LOCAL RULES
OF
CIVIL PRACTICE
FOR THE
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF DELAWARE

(Amended Effective June 30, 1987)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In the Matter of

The Amendments of Local	)
Rules of Civil Practice	)
For The United States	)
District Court For The	)
District of Delaware	)

ORDER

And Now To Wit, this 4th day of June, 1987, a draft of the Amendments of Local Rules of Civil Practice for this Court having been submitted by the Permanent Lawyers Advisory Committee appointed by this Court, and all of the judges of this Court having considered the same,

IT IS ORDERED:

1. Pursuant to the authority vested in this Court by Rule 83, Fed. R. Civ. P., the Local Rules of Civil Practice for the United States District Court for the District of Delaware be, and they are hereby amended by including therein the amendments to Local Rules 3.1, 3.2, 4.1, 4.3, 5.4, 5.5, 8.2 and 9.7 attached hereto. Those amendments shall take effect on June 30, 1987, in accordance with the provisions of Rule 9.7D thereof.

2. The Clerk shall have the attached Amendments to the Local Rules printed in appropriate form and shall make them available for sale to all interested parties at a price approximately equivalent to their costs as fixed by the Court.

3. The Clerk shall forward a copy of this Order and the attached Amendments to the Local Rules of Civil Practice to (a) the Supreme Court of the United States as required by Rule 83, Fed. R. Civ. P., (b) the Director of the Administrative Office of the United States Courts, and (c) West Publishing Company.

/s/ Murray M. Schwartz	/s/ Jane R. Roth
Chief Judge	Judge
/s/ Joseph J. Longobardi	/s/ James L. Latchum
Judge	Judge
/s/ Joseph J. Farnan, Jr.	/s/ Caleb M. Wright
Judge	Judge

THE
PERMANENT LAWYERS
ADVISORY COMMITTEE
FOR THE
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF DELAWARE

(Amended Effective June 30, 1987)

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Federal District Court Liaison
Hon. Joseph J. Longobardi

I. TITLE AND SCOPE OF RULES

1.1 TITLE

The following are the Local Rules of Civil Practice for the United States District Court for the District of Delaware and may be cited "L.R. _____".

1.2 SCOPE

These Rules govern the procedure in the United States District Court for the District of Delaware in all cases to which the Federal Rules of Civil Procedure are applicable.

1.3 TIME

Computation of time under these Rules shall be in accordance with Fed.R. Civ.P. 6.

1.4 SUMMONS

A party required to serve a summons shall prepare and deliver the summons to the Clerk for issuance contemporaneously with the filing of the pleading to be served with the summons or praecipe for additional or separate summons. Upon issuance the Clerk shall return the summons to the party or party's attorney who shall be responsible for prompt service of the summons and a copy of the pleading.

II. COMMENCEMENT OF ACTIONS; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

2.1 PROOF OF SERVICE OF PAPERS

A. Unless otherwise ordered, no pleading or other paper required to be served shall be filed unless the original thereof shall have endorsed thereon a receipt of service of a copy thereof by all parties required to be served or unless it shall have attached to it either (1) a certification by a member of the Bar of this Court, or (2) an affidavit showing that service has been made and how made.

B. In an action in which the plaintiff serves process pursuant to 10 *Del. C.* §3104, §3112 or §3113, an affidavit of the plaintiff or his attorney of the defendant's nonresidence and the mailing and receipt or refusal of the notice required by the statute, with the defendant's return receipt attached, shall be filed within 10 days of the receipt by the plaintiff or his attorney of that return receipt. The affidavit and return receipt need not be served upon the parties.

Source: Rule 2.1 A is substantially the same as previous Rule 5, except for editorial changes. Those papers required to be served are specified in Fed.R.Civ.P. 5(a)

2.2 ASSIGNMENT OF CASES; TRIALS

A. Each case will be assigned to a named judge. All matters pertaining to a case will be heard by the judge to whom it has been assigned, unless otherwise ordered.

B. If counsel for a plaintiff in a civil action knows or believes that such action and one or more other civil actions or proceedings previously decided or currently filed in this District: (1) arise from the same or substantially identical transactions, happenings, or events; or (2) involve the same or substantially the same parties or property; or (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, counsel shall indicate that fact on the cover sheet he* submits with the original complaint or petition. If counsel for a defendant possesses such information, and it has not been noted previously, he shall bring that information to the attention of all parties and the Clerk, who will either note it on the cover sheet for the case or inform the judge to whom the case has been assigned.

C. Each week on a rotating basis, one of the active judges will be designated as "Duty Judge". The Duty Judge will 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 Court House 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.

*Masculine pronouns include the feminine.

(4) Conduct proceedings under the Narcotics Addict Rehabilitation Act of 1966.

Source: Subparagraph A of this Rule is based on the former Local Rule 13. Subparagraph B is derived from Local Rule 206 of the Southern District of California. Subparagraph C, although it is new, essentially explains the Court's current practice. Some of the language of Subparagraph C is derived from Local Rule 5 of the Eastern District of Pennsylvania.

2.3 EXCEPTIONS OF ACTIONS FROM Fed.R.Civ.P. 16(b).

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

(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 condemnation, or for foreclosure of mortgages or sales to satisfy liens of the United States;
(d) proceedings in bankruptcy;
(e) 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 this District in connection with discovery, or testimony *de bene esse*, or for perpetuation of testimony for use in a matter pending or contemplated in a U.S. 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.

2.4 REMOVAL BONDS

A. Removal bonds need not be executed by the defendant, execution by a duly qualified corporate surety being sufficient.

B. Removal bonds shall be filed with the Clerk and approval by the Court shall be unnecessary unless objections thereto are filed.

C. Removal bonds shall be payable to opposing parties and shall be in the penal sum of $500 unless after objection thereto the Court shall otherwise order.

Source: This is substantially the same as former Rule 24.

2.5 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.

2.6 PLEADING CLAIM FOR UNLIQUIDATED DAMAGES

A. A pleading which set forth a claim for relief in the nature of unliquidated money 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 the jurisdiction of the court, but no other.

B. Upon service of a written request by another party, the party filing the pleading shall within 10 days after service thereof furnish the requesting party with a written statement of the amount of damages claimed, which statement shall not be filed except on court order.

2.7 SERVICE OF LETTERS ON OPPOSING COUNSEL

A copy of all letters furnished to the Court relating to a pending case shall be furnished to the Clerk. The same means (e.g., mail or hand delivery) as used in delivery to the Court shall be used in delivery to opposing counsel whenever feasible. The copy delivered to the Court shall indicate the method of delivery to opposing counsel.

