

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

IN RE: )  
)  
Amendments to Local Civil Rules 5.02, 7.05, )  
7.06, 7.07, 7.10, 12.01, 16.00, 16.01, 16.02, )  
16.06, 16.08, 26.01, 26.02, 26.03, 26.04, 26.05, )  
26.07, 30.02, 30.04, 37.01, 47.02, 47.03, 54.01, )  
54.02, 73.03, 83.I.08 (RDE II and X), 83.II.01, )  
83.VII.05, and Local Criminal Rules 12.05, 26.04, )  
57.VI.02, )  
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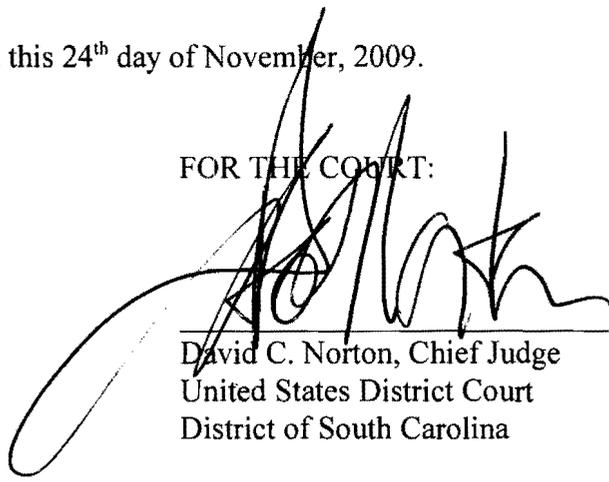
ORDER

Upon due consideration by the Court, amendments to Local Civil Rules 5.02, 7.05, 7.06, 7.07, 7.10, 12.01, 16.00, 16.01, 16.02, 16.06, 16.08, 26.01, 26.02, 26.03, 26.04, 26.05, 26.07, 30.02, 30.04, 37.01, 47.02, 47.03, 54.01, 54.02, 73.03, 83.I.08 (RDE II and X), 83.II.01, and 83.VII.05, and Local Criminal Rules 12.05, 26.04, and 57.VI.02, in the form appended hereto are adopted and promulgated by the Court to become effective at 12:01 a.m. on December 1, 2009.

Pursuant to Title 28 U.S.C. § 2071(e), Rule 83 of the Federal Rules of Civil Procedure, and Rule 57 of the Federal Rules of Criminal Procedure, proper public notice of these amendments to the Civil Local Rules and the Criminal Local Rules and the opportunity for comments will be given. Modifications necessary as a result of public comments will be considered after March 1, 2010, the expiration date for receiving said comments.

DONE AND ORDERED by the Court this 24<sup>th</sup> day of November, 2009.

FOR THE COURT:



David C. Norton, Chief Judge  
United States District Court  
District of South Carolina

Local Civil Rule 5.02: *Filing with the Clerk*. The Court is open on all days except Saturdays, Sundays, and legal holidays. During normal business hours (8:30 a.m. until 4:30 p.m.), documents may be filed with the Intake section of the Clerk of Court's office at the Courthouse in Columbia, the Hollings Judicial Center in Charleston, the Clement F. Haynsworth Federal Building in Greenville, and the McMillan Federal Building in Florence.

If for any reason it is necessary for documents to be filed with the Court between the hours of 4:30 p.m. and 12:00 midnight on any day for documents due that day, such emergency filings can be accomplished if the party making the request contacts the Clerk of Court or his designee during normal business hours to make arrangements to accept the after-hour filing. The Clerk of Court or his designee is authorized to accept the entire document, or a portion thereof, by having the party fax the document to a designated fax number. The party must also subsequently deliver the original document to the office of the Clerk of Court by 9:30 a.m. on the next day following the request. Documents received under the procedure shall be date-stamped "FILED" as of the date and time occurring on the facsimile copy.

Local Civil Rule 7.05: *Form and Content of Memoranda.*

- (A) A memorandum shall contain:
- (1) A concise summary of the nature of the case;
  - (2) A concise statement of the facts that pertain to the matter before the Court for ruling with reference to the location in the record;
  - (3) The argument (brevity is expected) relating to the matter before the Court for ruling with appropriate citations;
  - (4) Copies of any unpublished decisions, out-of-region court decisions,<sup>5</sup> or decisions published in the various specialized reporting services (*e.g.*, CCH Tax Reports, Labor Reports, UCC Reporting Service, etc.);
  - (5) Where the memorandum opposes a motion for summary judgment, a concise statement of the material facts in dispute shall be set forth with reference to the location in the record;
  - (6) Any special content required by any Federal or Local Civil Rule governing the subject matter of the motion.<sup>6</sup>
- (B) Unless an exception is granted by the Court, no memorandum shall exceed:
- (1) 35 double-spaced pages, in the case of an initial brief of any party (Local Civil Rule 7.04); and
  - (2) 15 double-spaced pages, in the case of any reply (Local Civil Rule 7.07).

The page limitation is exclusive of affidavits, supporting documentation, and copies of

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<sup>5</sup> Cases published in the South Eastern Reporter, Federal Supplement, Federal Reporter, or Supreme Court Reporter need not be provided.

