a disciplinary proceeding before the Court. The sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

(2) 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.

(3) An attorney suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction has been reversed. The reinstatement, however, 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 such action.~~ When another jurisdiction imposes discipline against an attorney admitted to practice in this Court, the same discipline is automatically effective in this Court without further action by this Court and shall remain in effect in this Court unless and until this Court issues an order that renders the discipline ineffective or imposes different discipline pursuant to these rules.

(2) 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 such action.

(3~~2~~) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that any attorney admitted to practice before this Court has been disciplined by another Court or upon becoming informed of such a judgment or order, 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 (5~~4~~) hereof that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.

(4~~3~~) In the event the discipline imposed in the other jurisdiction has been stayed, any reciprocal discipline imposed in this Court shall be deferred until such stay expires.

(5~~4~~) Upon expiration of 30 days from service of the notice issued pursuant to the provisions of (3~~2~~) above, this Court shall maintain the imposition of ~~e~~ the identical discipline unless the Court finds that:

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

(D) The misconduct established is deemed by this Court to warrant substantially different discipline.

To the extent the Court finds any of the above, it shall enter such other order as it deems appropriate.

(6~~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 this Court.

(7~~6~~) This Court may at any stage appoint counsel to prosecute the disciplinary proceedings.

(c) Disbarment on Consent or Resignation in Other Courts. Any attorney admitted to practice before the Court who has been disbarred on consent or who has resigned for disciplinary reasons 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, shall promptly inform the Clerk of such. Upon the filing of a certified copy of the judgment or order accepting such disbarment on consent or resignation, the attorney shall cease to be permitted to practice before the Court and shall be stricken from the roll of attorneys admitted to practice before the Court.

(d) Standards for Professional Conduct. Subject to such modifications as may be required or permitted by federal statute, court rule, or decision, all attorneys admitted or authorized to practice before this Court, including attorneys admitted on motion or otherwise, shall be governed by the Model Rules of Professional Conduct of the American Bar Association ("Model Rules"), as amended from time to time.

(e) Disciplinary proceedings.

(1) Professional Misconduct Complaint. Where the Rules do not already provide a procedure, the Chief Judge of this Court shall evaluate information coming to the Court's attention, by complaint or from other sources, alleging misconduct by, or in the incapacity of, a lawyer subject to the jurisdiction of this Court (herein, the "respondent"). The Chief Judge or another Judge of the Court shall determine as a threshold matter whether the information, if true, would constitute misconduct or incapacity such as to warrant investigation. If an investigation is warranted, the Chief Judge or another Judge of the Court may ~~shall~~ appoint counsel from the Bar of this Court to conduct a confidential investigation

of the matter. Complaints, and any files based on them, shall be treated as confidential unless otherwise ordered for good cause shown.

(2) Investigation and Recommendation. If the Court appoints c~~C~~ounsel pursuant to paragraph (e)(1), such counsel shall conduct an investigation as directed by the Court. As part of the investigation, at a time deemed appropriate by counsel, counsel shall notify the respondent in writing of the substance of the matter and afford the respondent an opportunity to be heard. At the conclusion of the investigation, counsel shall prepare a confidential report and recommendation for the Court. The report and recommendation shall set forth the results of counsel's investigation and shall state whether cause exists to find that a violation of the Model Rules has occurred. If counsel recommends that cause does not exist to find a violation of the Model Rules, and the Court accepts counsel's recommendation, the complaint shall be dismissed.

(3) Show Cause Hearing. If counsel recommends that cause exists to find a violation of the Model Rules, and the Court accepts counsel's recommendation, then the Court shall issue a confidential order for the respondent to show cause within 30 days after service of that order upon respondent, personally or by mail, why the respondent should not be disciplined. For good cause shown, the time to show cause may be extended. The respondent shall be provided a copy of counsel's recommendation and may submit a written response to counsel's recommendation in advance of the show cause hearing. The show cause hearing shall be conducted by one or more Judges of the Court, as determined by the Chief Judge, and may include the Chief Judge. If the hearing results from an allegation of misconduct brought by a Judge of this Court, that Judge shall not participate in the show cause hearing. The show cause proceedings shall be confidential, unless the attorney subject to discipline requests that the proceedings be public.