III. PLEADINGS, MOTIONS AND BRIEFS

3.1 MOTIONS

A. An application for an order shall be by stipulation or by motion.

B. A motion, unless made during a hearing or trial, shall be in writing.

C. Unless the Court notifies the parties otherwise, the briefing and affidavit schedule for presentation of all motions shall be: (1) the opening brief and accompanying affidavits shall be filed within 10 days from the filing of the motion; (2) the answering brief and accompanying affidavits shall be filed no later than 10 days after the serving and filing of the opening brief; (3) the reply brief and accompanying affidavits shall be filed no later than 5 days after the serving and filing of the answering brief. The above schedule shall be set aside if within 10 days of the filing of a motion a party shall (1) file a stipulated briefing and affidavit schedule to be approved by the Court or (2) advise the Court that the parties are unable to agree upon the need for or timing of a briefing schedule in which case the Court shall resolve the matter or (3) advise the Court, because of the nature of the motion, all parties believe that no briefing is required.

D. Any non-dispositive motion and any motion relating to discovery shall have attached to it a separate certification by movant's attorney detailing the date, time spent, and method of communication in attempting to reach an agreement on the subject of the motion with the other party or parties, and that certification shall indicate if the motion is unopposed.

E. No additional briefs, affidavits, or other papers in support of or in opposition to the motion shall be filed without prior approval of the Court, except that a party may call to the Court's attention and briefly discuss pertinent cases decided after a party's final brief is filed or after oral argument.

F. Oral argument on any motion may be scheduled upon the application of a party, or *sua sponte* by Court order. An application to the Court for oral argument shall be in writing and shall be made within three days after the time for the filing of a reply brief has passed. An application for oral argument may be granted or denied, in the discretion of the Court.

3.2 FORM AND CONTENTS OF BRIEFS, MEMORANDA, MOTIONS AND APPENDICES

A. Briefs, When Required.

Briefs shall be served and filed in accordance with the schedule established pursuant to L.R. 3.1 C. The moving party shall file an opening brief; those who oppose the motion shall file an answering brief; those who filed an opening brief may file a reply brief. An appendix may be filed with any brief. Whenever a party does not file a brief, the Court may refuse that party oral argument.

B. Memoranda of Points and Authorities.

The Court may order or the parties may agree to serve and file, simultaneously or on an ordered or agreed schedule, statements of points and authorities in memorandum form in place of briefs. Such statements shall succinctly state each legal proposition urged by the party and, following each such proposition, cite supporting cases and legal authorities, but shall not include any further legal

argument. Any memorandum not conforming with this subsection of this Rule shall conform with L.R. 3.2 D.

C. Form of Briefs, Memoranda and Appendices.

(1) On the front cover of each brief, memorandum of points and authorities and appendix there shall be stated the name of this Court, the caption of the case, its number in this Court, a description of its nature, the name and designation of the party for whom it is filed, and the name, address and telephone number of counsel by whom it is filed.

(2) Briefs, memoranda of points and authorities and appendices may be printed or typed and reproduced by any duplicating or copying process which produces a clear black image on opaque, unglazed white paper; carbon copies may not be submitted without permission of the Court. All printed matter must appear in at least 11 point type on opaque, unglazed paper.

(3) All briefs, memoranda and appendices shall be firmly bound at the left margin. Printed briefs, memoranda of points and authorities and appendices shall have pages approximately 7 by 9½ inches. Briefs, memoranda of points and authorities and appendices produced by any other process shall have pages not exceeding 8½ by 11 inches, with double spacing between each line of text except for quotations and footnotes. Side margins of briefs and memoranda of points and authorities shall be not less than 1¼ inches.

(4) Pages of an appendix shall be numbered separately at the bottom. The page number shall be preceded by a capital letter "A". Transcript and other papers reproduced in a manner authorized by this rule shall be included in the appendix both with original and appendix paginations.

(5) Without leave of Court, the argument in an opening or answering brief shall not exceed 50 pages and, in the case of a reply brief, the argument shall not exceed 25 pages.

(6) Citations will be deemed to be in acceptable form if made in accordance with "A Uniform System of Citation" published and distributed from time to time by the Harvard Law Review Association. State reporter citations may be omitted but citations to the National Reporter System must be included except as to U.S. Supreme Court decisions where the official citation shall be used.

D. Contents of Briefs.

(1) 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 arranged. If a brief does not contain any citations therein, a statement stating this fact should be placed under this heading.

(c) A statement of the nature and stage of the proceeding.

(d) A summary of argument, stating in separate numbered paragraphs the legal propositions upon which each side relies.

(e) A concise statement of facts, with supporting references to appendices or record, presenting succinctly the background of the questions in-

volved. The statement shall include a concise statement of all facts which should be known in order to determine the points in controversy. Each party shall be referred to as "plaintiff", "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) The argument shall be divided under appropriate headings distinctly setting forth separate points. The style of citations shall be as provided in paragraph C(6). If an unreported opinion is cited, a copy thereof shall be attached to the brief, and it shall be appropriately identified with a sufficient statement of the facts to demonstrate its pertinency.

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

(2) 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 repetition of materials contained in the opening brief. A table of contents and a table of citations, as required by subparagraphs (1)(a) and (b), above, shall be included in the reply brief.

E. Contents of Appendices.

Each Appendix shall contain a paginated table of contents and may contain such parts of the record material to the questions presented as the party wishes the Court to read; duplication shall be avoided. Portions of the record shall be arranged in chronological order. If testimony of witnesses is included, appropriate references to the pages of such testimony in the transcript shall be made and asterisks or other appropriate means shall be used to indicate omissions. Appendices may be separately bound. Parts of the record not included in the appendix may be relied on in briefs or oral argument. Whenever a document, paper or testimony in a foreign language is included in any appendix or is cited from the record in any brief, an English translation made under the authority of the Court or agreed by the parties to be correct, shall be included in the appendix or in the record.

F. Joint Appendix.

Counsel may agree on a joint appendix which shall be bound separately.

G. Pleadings, Motions and Other Papers.

(1) Pleadings, motions and other papers shall be produced on opaque, unglazed white 8½ *x* 11 inches paper. Such papers shall be unbacked and shall contain a caption setting forth the name of this Court, the caption of the case, the number in this Court, the date of filing and a brief descriptive title indicating the purpose of the paper.

(2) An amended pleading shall indicate in what respect it differs from the pleading which it amends. Materials to be deleted should be bracketed. Materials to be added should be underlined.

H. Number of Copies.

The original and one copy of motions, briefs and memoranda and the original of all other papers shall be filed with the Clerk. Two copies of each paper filed with the Court shall be served on local counsel for each of the other parties. Whenever papers are captioned in more than one action, sufficient copies shall be furnished to permit the Clerk to file one copy in each action.

I. Nonconforming Papers Rejected.

The Clerk shall refuse to file papers not conformed to this Rule or other Rules of this Court unless the Court shall otherwise order. In the event that a paper not prepared in conformance with this Rule is filed pursuant to an order of the Court, the document shall state in capital letters above the title of the document:

'THIS DOCUMENT CONFORMS TO THE ORAL (OR WRITTEN) ORDER OF THE HONORABLE _____ ON _____.'