<sup>6</sup> Additional content and timing requirements for specific motions are addressed in separate rules relating to the subject matter of the motion. *E.g.*, Local Civil Rules 5.03 (Filing Documents under Seal); 6.01 (Motion for Enlargement or Shortening of Time); 6.02 (Protection Requests); 16.00(C) (Stay of Deadlines and Entry of Scheduling Order); 30.04(C) (Conduct During Depositions – motion required within seven days of directing a witness not to respond); 83.I.05 (Appearances by Attorneys not Admitted in the District); and 83.I.07 (Withdrawal of Appearance).

authority required to be attached by Local Civil Rule 7.05(A)(4).

Local Civil Rule 7.06: *Responses to Motions*. Any memorandum or response of an opposing party must be filed with the Clerk of Court within fourteen (14) days of the service of the motion unless the Court imposes a different deadline. If no memorandum in opposition is filed within fourteen (14) days of the date of service, the Court will decide the matter on the record and such oral argument as the movant may be permitted to offer, if any.

Any response supported by discovery material shall specify with particularity the portion of the discovery material relied upon in support of counsel's position, summarize the material in support of counsel's position, and shall attach relevant portions of the discovery material or deposition. See Local Civil Rule 5.01.

Each response to a motion to compel discovery shall include a statement explaining why the discovery should not be had in the context of that action. Legal authorities need not be included in the statement unless unusual legal issues are present or a privilege has been asserted.

Local Civil Rule 7.07: *Replies*. Replies to responses are discouraged. However, a party desiring to reply to matters raised initially in a response to a motion or in accompanying supporting documents shall file the reply within seven (7) days after service of the response, unless otherwise ordered by the Court.

Local Civil Rule 7.10: *Draft Orders Submitted by Counsel.*

- (A) *Matters to which Applicable.* This Local Civil Rule is applicable to all draft orders or proposed findings and conclusions submitted by counsel.
- (B) *General standards.* The Court may request proposed orders from counsel in compliance with the standards set forth below and by the Fourth Circuit and United States Supreme Court:<sup>7</sup>
  - (1) Whenever practicable, the Court will provide oral or written guidance in the form of a tentative ruling, outline of matters to be addressed, or ruling as to matters not to be included.
  - (2) Any tentative ruling of the Court pursuant to Local Civil Rule 7.10(B)(1) will remain subject to modification until the final order is signed.
  - (3) Proposed orders will make reference to supporting evidence (*e.g.*, by name of witness or exhibit number) where applicable.
  - (4) Copies of proposed orders will be provided to all counsel of record at the same time and in the same manner as provided to the Court; provided, however, that if the Court requests proposed findings and conclusions to be submitted before trial, the Court may postpone the required exchange until after trial.
  - (5) Unless otherwise ordered, opposing counsel will have fourteen (14) days from receipt in which to comment on the proposed order. Comment may be provided by letter.
  - (6) Counsel are encouraged to submit orders to the Court both by hard copy and in electronic form (*i.e.*, on computer disk) to facilitate revision by the Court.

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<sup>7</sup> *Anderson v. City of Bessemer*, 470 U.S. 564, 571-73 (1985); *Aiken County v. BSP Division of Envirotech Corp.*, 866 F.2d 661, 676-77 (4th Cir. 1989).

Local Civil Rule 12.01: *Extensions of Time to Respond to a Pleading*. One extension in writing may be granted by a party to respond to an original or amended pleading in which a claim is asserted, provided the extension does not exceed the lesser of twenty-one (21) days or the number of days within which the response was originally due. *See also* Local Civil Rules 6.01 (Motions to Enlarge or Shorten Time), 29.01 (Modifications of Discovery Procedures), and 37.01 (Motions to Compel Discovery).

Local Civil Rule 16.00: *Exemptions and Stay of Deadlines.*

- (A) *Exempt Actions.* Scheduling orders will generally not be entered in any action listed in Fed. R. Civ. P. 26(a)(1)(B) (categories of actions exempted from the federal rule initial disclosure and conference requirements). To the extent discovery is appropriate in any action covered by Fed. R. Civ. P. 26(a)(1)(B), it shall be governed by Local Civil Rule 26.04 absent entry of a specific scheduling order.
- (B) *Non Exempt Pro Se Actions.* In any action in which a party is proceeding without counsel (“*pro se*”), but which is not covered by Fed. R. Civ. P. 26(a)(1)(B)(iii) (prisoner *pro se* actions), the Court’s initial order shall address whether the Fed. R. Civ. P. 26(f) conference or any other federal or local rule requirements addressed in Local Civil Rules 16.01-16.02 are waived.<sup>8</sup> Except to the extent the requirements are waived, orders in *pro se* actions shall address all deadlines listed in Local Civil Rules 16.01-16.02.
- (C) *Stay of Deadlines and Entry of Scheduling Orders.* The Court may stay entry of the scheduling order(s) and all Federal and Local Civil Rule disclosure and conference requirements pending resolution of a motion to remand or to dismiss or other dispositive motion. Any party desiring a stay on this basis shall file a separate motion to stay which shall attach a proposed order. No consultation or separate memorandum is required.