(4) Sanctions. After a show cause hearing, the Court may impose such sanctions as the circumstances warrant, including private admonition, public reprimand, suspension, or disbarment.

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

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

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

(B) Is aware that there is a presently pending investigation or proceeding involving specifically identified allegations of the misconduct;

(C) Acknowledges that the material facts so alleged are true; and 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 maintain a defense.

(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.

(g) Reinstatement.

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

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

(3) Hearing on Application. Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the Chief Judge of this Court. Upon receipt of the petition, the Chief Judge shall promptly refer the petition to counsel and shall assign the matter for prompt hearing before 1 or more Judges of this Court provided, however, that if the disciplinary proceeding was predicated upon the complaint of a Judge of this Court, the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge or, if there are less than 3 Judges eligible to serve, or the Chief Judge was the complainant, by the Chief Judge of the Court of Appeals for this Circuit. The Judge or Judges assigned to the matter shall, within 30 days after referral, schedule a hearing at which the petitioner shall have the burden of demonstrating, by clear and convincing evidence, that petitioner has the moral qualifications, competency and learning in the law required for admission to practice law before this Court and that petitioner's resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

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

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

(6) Conditions of Reinstatement. If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to

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

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

(i) 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.

(j) Service of Papers and Other Notices. Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at the address shown on the records of this Court. Unless stated otherwise, service of any other papers or notices required by these Rules shall be deemed to have been made if such service is made by method permissible under the Rules of the Court.

(k) Appointment of Counsel. Whenever counsel is to be appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this Court shall appoint as counsel one or more members of the Bar of this Court. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

(l) Duties of the Clerk.

(1) Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk 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 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 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 attorney who has been convicted of any crime or disbarred or suspended, or censured or disbarred on consent by this Court, is admitted to practice law in any other jurisdiction or before any other Court, the Clerk 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 or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence address of the defendant or respondent.

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

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

(n) Pre-existing Proceedings. If any formal disciplinary proceeding is pending before this Court on the effective date of these Rules, it shall be concluded under the procedure existing prior to the effective date of these Rules.

RULE 83.7. **Substitution and Withdrawal of Attorney.**

An attorney may withdraw an appearance for a party without the Court's permission when such withdrawal will leave a member of the Bar of this Court appearing as counsel of record for the party. Otherwise, no appearance shall be withdrawn except by order on a motion duly noticed to each party and served on the party client, at least 14 days before the motion is presented, by registered or certified mail addressed to the client's last known address.

Form for Motion for Admission *Pro Hac Vice*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

)
) Civil Action No.
)

MOTION AND ORDER FOR
ADMISSION *PRO HAC VICE*

Pursuant to Local Rule 83.5 and the attached certification, counsel moves the admission *pro hac vice* of _____ to represent_____ in this matter.

Signed:_____
(Movant's Name and Delaware State
Bar Identification Number)
(Movant's Address)
(Movant's Telephone Number)

Date:_____ Attorney for _____

ORDER GRANTING MOTION

IT IS HEREBY ORDERED counsel's motion for admission *pro hac vice* is granted.

Date:_____ _____
United States District Judge

CERTIFICATION BY COUNSEL TO BE ADMITTED PRO HAC VICE

Pursuant to Local Rule 83.5, I certify that I am eligible for admission to this Court, am admitted, practicing and in good standing as a member of the Bar of _____ and pursuant to Local Rule 83.6 submit to the disciplinary jurisdiction of this Court for any alleged misconduct which occurs in the preparation or course of this action. I also certify I am generally familiar with this Court's Local Rules. In accordance with Standing Order for District Court Fund effective ~~1/1/05~~7/23/09, I further certify that the annual fee of $25.00 has been paid G to the Clerk of Court, or, if not paid previously, the fee payment will be submitted G to the Clerk's Office upon the filing of this motion.

Dated: _____ Signed: _____
(Applicant's Address)