Source: This Rule is a revision of former Rules 6 and 8 with greater detail included on the formal requirements for briefs and appendices. Pleading backers need no longer contain written material. In place of briefs, the Court may direct the parties to file memoranda of points and authorities.

3.3 REARGUMENTS

A motion for reargument shall be served and filed within ten days after the filing of the Court's opinion or decision. The motion shall briefly and distinctly state the grounds therefor. Within ten days after service of such motion, the opposing party may serve and file a brief answer to each ground asserted in the motion. The Court will determine from the motion and answer whether reargument will be granted.

Source: This is former Rule 16 except that the previous five day requirement for filing motions for reargument has been extended to ten days to accord with the rulings in *Ganey v. Brotherhood of Railway & Steamship Clerks,* 303 F.2d 716, 718 (3d Cir. 1962); *Citizens' Acceptance Corporaton v. United States,* 320 F.Supp. 798 (D.Del. 1978). The time to answer has also been extended to ten days.

3.4 DEMAND FOR JURY

Whenever trial by jury is demanded in a pleading in accordance with Fed.R. Civ.P. 38(b), such demand shall be in capital letters, underlined, and set out on the first page of the pleading immediately under the civil action number.

Source: This is former Rule 6D.

3.5 PROCEDURE FOR STATUTORY COURT

Where, pursuant to law, an action must be heard by a District Court composed of three judges, all pleadings and briefs are to be filed with the Clerk in quadruplicate, the original becoming part of his file; the three copies to be distributed by him to the members of the Court.

Source: This Rule is substantially the same as former Rule 22.

3.6 ORDERS GRANTABLE BY THE CLERK

A. The Clerk is authorized to sign and enter orders specifically allowed to be signed by the Clerk under the Federal Rules of Civil Procedure and is, in addition, authorized to sign and enter the following orders without further direction of a judge:

(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 20 days in any instance the time to file the record on appeal in the appellate court.

B. Any orders entered by the Clerk under this Rule may be suspended, altered or rescinded by the Court.

Source: The committee believes that the scope of the orders grantable by the clerk may be expanded to some degree to avoid inconveniencing the Court with routine matters. Subsections (1) through (5) are drawn from the California Southern District Rule 125-5 and the similar Rule in the California Middle District. Subsection (6) is drawn from the Illinois Northern District Rule 16(b). The Court no longer desires the Clerk to be empowered to extend time for certain actions as formerly provided in Rule 18.

IV. DEPOSITIONS AND DISCOVERY

4.1 DISCOVERY

A. Reference to Magistrate

Every civil action not exempted from the requirements of Fed.R.Civ.P. 16(b) by L.R. 2.3 may be referred by the Judge to whom the case is assigned to the United States Magistrate who shall promptly:

(1) Consult with the attorneys for the parties and any unrepresented parties by telephone, mail or other means;

(2) Enter a scheduling order pursuant to Fed.R.Civ.P. 16(b); and

(3) Determine whether the frequency or extent of use of discovery methods should be limited, and enter an appropriate order.

Orders issued pursuant to this rule shall not be modified except by leave of the Court or Magistrate upon a showing of good cause.

B. Interrogatories and Requests for Admissions

(1) Unless the Court otherwise orders, no party shall direct more than 50 written interrogatories and 25 requests for admissions, including each subpart as a separate interrogatory or request, until such time as a conference is held pursuant to Rule 16 of the Federal Rules of Civil Procedure.

(2) The party answering interrogatories and requests for admissions shall retype the questions or requests with the answers, objections or explanations following immediately thereafter.

(3) Objections to interrogatories shall be set forth in the answers to interrogatories with a brief statement of the grounds therefor and a citation of the main authorities, if any, relied upon.

C. Requests for Production

(1) A party who produces documents for inspection in response to a request for production pursuant to Fed.R.Civ.P. 34 or who, in response to an interrogatory, relies upon the option permitted by Fed.R.Civ.P. 33(c) and produces business records and related compilations, abstracts or summaries based thereon in lieu of answering the interrogatory, shall produce the documents as they are kept in the usual course of business. The producing party shall, at its option, either (a) make available to the discovering party any business files indexes, subject matter descriptions and auxiliary information maintained by that party in the usual course of business which may permit the discovering party to locate and inspect pertinent documents; or (b) shall utilize such indexes, descriptions or auxiliary information to locate such documents for the applying party; or (c) if there are no such indexes, descriptions or auxiliary information, shall so advise the other party.

(2) The parties responding to a Request for Production shall retype each request with the response or objections following immediately thereafter.

D. Who May Attend Deposition

Unless otherwise ordered by the Court, or agreed to by all parties, a deposition may be attended only by (1) the deponent, (2) counsel for any party and members and employees of their firms, (3) a party who is a natural person, (4) an officer or employee of a party which is not a natural person designated as its representative by its counsel, (5) counsel for the deponent, and (6) any consultant or expert designated by counsel for any party. If a confidentiality 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 any confidential document or information.

E. Discovery Materials Not Filed Unless Ordered or Needed

(1) All requests for discovery under Fed.R.Civ.P. 31 and 33 through 36, and answers and responses there to 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 the following information:

(a) a certification that a particular form of discovery or response was served on other counsel or opposing parties, and

(b) the date and manner of service.

Filing the notice of taking of oral depositions required by Rule 30(b)(1), Federal Rules of Civil Procedure, 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 custodian of them. The party taking an oral deposition shall be custodian of the original; no copy shall be filed except pursuant to subparagraph 3. In cases involving out-of-state counsel, local counsel shall be the custodian.

(3) If depositions, interrogatories, requests for documents, requests for admissions, answers or responses are to be used at trail or are necessary to a pretrail 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.

(6) When discovery materials are to be filed with the Court other than during trial, the filing party shall file the material together with a notice (a) stating in no more than one page, the reason for filing and (b) setting forth an itemized list of the material.

4.2 VIDEOTAPE DEPOSITIONS

A. Any deposition to be taken upon oral deposition may be recorded by videotape.

B. Every notice or subpoena for the taking of a video deposition shall state that it is to be videotaped, the name and address of the person whose deposition is to be taken, the name and address of the person before whom it is to be taken, and the name and address of the videotape operator and of his employer.

C. The deposition shall begin by the operator stating on camera (1) his name and address, (2) the name and address of his employer, (3) the date, time and place of the deposition, (4) the caption of the case, (5) the name of the witness, and (6) the party on whose behalf the deposition is being taken. The officer before whom the deposition is taken shall then identify himself and swear the witness on camera. At the conclusion of the deposition the operator shall state on camera that the deposition is concluded. When the length of the deposition requires the use of more than one tape, the end of each tape and the beginning of each succeeding tape shall be announced on camera by the operator.