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<sup>8</sup> Due to the special concerns raised by oral communications between counsel and unrepresented (“*pro se*”) litigants, it is the general practice in this District to waive the Fed. R. Civ. P. 26(f) conference requirement when any party is proceeding *pro se*. *See also*, Local Civil Rule 7.02 (no consultation requirement in *pro se* actions). Because these concerns are not present as to written communications or submissions, it is the general practice in this District not to waive the disclosure requirements of Fed. R. Civ. P. 26(a)(1)-(3), the report requirement of Fed. R. Civ. P. 26(f), and the various requirements of Local Civil Rule 26 in a *pro se* action to which they otherwise apply. *See* Fed. R. Civ. P. 26(a)(1)(B) (exempting prisoner *pro se* actions from the 26(a)(1) requirements absent order to the contrary); Local Civil Rule 26.03(D) (addressing submission of Fed. R. Civ. P. 26(f) report when the conference requirement is waived).

Local Civil Rule 16.01: *Pre-Scheduling Order*.

- (A) Upon the appearance of a defendant, and to the extent the requirements of Fed. R. Civ. P. 26(a)(1) and (f) are not otherwise waived by the Court or Fed. R. Civ. P. 26(a)(1)(B), the Court shall either issue a tentative scheduling order which shall require a Fed. R. Civ. P. 26(f) conference and report and shall become binding absent objection after such report or, by order, set deadlines for the following:
- (1) Fed. R. Civ. P. 26(f) conference of the parties (to be held no later than forty-five (45) days after the appearance of a defendant);
  - (2) Fed. R. Civ. P. 26(a)(1) required initial disclosures (to be made no later than fourteen (14) days after the Fed. R. Civ. P. 26(f) conference);<sup>9</sup> and
  - (3) Fed. R. Civ. P. 26(f) report to the Court (to be filed no later than fourteen (14) days after the Fed. R. Civ. P. 26(f) conference).
- (B) The order shall include:
- (1) Notice to counsel that Local Civil Rule 26.03 lists additional queries to be answered in the Fed. R. Civ. P. 26(f) report and that the Court's general practices as to Scheduling Orders and Conferences are addressed by Local Civil Rule 16.02;
  - (2) Any special instructions for submission of the Fed. R. Civ. P. 26(f) report requested by the assigned judge;
  - (3) Information regarding the availability of alternative dispute resolution;
  - (4) A directive that plaintiff's counsel shall initiate scheduling of the Fed. R. Civ. P. 26(f) conference with all counsel known to plaintiff regardless of whether they have filed appearances; and
  - (5) The notice of right to consent to trial before a magistrate as discussed in Local Civil Rules 73.02(B)(1) and 73.03.

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<sup>9</sup> Pursuant to Fed. R. Civ. P. 26(a)(1), the parties may, by stipulation, agree not to make some or all of the Rule 26(a)(1) initial disclosures. If such a stipulation is made, it shall be confirmed in writing between the parties. See Local Civil Rule 29.01.

Local Civil Rule 16.02: *Scheduling Conference and Scheduling Order.*

- (A) *Conference with the Assigned Judge.* It is the normal practice in this District to issue the scheduling order based on the information received from the Fed. R. Civ. P. 26(f) report to the Court, including the disclosures required by Local Civil Rule 26.03, without further conference. If one or more parties believes a conference is justified by the particular circumstances of the case, they shall so inform the assigned judge by letter as soon as practicable.
- (B) *Trial Date.* Unless otherwise directed by the Court, all cases shall be ready for trial on the date set for jury selection. Therefore, for scheduling purposes under the Federal Rules of Civil Procedure and the Local Civil Rules of this District, the jury selection date shall be deemed the trial date.
- (C) *Content of Scheduling Order.* “[A]s soon as practicable but in any event within 90 days after the appearance of a defendant and within 120 days after the complaint has been served on a defendant” (Fed. R. Civ. P. 16(b)), the Court shall issue a scheduling order setting deadlines for the following:
- (1) Filing of motions to join parties and to amend the pleadings (Fed. R. Civ. P. 16(b)(1));
  - (2) Exchange of Fed. R. Civ. P. 26(a)(2) expert witness disclosures and filing of any related disclosure and certification required by the scheduling order;<sup>10</sup>
  - (3) Service of affidavits of records custodian witnesses proposed to be presented by affidavit at trial (*See* Fed. R. Evid. 803(6), 902(11), or 902(12) and Local Civil Rule 16.02(D)(3));
  - (4) Completion of discovery (Fed. R. Civ. P. 16(b)(3)) and filing of certification of consultation with client and opposing counsel as to the use of alternative dispute resolution as required by Local Civil Rule 16.03;
  - (5) Conclusion of alternative dispute resolution conference, if any;
  - (6) Filing of dispositive motions (Fed. R. Civ. P. 16(b)(2));

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<sup>10</sup> The majority of the judges in this District require filing of a document identifying the expert witnesses and certifying that the required disclosures have been made. This is intended to preclude disputes at trial as to whether disclosures were made. The disclosures themselves should not be filed absent order to the contrary.