D. The deposition shall be timed by a digital clock on camera which shall show continually each hour, minute and second of each tape of the deposition.

E. No signature of the witness shall be required.

F. The attorney for the party taking the deposition shall take custody of and be responsible for the safeguarding of the videotape and shall permit the viewing of and shall provide a copy of the videotape or the audio portion thereof upon the request and at the cost of a party.

G. At a trial or hearing that part of the audio portion of a videotape deposition which is offered in evidence and admitted, or which is excluded on objection, shall be transcribed in the same manner as the testimony of other witnesses. The videotape shall be marked as an exhibit and shall remain in the custody of the Court.

H. The trial judge shall prescribe the procedure for handling objections to questions and answers on the tape. Suggested devices include, among other things, a previewing by the judge and counsel and withholding from evidence material to which objections are sustained; or having the operator turn off the audio portion of the tape at the trial or hearing to exclude objectionable material; or the use of "fast forward" by the operator at the trial or hearing to eliminate both the image and the sound of the objectionable material.

Source: This Rule is modeled on a state court rule; see Fed.R.Civ.P. 30(b)(4).

4.3 NOTICE AND FILING OF DEPOSITIONS

A. Unless otherwise ordered by the Court, "reasonable notice" for the taking of depositions under Fed.R.Civ.P. 30(b)(1) shall be not less than five days. Pending resolution of any motion under Fed.R.Civ.P. 26(c) or 30(d) neither the objecting party, witness, nor any attorney is required to appear at the deposition to which the motion is directed until the motion is ruled upon. The timely filing of a motion under either of these rules shall stay the discovery to which the motion is directed pending further order of the Court.

B. It shall be the duty of the party on whose behalf the depostion was taken to make certain that the officer before whom it was taken has delivered the original transcript to such party. Unless otherwise ordered by the Court the depositions which have been filed pursuant to L.R. 4.1E(3) may be unsealed by the Clerk.

V. TRIALS

5.1 EXHIBITS

A. Every exhibit admitted in evidence, or which is the subject of an offer of proof, shall be held in the custody of the Clerk; but unless there be some special reason why the original should be retained, the Court will, upon stipulation or application, and the absence of any objection, order them to be returned to the party to whom they belong with a copy thereof approved and initialed by the opponent to be filed in place of the original.

B. Upon the filing of a stipulation waiving and abandoning the right to an appeal, and to a rehearing or new trial, or upon expiration of the time for an appeal, or upon final disposition of the case after an appeal, any party shall, unless the Court has otherwise ordered, be entitled to have such exhibits returned to the party or person to whom they belong, without the necessity of filing any copies thereof.

C. Unless the Court otherwise directs, upon the filing of a stipulation waiving and abandoning the right to an appeal, and to a rehearing or new trial, or upon expiration of the time for an appeal, or upon final disposition of the case after an appeal, 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.

Source: This is a general revision of Rule 10.

5.2 DISMISSAL FOR FAILURE TO PROSECUTE

All cases are reviewed periodically as to status by the judge to whom they are assigned, and counsel shall be required to explain any delay. 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 three months the Court may, on its motion, or upon application of any party, and after reasonable notice, enter an order dismissing such cause unless good reason for the inaction is given. An application for a continuance shall not be deemed to be action precluding such dismissal. 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 application of this Rule.

Source: The above Rule is the result of a combination of former Rules 3 and 12, most of the provisions of former Rule 3 (relating to the previous practice of calls of the calendar) having been deleted.

5.3 SETTING CASES FOR TRIAL

Upon motion, cases will be set for trial by the judge to whom the case has been assigned. The motion shall contain a statement of the approximate time required for trial. Unless a written opposition stating the grounds thereof is served and filed within five days after the filing of a motion, the case may be scheduled for a pre-trial conference and/or for trial.

Source: This is a revision of former Rule 13 C.

5.4 PRETRIAL CONFERENCE AND PROCEDURE

A. Unless otherwise ordered all civil cases shall be set for a pretrial conference. Any party may apply for a pretrial conference to be held following the completion of discovery as provided in the pretrial order issued pursuant to Fed. R. Civ. P. 16 (b), and L.R. 4.1. Reasonable notice of the time and place of such pretrial conference shall be given by the Clerk or the Court by mail to counsel of record.

B. Unless otherwise ordered counsel who will conduct the trial are required to appear before the Court for the pretrial conference. Should an attorney for a party fail to appear therefor or to cooperate in the preparation of the pretrial order specified in Paragraph D hereafter, the Court, in its discretion, may in addition to the imposition of sanctions as provided in Rule 9.2 of these Rules, hold a pretrial hearing, ex parte or otherwise, and, after notice, enter an appropriate judgment or order.

C. Each attorney, before the pretrial conference, shall become thoroughly familiar with his case and shall confer with the other attorneys as long and as frequently as may be required to enable plaintiff's attorney to comply with Paragrah D of this Rule and to permit each party to premark all exhibits. At such conferences each attorney shall produce all documents, papers, books, accounts, letters, medical and doctors' reports, photostats, objects or other matters he proposes to introduce in evidence in support of his case in chief, and, if requested, shall furnish copies to opposing counsel of documents, papers, etc., designated by opposing counsel, at the expense of the party represented by the opposing counsel. At the same time, each attorney shall consider and discuss all matters which may expedite the pretrial conference and the trial of the case. Nothing contained in this Rule shall preclude the judge in his discretion from requiring any party to produce for the inspection of another such additional documents, papers, books, accounts, letters, medical and doctors' reports, photostats, objects and other matters as the judge deems appropriate.

D. At least three days prior to the pretrial conference, the attorney for the plaintiff shall file with the Clerk, an original and one copy of a proposed pretrial order, signed by an attorney for each party, which will cover such of the following items as are appropriate:

(1) A statement of the nature of the action, the pleadings in which the issues are raised (for instance, third amended complaint and answer) and whether counterclaims, cross-claims, 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. This should be as detailed as circumstances permit; as, for instance, in a negligence case whether the brakes on plaintiff's vehicle were defective in that they had to be pumped several times to take hold at the time of the accident; whether plaintiff drove through a stop light; etc.

(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 pre-marked exhibits, including designations of interrogatories and answers thereto, requests for admissions and responses, which each party intends to offer at the trial with a specification of those which will

be admitted in evidence without objection, those that will be objected to and the Federal Rule of Evidence in support of said objection and the Federal Rule of Evidence relied upon by the proponent of the exhibit.

(7) The names and addresses of all witnesses a party intends to call to testify either in person, or by deposition, at the trial and the specialties of experts to be called as witnesses.

(8) A brief statement of what plaintiff intends to prove in support of his claim including the details of the damages claimed, or of other relief sought, as of the date of preparation of the draft order.

(9) A brief statement of what the defendant intends to prove as a defense.

(10) Statements by counterclaimants or cross-claimants 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 therefor.

(12) A certification that two way communication has occurred between persons having authority in a good faith effort to explore the resolution of the controversy by settlement.

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

(14) The concluding paragraph of the draft of the pretrial order shall read:

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

Source: This Rule is adopted from former Rule 11 with some minor substantive changes, including a reference in subparagraph (B) to sanctions which may be imposed under Rule 9.2 for failure to comply with this Rule.

5.5 JURY TRIALS

A. Prior to the pretrial conference of any jury trial, counsel for all parties must confer about the instructions and, at least three (3) days before the pretrial conference, the attorney for the plaintiff shall file with the Clerk, in triplicate, written instructions upon which they all 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. 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 the plaintiff(s) or by the defendant(s).

B. If any party desires a special verdict or interrogatories, as provided for in Fed.R.Civ.P. 49, or special voir dire questions to be asked of the jury panel, he must file with the Clerk in triplicate a suggested form of special verdict or suggested interrogatories or voir dire questions at least three (3) days before the pretrial conference.

C. In all civil jury cases, the jury shall consist of six members except that the parties may stipulate that the jury in any such case shall consist of any number less than six.

D. Whenever any civil action scheduled for jury trial is settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, juror costs, including Marshal's fees, mileage and per diem, shall be assessed equally against the parties and their counsel or otherwise assessed as directed by the Court, unless the Clerk's Office is notified at least three full days prior to the day on which the action is scheduled for trial.

Source: Subsection A amends former Rule 14 by requiring counsel to attempt to produce a charge upon which they all agree. The latter requirement and Subsection B formalize requirements which some of the judges in this District have routinely imposed by order in the past. Subsections C and D are former Rules 14(a) and 14(b), respectively.

VI. JUDGEMENT

6.1 COSTS

A. In General

(1) Unless otherwise ordered by the Court the prevailing party shall be entitled to costs. The party in whose favor a judgment or decree for costs is awarded or allowed by law, and who claims his costs, shall within ten (10) days after the time for appeal has expired or within ten (10) days after the issuance of the mandate of the appellate court, serve on the attorney for the adverse party and file with the Clerk of this Court his 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) Such bill of costs shall distinctly set forth each item of cost so that the nature of the change can be readily understood, and shall be supported by an affidavit of the party claiming costs or his attorney or agent, stating that the items are correct and have been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed.

(3) Within ten (10) days after service by any party of his bill of costs, any other party may serve and file specific objections in writing to any item, setting forth the grounds therefor.

(4) Not less than twenty (20) days after receipt of a party's bill of costs, the Clerk, after consideration of any objections thereto, 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) Costs shall be taxed in conformity with the provisions of 28 U.S.C. §§1920, 1921 and 1923 (which allow clerk's fees, marshal's fees and docket fees, among other things), such other provisions of law as may be applicable and the remaining paragraphes of subpart B of this Rule.

(2) Fees Incident to Transcripts — Trial Transcripts.

The cost of the originals of a trial transcript, a daily transcript and of a transcript of matters prior or subsequent to trial furnished the Court is taxable, when either 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 of a deposition and the reasonable costs of taking and presenting a videotaped deposition at trial are taxable only where a substantial portion of the deposition is admitted into evidence at trial or otherwise 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. Witness fees for a deposition are taxable at the same rate as for attendance at trial where the cost of the deposition is taxable. The witness

need not be under subpoena. A reasonable fee for a necessary interpreter at the taking of such a deposition is also taxable.

(4) Witness Fees, Mileage and Subsistence

The rates for witness fees, mileage and subsistence are fixed by statute (see 28 U.S.C. §1821). Such fees are taxable even though the witness does not take the stand, provided the witness necessarily attends the court. Such fees are taxable even though the witness attends voluntarily upon request and is not under subpoena. 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 residence from day to day.

No party shall receive witness fees for testifying in his 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. Fees of expert witnesses are not taxable in an amount greater than that statutorily allowable for ordinary witnesses. The reasonable fee of a competent 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. Cost of one copy of a document is taxable when admitted into evidence in lieu of an original which is either not available for introduction in evidence or is not introduced at the request of opposing counsel. The cost of copies submitted in lieu of originals because of the convenience of offering counsel or his client are not taxable. The cost of copies obtained for counsel's own use are not taxable. The fee of an official for certification or proof concerning the non-existence of a document is taxable. The reasonable fee of a competent 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 which are necessarily 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) The cost of maps and charts are taxable if they are admitted into evidence. The cost of photographs, 8'' X 10'' in size or less, are 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, Receivers and Commissioners.

Fees to masters, receivers and commissioners are taxable as costs, unless otherwise ordered by the Court.

(8) Premiums on Undertakings, Bonds or Security Stipulations.

Premiums paid on undertakings, bonds or security stipulations are taxable where the same have been furnished by reason of a statute or court order or were reasonably necessary to secure a right of the prevailing party in the action or proceeding.

(9) 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 necessarily attached to documents required to be filed in the state court.

(10) Admirality.

Fees for compensation for keepers of boats and vessels attached or libeled are taxable up to the amount of $4.00 per keeper hour.

(11) 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 his 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 Federal Rules of Civil Procedure 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.

A review of the decision of the Clerk in the taxation of costs may be taken to the Court on motion by any party in accordance with F.R.Civ.P. 54(d), upon written notice thereof, served and filed with the Clerk within five (5) days after receipt of the bill of costs as allowed by the Clerk.

The motion shall particularly specify the ruling of the Clerk excepted to and no others will be considered on the hearing, except that the opposing party may, within three (3) days of service of the motion, file a cross motion for review of the decision of the Clerk.

E. Appellate Costs.

The District Court does not tax or review 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 the District court of a writ of execution to recover costs taxed by the appellate court.

Source: Subpart A of this Rule, which sets forth the procedure for the taxation of costs, is patterned after Local Rule 265 of the Northern District of California. The affidavit requirement is taken from 28 U.S.C. §1924. The items taxable as costs listed in Subpart B

are derived from Local Rule 265 of the Southern District of California. A noteworthy exception is the provision limiting recovery of costs incurred in a deposition to situations in which a substantial portion of the deposition is admitted into evidence at trial or otherwise used in the resolution of a material issue in the case. The latter provision was approved after consideration of several alternative standards used in other jurisdictions, and is not intended to depart significantly from the informal standards that previously have been applied in the District. Subparagraph B(4) which provides that expert witness fees are not ordinarily taxable in an amount greater than that statutorily allowable for ordinary witnesses abolishes the former practice of allowing expert witness fees in diversity cases based on 10 Del.C. §8906 and establishes a standard for both diversity and non-diversity cases permitting the Court, in its discretion, to allow some reasonable amount as an additional award of expert witness fees provided the Court finds that the expert's testimony was not only reasonable and helpful to the Court but also played a crucial role in resolving the issues presented. This Rule is not intended to apply to attorneys' fees even where a statute may treat them as costs.