- (7) Filing and exchanging of Fed. R. Civ. P. 26(a)(3) pretrial disclosures;
- (8) Filing and exchanging of Fed. R. Civ. P. 26(a)(3) objections, any objections to use of a deposition designated by another party, and any deposition counter-designations under Fed. R. Civ. P. 32(a)(4). *See* Local Civil Rule 30.03(J) (video deposition additional requirements);
- (9) Meeting, marking, and exchanging of exhibits and completion of a final exhibit list with objections noted. *See* Local Civil Rule 26.07 (instructions relating to exhibits);
- (10) Submission of Local Civil Rule 26.05 pretrial brief to the Court;
- (11) Jury selection.<sup>11</sup>

All disclosures shall be supplemented in a timely manner. In the event an action is carried over to a later trial term after pretrial disclosures are made and pretrial briefs are filed, the parties should file and serve any supplementation in a like period of time prior to the new trial term, but need not file and serve disclosures or briefs that are merely duplicative.

(D) *Timeliness of Requests and Disclosures.*

- (1) Discovery requests are timely if served in time for the response to be served within the discovery deadline set by the scheduling order.
- (2) Witnesses who are not timely identified may be excluded. All witnesses should be identified as early in the discovery process as is feasible. Witnesses identified within the last twenty-eight (28) days of the discovery period will be presumed not to be timely identified, absent a showing of good cause.
- (3) Affidavits of records custodians which a party intends to offer for authentication in lieu of live testimony shall be served no less than thirty (30) days before the close of discovery unless otherwise ordered. Objections to such affidavits must be made within fourteen (14) days after the service of the disclosure unless otherwise ordered. *See* Local Civil Rule 16.02(C)(3).

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<sup>11</sup> The trial term commences on the date of jury selection whether the action is to be tried with or without a jury. Trial terms may last from one to two months. Absent a contrary instruction from the Court, an action should be ready for trial on the date set for jury selection.

- (C) If additional parties make appearances following the issuance of the Local Civil Rule 16.01 Pre-Scheduling Order, the Clerk of Court shall immediately forward the Pre-Scheduling Order and all attachments to those parties or their legal representatives (if represented).
- (D) Any extraordinary circumstances justifying modification of these deadlines shall be brought to the attention of the assigned judge as soon as practicable.

Local Civil Rule 16.06: *Appointment of Mediator.*

- (A) *Eligibility.* A mediator may be a person who:
  - (1) Is a certified mediator under Local Civil Rule 16.12; or
  - (2) Is not a certified mediator but in the opinion of all of the parties is otherwise qualified by training or experience to mediate all or some of the issues in the action.
- (B) *Roster of Certified Mediators.* The Clerk of Court shall maintain a roster of mediators certified under Local Civil Rule 16.12 who are willing to serve in the District. A certified mediator shall notify the Court if the mediator desires to be added or deleted. The roster shall be available to the public.
- (C) *Selection of a Mediator by Agreement of the Parties.* Unless otherwise ordered, the parties must select a mediator within twenty-one (21) days after the date on which the Court issues its order referring the case to mediation.
- (D) *Appointment of Mediator by the Court.* If the parties cannot agree upon the selection of a mediator within twenty-one (21) days after the Court issues its order referring the case to mediation, the plaintiff's attorney shall advise the Court of this fact and request appointment of a mediator.
- (E) *Disqualification of Mediator.* Any party may move the Court for an order disqualifying the mediator. If the motion is granted and the mediator is disqualified, an order shall be entered appointing a replacement mediator.

Local Civil Rule 16.08: *Duties of the Parties, Representatives, and Attorneys at Mediation.*

- (A) *Attendance.* The following persons shall attend a mediation conference in person unless otherwise ordered by the Court or agreed upon by the parties and mediator:
- (1) The mediator;
  - (2) All individual parties; or an officer, director, or employee having full authority to settle the claim for a corporate party; or in the case of a governmental agency, a representative of that agency with full authority to negotiate on behalf of the agency and recommend settlement to the appropriate decision-making body of the agency;
  - (3) The party's counsel of record, if any; and
  - (4) For any insured party against whom a claim is made, a representative of the insurance carrier who is not the carrier's outside counsel and who has full authority to settle the claim.
- (B) *Identification of Matters in Dispute.* The mediator may require, prior to the scheduled mediation conference, that the parties provide brief memoranda setting forth their positions with regard to the issues that need to be resolved. The memorandum should be no more than five (5) pages in length unless permitted by the mediator. With the consent of all parties, such memoranda may be mutually exchanged by the parties.
- (C) *Confidentiality.* Communications during the mediation conferences shall be confidential. The parties, their attorneys, and other persons present shall maintain the confidentiality of the mediation and shall not rely on, introduce, or attempt to introduce as evidence in any arbitral, judicial, or other proceeding, any event, document, or communication relating in any way to the mediation.
- (D) *Finalizing Agreement.* If agreement is reached, the parties shall, before the adjournment of the mediation, reduce the agreement to writing and sign along with their attorneys. If the agreement executed by the parties and their attorneys in mediation envisions the execution of a more formal agreement, the mediator shall assign one of the parties' attorneys to prepare the formal agreement and such papers to be filed with the Court as may be necessary. Such documents shall be executed by the parties within fourteen (14) days of the date of the mediation conference. A copy shall be forwarded to the mediator.