6.2 EXECUTIONS

A. All executions issued by the Clerk of this Court shall, unless otherwise specially ordered, be returnable sixty days from the date of such writ.

B. In all cases in which a party seeks a writ, the parties shall submit the completed proposed form of the writ to the Clerk.

Source: This is former Rule 23 with a substantive addition concerning the form of writ.

6.3 ATTORNEYS' FEES

A. Unless otherwise ordered by the Court, awards of attorneys' fees will not be made until after the time for appeal has run on the judgment for which fees are sought. In the event no appeal is taken, any motions for fees shall be filed no later than 21 days after the time for appeal has expired. In the event an appeal is taken, motions for awards of attorneys' fees shall be filed no later than 21 days after receipt of the mandate of the appellate court. Motions for fees filed while an appeal is pending may be held in abeyance by the District Court pending the disposition of the appeal.

B. Where the judgment is not a final judgment on all claims, failure to apply for attorneys' fees pursuant to this Rule shall not prevent a party from applying for fees after entry of final judgment.

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

Source: This Rule, consistent with *White v. New Hampshire Dept. of Emp. Sec.*, 102 S.Ct. 1162, 1168 (1982) and *Halderman v. Pennhurst State School & Hosp.*, 673, F.2d 628 (3d Cir. 1982), controls the timing of fee applications.

VII. PROVISIONAL AND FINAL REMEDIES IN SPECIAL PROCEEDINGS

7.1 PROCEDURE IN ACTIONS OF INTERPLEADER

A. When no party disputes the plaintiff's right to relief prayed for in a complaint for interpleader, an appropriate order shall be entered discharging the plaintiff, if proper so to do, after the subject matter of the complaint has been deposited with or placed under the control of the Court.

B. Defendants in an action for interpleader shall, together with their answer to the complaint, interplead by filing and serving on each party to the action separate statements of claim denominated "Statement of Claim in Interpleader of _____", setting forth their several claims to the fund or property; and if they dispute the claims of any co-defendant, they shall, within 20 days after service of any such statement of claim, unless otherwise ordered, serve a separate answer to the claim of each co-defendant which they dispute, denominated "Answer in Interpleader of _____ to Statement of Claim in Interpleader of _____". Failure to serve a statement of claim shall constitute a waiver of any claim to the fund or property and failure to serve an answer to any co-defendant's claim shall constitute, as against the defaulting party, an admission of the validity of such claim.

Source: This is former Rule 7.

7.2 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 before entering such judgment the following documents shall be filed:

(1) A notice directed to the Clerk which shall contain (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 L.R. 7.2 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 attorney's fee of $_____ and costs of $_____ .
> Date: _____
> Person exercising warrant of attorney

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

(3) In the case of a debtor who was a non-resident at the time of the execution of the original document, authorizing confession of judgment the plaintiff shall also file the affidavit required by 10 Del.C. §2306(c) together with a completely legible 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 his authority for commencing the procedure set forth in this Rule.

C. The Clerk shall record the time of lodging and place an index card in the Judgment File with a notation of the tentative nature of entry. Subsequently, the Clerk shall make a notation 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 mailings 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 court judgment against him in the United States District Court for the District of Delaware based on the enclosed document for the following amounts:

Principal _____

Accrued Interest _____

Attorney's Fees _____

Plus Interest and Costs _____

(2) That the plaintiff alleges he has waived his rights to notice and hearing prior to the entry of judgment against him.

(3) That the entry of such a court judgment will result in a lien against all his real estate and the means in default of payment, whereby the Marshall can levy against his personal property and real estate and ultimately sell at public auction his personal property and real estate for credit against the debt.

(4) That in default of payment in appropriate cases the Marshal may seize some portion of his wages for credit against the debt.

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

(6) That the debtor is not required to object but if he fails to do so, 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 two weeks

following the last publication. An affidavit of publication shall be filed by the plaintiff with the Clerk.

G. (1) [Omitted]

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

(3) If the debtor objects, a hearing date will be scheduled by the Court. At said hearing the burden shall be on the plaintiff to prove that debtor effectively waives his right to notice and a hearing prior to the entry of judgment against him. Costs are to be assessed against the plaintiff if he fails in his proof. Costs are to be assessed against the debtor if judgment is entered against him.

(4) When a judgment is obtained pursuant to this Rule, a notation to that effect shall then be entered in the judgment records and indices 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 notice 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 DelC. §2306(j) for each debtor against whom execution is requested.

(2) The Clerk shall record the time of the filing of the praecipe. Subsequently, the Clerk shall make a notation on the docket of the mailing and duplication 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) Judgment creditor has requested the United States District Court for the District of Delaware to issue a writ of execution against him 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 his personal property and real estate and ultimately sell them for credit against the debt.

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

(d) That he is not required to object but if he fails to do so, a warning that the writ of execution sought by the judgment creditor and other subsequent writs will be issued whereby the Marshal could attach his wages in appropriate cases, or seize his personal property and real estate and ultimately sell them for credit against the debt.

(e) That 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) That if the debtor has any questions about these matters he should consult a lawyer 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 two weeks following the last publication. An affidavit of publication shall be filed by the plaintiff with the Clerk.

(6) (a) 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.

(b) If the debtor objects, a hearing date will be scheduled by the Court.

(c) At the conclusion of the hearing, the Court shall make such orders as are appropriate including the assessment of costs.

Source: Delaware Superior Court Civil Rule 58.1 has been modified for federal practice.

7.3 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 L.R. 7.2 A(1).

(b) The original document authorizing confession of judgment, together with a completely legible 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 his constitutional

rights concerning the entry of judgment and the right to execution thereon.

(5) The Court shall make such orders as are appropriate including 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 L.R. 7.2 H.

Source: Superior Court Civil Rule 58.2 modified for federal practice.

VIII. ATTORNEYS

8.1 ATTORNEYS

A. 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. Any attorney admitted to practice by the Supreme Court 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 demean myself, as an attorney and counselor of this court, uprightly, and according to law; and that I will support the Constitution of the United States."

C. Attorneys admitted, practicing, and in good standing in another jurisdiction, who are not admitted to practice by the Supreme Court 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. However, unless 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: (a) resides in Delaware; or (b) is regularly employed in Delaware; or (c) 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.

D. An attorney not admitted to practice by the Supreme Court 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, upon whom all notices, orders, pleadings and other papers filed in the case shall be served and who shall be required to sign all papers filed with the Court, where the signature of an attorney is required, and attend before the Court, Clerk, United States Magistrate, Bankruptcy Judge, Auditors, Trustees, Receivers, or other officers of the Court.

E. A party not appearing pro se shall obtain representation by a member of the Bar of this Court or have its attorney associate with a member of the Bar of this Court in accordance with L.R. 8.1D within thirty 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 L.R. 9.2.