Local Civil Rule 26.01: *Interrogatories to be Answered by Each Party*. The following information is used for purposes of assigning cases and shall be filed with the Clerk of Court and served on all parties at the time a party first appears. In removed cases, the removing defendant shall file these responses with the removal papers. All other parties shall file responses no later than fourteen (14) days after service of the notice of removal. If a party fails to file the required responses on time, the Clerk of Court shall draw the requirement to the attention of the party (or counsel) and allow fourteen (14) days to file responses. The Clerk of Court shall have the authority to extend the time for responding. Absent order to the contrary, categories of actions listed in Fed. R. Civ. P. 26(a)(1)(B) are exempt from the requirements of this Local Civil Rule.

- (A) State the full name, address, and telephone number of all persons or legal entities who may have a subrogation interest in each claim and state the basis and extent of said interest.
- (B) As to each claim, state whether it should be tried jury or nonjury and why.
- (C) State whether the party submitting these responses is a publicly owned company and separately identify: (1) each publicly owned company of which it is a parent, subsidiary, partner, or affiliate; (2) each publicly owned company which owns ten percent or more of the outstanding shares or other indicia of ownership of the party; and (3) each publicly owned company in which the party owns ten percent or more of the outstanding shares.
- (D) State the basis for asserting the claim in the division in which it was filed (or the basis of any challenge to the appropriateness of the division). *See* Local Civil Rule 3.01.
- (E) Is this action related in whole or in part to any other matter filed in this District, whether civil or criminal? If so, provide: (1) a short caption and the full case number of the related action; (2) an explanation of how the matters are related; and (3) a statement of the status of the related action. Counsel should disclose any cases which *may be* related regardless of whether they are still pending. Whether cases *are* related such that they should be assigned to a single judge will be determined by the Clerk of Court based on a determination of whether the cases: arise from the same

or identical transactions, happenings, or events; involve the identical parties or property; or for any other reason would entail substantial duplication of labor if heard by different judges.<sup>14</sup>

- (F) [*Defendants only.*] If the defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct identification.
- (G) [*Defendants only.*] If you contend that some other person or legal entity is, in whole or in part, liable to you or the party asserting a claim against you in this matter, identify such person or entity and describe the basis of said liability.

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<sup>14</sup> This information is required in addition to completion of the “related cases” block on the JS44 Civil Cover Sheet. Although the Civil Cover Sheet requires only that parties disclose *pending* related cases, this interrogatory and this District’s assignment procedures require disclosure of *any prior or pending* related case whether civil or criminal. Therefore, both categories should be disclosed in response to this interrogatory as well as on the JS 44 Civil Cover Sheet.

Local Civil Rule 26.02: *Rules for Answering Court Interrogatories*. The following rules shall be adhered to in responding to the foregoing interrogatories and completing the Fed. R. Civ. P. 26(f) report.

- (A) Only a signature by counsel is required if the party is represented; no party verification is required.
- (B) Each interrogatory shall be set forth immediately prior to the answer thereto.
- (C) Answers shall identify all attorneys representing a party by full name, district court identification number, firm name, mailing address, telephone, and facsimile numbers. While not required, an e-mail address is also requested if counsel regularly utilizes e-mail for business communications.
- (D) In the event any question cannot be fully answered after the exercise of reasonable diligence, the party shall furnish as complete an answer as possible and shall supplement as soon as is feasible.
- (E) Responses pursuant to Local Civil Rules 26.01 and 26.03 may be relied on and used in the same manner as discovery responses obtained under the Federal Rules of Civil Procedure.
- (F) The provisions of Local Civil Rules 26.01 and 26.03 shall not apply, absent order to the contrary, in actions exempted from the requirements of Fed. R. Civ. P. 26(a)(1) and (f) by Fed. R. Civ. P. 26(a)(1)(B).

Local Civil Rule 26.03: *Rule 26(f) Report.*

- (A) *Content.* In addition to the requirements set forth in Fed. R. Civ. P. 26(f) for a report to the Court, the parties shall include the following information in their Rule 26(f) report which shall be filed with the Court:
- (1) A short statement of the facts of the case;
  - (2) The names of fact witnesses likely to be called by the party and a brief summary of their expected testimony;
  - (3) The names and subject matter of expert witnesses (if no witnesses have been identified, the subject matter and field of expertise should be given as to experts likely to be offered);
  - (4) A summary of the claims or defenses with statutory and/or case citations supporting the same;<sup>15</sup>
  - (5) Absent special instructions from the assigned judge, the parties shall propose dates for the following deadlines listed in Local Civil Rule 16.02:
    - (a) Exchange of Fed. R. Civ. P. 26(a)(2) expert disclosures; and
    - (b) Completion of discovery.
  - (6) The parties shall inform the Court whether there are any special circumstances which would affect the time frames applied in preparing the scheduling order. *See generally* Local Civil Rule 16.02(C) (Content of Scheduling Order).
  - (7) The parties shall provide any additional information requested in the Pre-Scheduling Order (Local Civil Rule 16.01) or otherwise requested by the assigned judge.
- (B) *Form of Submission.* The parties are encouraged to submit a joint Fed. R. Civ. P. 26(f) report, but joint reports are not required. *See* Fed. R. Civ. P. Form 35. Any separate report shall be served on all parties.