8.2 DISCIPLINE OF ATTORNEYS

A. Attorneys Convicted of Crimes.

(1) Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any Court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, the Court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or

otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the Court may set aside such order when it appears in the interests of justice so to do.

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

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

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

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

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

B. Discipline Imposed By Other Courts.

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

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

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

(b) an order to show cause directing that the attorney inform this Court within 30 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in (4) hereof that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.

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

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

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

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

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

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

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

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

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

C. Disbarment on Consent or Resignation in Other Courts.

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

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

D. Standards for Professional Conduct.

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

(2) Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Rules of Professional Conduct adopted by the Supreme Court of the State of Delaware, as amended from time to time by that Court, shall constitute misconduct and be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

E. Disciplinary Proceedings.

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

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

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

(4) Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation this Court shall set the matter for prompt hearing before one or more Judges of this Court, provided, however, that if the disciplinary proceeding is predicated upon the complaint of a Judge of this Court the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge, or, if there are less than three Judges eligible to serve, or the Chief Judge is the complainant, by the Chief Judge of the Court of Appeals for this Circuit.

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:

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

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

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

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

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

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

G. Reinstatement.

(1) *After Disbarment or Suspension.* An attorney suspended for three months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the Court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three 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 five 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 one or more Judges of this Court, provided, however, that if the disciplinary proceeding was predicated upon the complaint of a Judge of this Court the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge, or, if there are less than three Judges eligible to serve or the Chief Judge 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 he has the moral qualifications, competency and learning in the law required

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

H. Successive Petitions.

No petition for reinstatement under this Rule shall be filed within one 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. Service of any other papers or notices required by these Rules shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at the address shown on the records of this Court or to counsel or the respondent's attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding.

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. Periodic Assessment of Attorneys; Registration Statements.

[Omitted]

M. Payment of Fees and Costs.

[Omitted]

N. 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 of this Court shall determine whether the clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk of this Court shall promptly obtain a certificate and file it with this Court.

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

(3) Whenever it appears that any person convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other court, the Clerk of this Court shall, within ten 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 of this Court shall, likewise, promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this Court.

O. 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.

P. 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.

Source: Rule 8.2 is based on the Model Federal Rules of Disciplinary Enforcement as adopted by the Judicial Conference of the United States on September 21, 1978. These had previously been approved by the House of Delegates of the American Bar Association on February 14, 1978.

8.3 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 attorney of record for the party. Otherwise, no appearance shall be withdrawn except by order on a motion duly notice to each party and served on the party client, at least ten days before the motion is presented, by registered or certified mail addressed to the client's last known address.

IX. GENERAL PROVISIONS

9.1 COURT REPORTERS

Rates for preparation of trial and argument transcripts shall be fixed by order of the Court, a copy of which shall be kept in the office of the Clerk, open for inspection by members of the Bar at any time.

Source: This is former Rule 20.

9.2 SANCTIONS

A. The violations of or failure to conform with any of these Local Rules, the Federal Rules of Civil Procedure or any order of this Court, including orders relating to conferences or other appearances, and orders or rules relating to brief schedules, shall subject the offending party and his attorney, at the discretion of the Court, to appropriate discipline including, but not limited to the imposition of costs, fines, and such attorneys' fees to opposing counsel as the Court may deem proper under the circumstances.

B. Failure of counsel for any party to appear before the Court at any pretrial conference or to complete the necessary preparations therefore or to be prepared for trial on the date set may be considered an abandonment or 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. Failure to comply with the Rules of this Court relating to motions may result in the determination of the motion against the offending party.

Source: This is a new rule drafted by the Committee.

9.3 FILES, CUSTODY AND WITHDRAWAL

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 a judge and a proper receipt signed by the person obtaining the record or paper. No such order will be entered except in extraordinary circumstances.

9.4 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 investitive, ceremonial or naturalization proceedings.

9.5 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.

9.6 MONEYS IN THE CUSTODY OF THE CLERK

A. In all cases not covered by Fed.R.Civ.P. 67 money delivered into the custody of the Court shall be kept in its 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. In all cases where money is to be invested at interest pursuant to 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 into an interest bearing account with a designated local depository. It is recommended that the Clerk's Office be contacted for information and copies of proposed orders for depositing funds with the Court. All court orders depositing money pursuant to this paragraph must be personally served on either the Clerk, Chief Deputy Clerk or Financial Deputy Clerk by the party depositing the money into the Court.

C. A party who wishes its funds to be deposited into another type of account or financial institution than that used by the Court in Paragraphs A and B shall prepare a proposed order to be submitted to the Court which specifies the amount to be invested, the type of investment, the rate of interest, the length of time the money should be invested with reinvestment instructions and the name of the institution where the money is to be deposited. Said institution must meet the requirements set forth in Treasury Circular No. 176. If the Court does not accept the terms of the proposed order, the Clerk shall deposit the funds into an interest-bearing account or accounts designated by the Court. All court orders depositing money into interest-bearing accounts must be personally served on either the Clerk, Chief Deputy Clerk or Financial Deputy Clerk by the party depositing the money into the Court.

D. In all cases where money is to be invested at interest, the Clerk shall have ten (10) working days from the date the money is delivered into his custody to make the investment, during which time the obligation to invest at interest shall not attach. If the funds deposited into the Court must be held pending verification that the institution named in the court order depositing funds has pledged sufficient collateral pursuant to Treasury Circular No. 176, the Clerk shall have five (5) 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.

E. All moneys deposited into the Court whose ownership has been adjudicated or is not in dispute and has been unclaimed by the person entitled thereto for a period of one year shall be deposited into the Treasury of the United States unless otherwise ordered by the Court. Small unclaimed balances ($100 or less) which are received by the Court shall automatically be deposited into the Treasury Account for Unclaimed Moneys (CANX600) without regard to the one year limitation.

9.7 EFFECTIVE DATE OF RULES

A. These Rules shall become effective August 1, 1980. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the Court their application in a particular action pending when the rules take effect would

not be feasible or would work injustice, in which event the former procedure applies.

B. The amendments adopted by the United States District Court for the District of Delaware on November 8, 1982, shall become effective on March 1, 1983. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the Court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

C. The amendments adopted by the United States District Court for the District of Delaware on December 13, 1984, shall become effective on March 1, 1985. They govern all proceedings in actions filed after the effective date and all further proceedings in pending actions, except to the extent that in the opinion of the Court their application in a pending action would not be feasible or would work injustice, in which event the applicable former local rule shall apply.

D. The amendments adopted by the United States District Court for the District of Delaware on June 4, 1987, shall become effective on June 30, 1987. They govern all proceedings in actions filed after the effective date and all further proceedings in pending actions, except to the extent that in the opinion of the Court their application in a pending action would not be feasible or would work injustice, in which event the applicable former local rule shall apply.