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<sup>15</sup> Generic references to the “general common, statutory or regulatory law” of the relevant jurisdiction will not be deemed an adequate response. Neither are lengthy discussions of commonly applied claims and defenses required. For most causes of action or defenses, a single citation to a single statute or case establishing the elements will suffice.

- (C) *Exemptions.* Absent order to the contrary, this Rule shall not apply to the categories of action listed in Fed. R. Civ. P. 26(a)(1)(B) as those actions are exempt from the Fed. R. Civ. P. 26(f) conference and report requirements.
  
- (D) *Report without Conference.* In any action in which the parties are exempted from the Fed. R. Civ. P. 26(f) conference requirement, but in which the Court seeks information in the form of a Fed. R. Civ. P. 26(f) report as supplemented by the requirements of this Local Civil Rule, the parties shall respond to any query relating to agreement of the parties by stating their position as to the subject matter of the query. *See generally*, Local Civil Rule 16.00(B) (addressing special procedures in *pro se* actions).

Local Civil Rule 26.04: *Pretrial Discovery for Civil Actions Exempted from Fed. R. Civ. P. 26(a)(1)*. Pretrial discovery in all civil cases that are exempt under Fed. R. Civ. P. 26(a)(1)(B) must be completed within a period of ninety (90) days following the joinder of issues unless otherwise ordered. If any expert witnesses will be called, Fed. R. Civ. P. 26(a)(2) disclosures shall be made at least twenty-eight (28) days before the close of discovery. Fed. R. Civ. P. 26(a)(3) disclosures shall be completed as set forth in that federal rule. No otherwise applicable deadline is waived absent order to that effect.<sup>16</sup>

In other appropriate cases not covered by Fed. R. Civ. P. 26(a)(1)(B), the Court may, by order, waive some or all of the otherwise applicable requirements and direct the parties to proceed under this Local Civil Rule. *See* Local Civil Rule 16.00 (discussing non-exempt *pro se* actions).

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<sup>16</sup> Cases listed in Fed. R. Civ. P. 26(a)(1)(B) are expressly exempted from: (1) the initial disclosure requirements of Fed. R. Civ. P. 26(a)(1); (2) the conference and report requirements of Fed. R. Civ. P. 26(f); and (3) the related Fed. R. Civ. P. 26(d) bar on discovery before the conference. Numerous other deadlines set by federal and local rule (*e.g.*, Fed. R. Civ. P. 26(a)(2)-(3) and Local Civil Rule 26.05) remain in effect absent order to the contrary. *See generally*, Local Civil Rule 16.02(C) (listing most federal and local rule deadlines).

Local Civil Rule 26.05: *Civil Pretrial Briefs*. All attorneys having civil cases set for trial shall furnish the Court a pretrial brief at least seven (7) days prior to the date set for jury selection in the term of court in which the case is set for trial unless another date is ordered by the Court. The pretrial brief shall contain the following information:

- (A) The name of each attorney, district court identification number, and the full name of each firm handling the case.
- (B) A list of any motions still pending.
- (C) A brief and concise statement of the facts upon which each claim or defense is based.
- (D) Additional legal authorities upon which each claim or defense is based not listed in the Fed. R. Civ. P. 26(f) report to the Court. *See* Local Civil Rule 26.03(A)(4).
- (E) Any unusual questions of law concerning admission of evidence or procedure likely to arise in the trial of the case.
- (F) Whether the possibility of a compromise settlement has been discussed and explored with opposing counsel. State specifically whether an offer has been made and the position of each party as to settlement; if no attempt to settle has been made, state the reasons. If nonjury, counsel should not disclose settlement negotiations.
- (G) The names of the witnesses expected to be called and a summary of their anticipated testimony. Whether the exclusion of a witness or witnesses is requested pursuant to Federal Rule of Evidence 615. If no request is made herein, it shall be deemed waived.
- (H) The damages claimed should be set forth in detail, including, but not necessarily limited to:
  - (1) Where permanent injuries are claimed, their nature must be described with particularity, and plaintiff's life expectancy must be given. Attach copies of medical reports and doctors' statements where available;
  - (2) Special damages claimed must be specified in detail. Thus, in personal injury cases, medical, nursing, hospital, and similar expenses should be itemized by giving the names of persons and institutions and the amount paid to or owing each. If property damage is claimed, state the cost of repairs and names of persons making them; or, if incapable of repair, the value of the property

immediately before the accident and immediately afterwards;

- (3) If loss of earnings or profits is claimed, state the amount, the manner of computation, the period for which loss is claimed, and the name of employer, if applicable;
  - (4) In death cases, state the age, employment, rate of earnings, marital status, and life expectancy of deceased; also, the names, ages, and the relationship of the dependents;
  - (5) The defendant should specify its position concerning damages.
- (I) Where a contract or a writing is involved:
- (1) If a written contract or a writing is involved, a copy should be furnished to the Court, and the portions in controversy particularized, with a statement as to the claimed construction thereof, and performance or nonperformance thereof, or obligation in connection therewith;
  - (2) If the contract is oral, its substance should be given; and where there is a dispute concerning its terms, the controverted terms should be specified and the same issues covered as above mentioned as to written contracts.
- (J) Where the relief sought is not covered by (H) above or is in addition thereto, state the nature of the relief sought and the reason(s) such relief should or should not be granted.
- (K) Counsel's best estimate of the time required for trial.
- (L) Any special matters to which the Court's attention is sought or required.
- (M) Any reason why the case cannot be tried at the term for which it is set for trial.
- (N) The final list of exhibits intended to be used in the trial of the case with any objections noted. This list shall be served on opposing counsel.
- (O) Attached to the pretrial brief should be counsel's request for voir dire questions (*see* Local Civil Rule 47.04) and request for jury instructions. Copies of the requests for voir dire questions and jury instructions shall be served on opposing counsel. If the requests for voir dire and jury instructions are not submitted seven (7) days prior to the selection of the jury, counsel shall be deemed to have waived the right to submit voir dire

questions and jury instructions, unless made necessary by events at trial.

It is understood that absent order to the contrary, the information required by Local Civil Rule 26.05(A)-(M) is for the sole use of the Court and will not be furnished to opposing counsel without consent of counsel. Therefore, these portions of the trial brief ((A)-(M)) are not served absent order to the contrary. Information contained in (N) and (O) shall be served on opposing parties.

Proposed findings and conclusions should not be submitted with the pretrial brief unless requested by the Court.

Local Civil Rule 26.07: *Trial Exhibits.*

- (A) In addition to the Fed. R. Civ. P. 26(a)(3) duty to file and serve exhibit lists and objections and serve objections thereto, and unless otherwise ordered by the Court, attorneys for each side shall meet at least seven (7) days prior to the date set for submission for pretrial briefs for the purpose of marking and exchanging all exhibits (other than solely for impeachment purposes) intended to be used at trial. Where possible, counsel shall agree on the admissibility of all trial exhibits. In the event there is an unresolved objection to any exhibit, the attorneys shall notify the Court of such objection in the pretrial brief.

Failure to meet, mark, and exchange exhibits may be deemed a waiver of the right to use such exhibits. Failure to raise a timely objection under Fed. R. Civ. P. 26(a)(3) or to preserve that objection by compliance with this Local Civil Rule may be deemed a waiver of the right to raise objections at trial.

Objections shall be specific but succinct, stating the legal grounds and short argument. For example, "lack of foundation -- plaintiff cannot demonstrate that these documents are business records kept in the regular course of business; relevancy -- these documents relate to a corporation other than the defendant in this action," would be sufficient.

- (B) All exhibits must be numerically marked with exhibit stickers consistent with the type provided by the Clerk of Court. An exhibit list must be filed in all cases. (*See also* Fed. R. Civ. P. 26(a)(3) (pretrial disclosures) and Local Civil Rule 83.II.01 (handling of exhibits).)
- (C) This Rule requires a physical exchange of exhibits marked as they will be used at trial. Once these exhibit designations are made, exhibits may be excluded or withdrawn but *shall not be renumbered*. A meeting to exchange exhibits and to determine if agreement can be reached as to any objections to exhibits shall be held on or before the "meet, mark, and exchange" date. If marked exhibits have not previously been physically exchanged, they shall be exchanged on this date.

Local Civil Rule 30.02: *Objections to Telephone Depositions*. A party who objects to a telephonic deposition shall make the objections known at least fourteen (14) days prior to the taking of the deposition. If the objection is not resolved by the parties or the Court before the scheduled deposition date, the deposition shall be stayed pending resolution of the dispute. *See also* Fed. R. Civ. P. 30(b)(7).

Local Civil Rule 30.04: *Conduct During Depositions.*<sup>17</sup>

- (A) At the beginning of each deposition, deposing counsel shall instruct the witness to ask deposing counsel, rather than the witness's own counsel, for clarifications, definitions, or explanations of any words, questions, or documents presented during the course of the deposition. The witness shall abide by these instructions.
- (B) All objections, except those which would be waived if not made at the deposition under Fed. R. Civ. P. 32(d)(3), and those necessary to assert a privilege, to enforce a limitation directed by the Court, or to present a motion pursuant to Fed. R. Civ. P. 30(d), shall be preserved.
- (C) Counsel shall not direct or request that a witness not answer a question, unless that counsel has objected to the question on the ground that the answer is protected by a privilege<sup>18</sup> or a limitation on evidence directed by the Court or unless that counsel intends to present a motion under Fed. R. Civ. P. 30(d)(1). In addition, counsel shall have an affirmative duty to inform their clients that unless such an objection is made, the question must be answered. Counsel directing that a witness not answer a question on those grounds or allowing their clients to refuse to answer a question on those grounds shall move the Court for a protective order under Local Civil Rule 26(c) or 30(d)(3) within seven (7) days of the suspension or termination of the deposition. Failure to timely file such a motion will constitute waiver of the objection, and the deposition may be reconvened.
- (D) Counsel shall not make objections or statements which might suggest an answer to a witness. Counsel's objections shall be stated concisely and in a non-argumentative and non-suggestive manner, stating the basis of the objection and nothing more.
- (E) Counsel and witnesses shall not engage in private, "off the record" conferences during depositions or during breaks or recesses regarding the substance of the testimony at the deposition, except for the purpose of deciding whether to assert a privilege or to make an objection or to move for a protective order.