TIME TABLE FOR LOCAL RULES

APPEALS Extension of Time	Clerk can sign consent orders extending for not more than *20 days* the time to file the record on appeal. (L.R. 3.6 A(6)).
ARGUMENT Application For	Application for oral argument shall be in writing and shall be made within *3 days* after the time for filing of reply brief. (L.R. 3.1 F).
ATTORNEYS' FEES Motion For	In the event no appeal is taken, any motions for fees shall be filed no later than *21 days* after the time for appeal has expired. In the event an appeal is taken, motions for attorneys' fees shall be filed no later than *21 days* after receipt of the mandate of the appellate court. (L.R. 6.3 A). Applications for 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 was not sought, motions for fees shall be filed no later than *21 days* after the settlement agreement is executed by the parties. (L.R. 6.3 C).
BILL OF COSTS Filing	The party in whose favor a judgment or decree for costs is awarded shall within *10 days* after the time for appeal has expired or within *10 days* after the issuance of the mandate, serve on the attorney for the adverse party and file with the Clerk his bill of costs. (L.R. 6.1 A(1)).
Objections	Within *10 days* after service by any party of his bill of costs, any other party may serve and file specific objections to any item. (L.R. 6.1 A(3)).
Taxation	Not less than *20 days* after receipt of a party's bill of costs, the Clerk shall tax costs and serve copies on all parties. (L.R. 6.1 A(4)).
Motion to Review	A motion to review the decision of the Clerk must be served and filed within *5 days* after receipt of the bill of costs as allowed by the Clerk. (L.R. 6.1 D).
Cross-Motion	The opposing party may within *3 days* of service of Motion to Review, file a cross motion for review of the decision by the Clerk. (L.R. 6.1 D).
BRIEFS Briefing Schedule	Unless the Court notifies the parties otherwise, the briefing and affidavit schedule for presentation of all motions shall be: (1) the opening brief and affidavits

	shall be filed within *10 days* from the filing of the motion; (2) the answering brief and affidavits shall be filed no later than *10 days* after the serving and filing of the opening brief; (3) the reply brief and affidavits shall be filed no later than *5 days* after the serving and filing of the answering brief. The above schedule shall be set aside if within *10 days* of the filing of the motion a party shall (1) file a stipulated briefing and affidavit schedule to be approved by the Court or (2) advise the Court that the parties are unable to agree upon a briefing schedule in which case the Court shall establish such schedule, or (3) advise the Court, because of the nature of the motion, all parties believe no briefing is required. (L.R. 3.1 C).
COMPUTATION OF TIME	Computation of time shall be in accordance with F.R.Civ.P. 6. (L.R. 1.3).
COSTS	See Bill of Costs.
DEPOSITIONS Notice of	Reasonable notice of taking depositions shall not be less than *5 days*. (L.R. 4.3 A).
DISCOVERY Cut-Off Date	All discovery shall be initiated so that it may be completed within the time periods provided in the scheduling order issued pursuant to Fed. R. Civ. P. 16 (b) and L.R. 4.1A unless otherwise ordered by the Court.
EXECUTIONS Returns	All executions issued by the Clerk shall, unless otherwise specially ordered, be returnable *60 days* from the date of such writ. (L.R. 6.2 A).
EXHIBITS Removal of	Unless the Court otherwise directs, upon the filing of a stipulation waiving the right to an appeal, and to a rehearing or new trial, or upon expiration of the time for an appeal, or upon final disposition of the case after an appeal, the Clerk shall notify counsel to remove the exhibits within *30 days*. (L.R. 5.1 C).
INTERPLEADER Answer to Disputed Claims	Defendant shall within *20 days* after service of any statement of claim, which they dispute, serve a separate answer to the claim of each co-defendant, unless otherwise ordered. (L.R. 7.1 B).
JUDGMENT BY CONFESSION Publication of Notice Letter for Entry	If a notice letter is returned undelivered, the person exercising the warrant of attorney shall accomplish service by publication of the notice *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 debtor's residence 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. (L.R. 7.2 F).

Objections to Entry

Objections to the entry of judgment by confession may be filed on a date set at least *2 weeks* from the mailing of the notice letter. (L.R. 7.2 D(5)).

If service of the notice was accomplished by publication, the objections may be filed on a date set at least *2 weeks* following the last publication. (L.R. 7.2 F).

Publication of Notice Letter for Issuance of Execution Process

If an execution letter is returned undelivered, the judgment creditor shall accomplish service by publication of the notice *once per week for 2 weeks* in a newspaper of general circulation in the county in which execution is to occur. If the debtor's residence 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 (L.R. 7.2 H(5)).

Objections Issuance of Execution Process

Objections to the issuance of the execution process may be filed on a date set at least *2 weeks* from the mailing of execution notice letter. (L.R. 7.2 H(3)(c)).

JURY TRIALS

Instructions

At least *3 days* before the P/T conference, the attorney for the plaintiff shall file, in triplicate, written instructions upon which the parties agree. (L.R. 5.5 A).

Special Verdict or Interrogatories, or Special Voir Dire

If the parties desires, a suggested form of special verdict or suggested interrogatories or voir dire questions must be filed at least *3 days* before the P/T conference. (L.R. 5.5 B).

Settlement

Whenever a case scheduled for jury trial is settled in advance of the actual trial, juror costs, including Marshal's fees, mileage and per diem shall be assessed equally against the parties unless the Clerk's Office is notified at least *3 full days* prior to trial. (L.R. 5.5 D).

MOTIONS

See specific topics.

PRE-TRIAL ORDER

Filing

At least *3 days* prior to the pretrial conference, the attorney for the plaintiff shall submit, in duplicate, a draft of a pretrial order signed by an attorney for each party. (L.R. 5.4 D).

REARGUMENT Motion For	A motion for reargument shall be served and filed within *10-days* after the filing of the Court's opinion or decision. (L.R. 3.3).
Answer to Motion	Within *10 days* after service of motion for reargument, the opposing party may serve and file a brief answer to each ground asserted in the motion. (L.R. 3.3).
SERVICE Affidavit of Non-Residence	In an action in which the plaintiff serves process pursuant to 10 *Del.C.* §3104, §3112 or §3113, an affidavit of the plaintiff or his attorney of the defendant's non-residence and the mailing and receipt or refusal of the notice required by the statute, with the defendant's return receipt attached, shall be filed within *10 days* of the receipt by the plaintiff or his attorney of that return receipt. The affidavit and return receipt need not be served upon the parties. (L.R. 2.1 B).
TRIAL Answer to Motion	Written opposition to a motion for trial must be served and filed within *5 days* after the filing of the motion. (L.R. 5.3).
UNLIQUIDATED DAMAGES Claim For	Upon service of a written request by another party, the party filing the pleading shall within *10 days* after service thereof furnish the requesting party with a written statement of the amount of damages claimed, which statement shall not be filed except on court order. (L.R. 2.5 B).
VOIR DIRE	See Jury Trials.