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<sup>17</sup> The restrictions and requirements in this Local Civil Rule relating to counsel are applicable to any person who is conducting or defending a deposition, including a *pro se* litigant. Participants are also subject to similar restrictions applicable to "any person" under Fed. R. Civ. P. 30.

<sup>18</sup> For purposes of this Local Civil Rule, the term "privilege" includes, but is not limited to, attorney-client privilege, work product protection, and trade secret protection.

- (F) Any conferences which occur pursuant to, or in violation of, Local Civil Rule 30.04(E) are proper subjects for inquiry by deposing counsel to ascertain whether there has been any witness coaching and, if so, to what extent and nature.
- (G) Any conferences which occur pursuant to, or in violation of, guideline Local Civil Rule 30.04(E) shall be noted on the record by the counsel who participated in the conference. The purpose and outcome of the conference shall be noted on the record.
- (H) Deposing counsel shall provide to opposing counsel a copy of all documents to be shown to the witness during the deposition, either before the deposition begins or contemporaneously with the showing of each document to the witness. If the documents are provided (or otherwise identified) at least seven (7) days before the deposition, then the witness and the witness's counsel do not have the right to discuss the documents privately during the deposition. If the documents have not been so provided or identified, then counsel and the witness may have a reasonable amount of time to discuss the documents before the witness answers questions concerning the document.
- (I) If an objecting party or deponent demands, after good faith consultation pursuant to Local Civil Rule 7.02, that the deposition be suspended pursuant to Fed. R. Civ. P. 30(d), the assigned judge's office shall be contacted to allow that judge to resolve the matter telephonically, if possible. If the assigned judge is not available, that judge's standing instructions for resolution of such matters, which may include referral to a magistrate or another judge, shall be followed. These instructions shall be available from the judge's chambers and the docketing clerk.
- (J) Violation of this Local Civil Rule shall be deemed to be a violation of a court order and shall subject the violator to sanctions under Fed. R. Civ. P. 37(b)(2).

Local Civil Rule 37.01: *Motion to Compel Discovery.*

- (A) *Timeliness of Motion.* Motions to compel discovery must be filed within twenty-one (21) days after receipt of the discovery response to which the motion to compel is directed or, where no response has been received, within twenty-one (21) days after the response was due. If counsel are actively engaged in attempts to resolve the discovery dispute, they may agree to extend the time to comply with the discovery request so long as the extension does not place the due date beyond thirty (30) days before the deadline for completion of discovery as set by the scheduling order. *See also* Local Civil Rule 29.01 (Modifications of Discovery Procedure). This extension will automatically extend the deadline for the motion to compel by an equal amount of time. The extension shall be confirmed in writing. In the event a later motion to compel is filed, the correspondence confirming the extension shall be attached.
  
- (B) *Memoranda and Hearings.* Motions to compel discovery shall be filed in compliance with Local Civil Rule 7.04. The relevant discovery requests and responses, if any, shall be filed as supporting documentation. Motions to compel may be heard at the discretion of the Court.

Local Civil Rule 47.02: *Use of Juror Questionnaires*. The Court may require potential jurors to respond to written questionnaires and may make the responses available to counsel or parties with cases on the relevant trial roster seven (7) days prior to jury selection. Counsel or any other persons obtaining juror questionnaire responses must ensure that the information contained therein is utilized solely for the purpose of evaluating potential jurors for a pending case and is not disseminated for any other purpose. The Clerk of Court shall institute procedures to draw these requirements and responsibilities to the attention of persons obtaining the questionnaire responses by completing the Juror Questionnaire/List Request Form. Any person desiring to obtain the information for any other purpose must petition the Court so that an appropriate hearing can be conducted.

Local Civil Rule 47.03: *Jury Lists*. Within seven (7) days of the date the jury is scheduled to appear, the Clerk of Court may furnish a copy of the list to counsel or parties with cases on the relevant trial roster with an approved Juror Questionnaire/List Request Form. The list shall set out the name, city of residence, sex, race, and year of birth of each juror. The jurors and their families shall not be contacted either directly or indirectly by counsel or counsel's agents. For purposes of this Local Civil Rule, "families" shall include natural, adopted and stepchildren, brothers, sisters, nieces, nephews, aunts, uncles, parents, grandparents, and spouses. If it is deemed necessary, the Court may order the jury list sealed. In such cases, the jury list shall be given out only by order of the Court.

Local Civil Rule 54.01: *Assessment of Jury Costs*. Whenever any civil action scheduled for a jury trial is settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, all juror costs, including Marshal's fees, mileage, and per diem, may be assessed equally against the parties or otherwise assessed as determined by the Court, unless the Clerk of Court is notified at least one day prior to the date on which the action is scheduled for trial or in sufficient time to notify jurors that their presence will not be required.

Local Civil Rule 54.02: *Petition for and Interest on Attorney's Fees.*

- (A) *Petition for Attorney's Fees.* Any petition for attorney's fees shall comply with the requirements set forth in *Barber v. Kimbrell's, Inc.*, 577 F.2d 216 (4th Cir. 1978), and shall state any exceptional circumstances and the ability of the party to pay the fee. Any memorandum in opposition to a petition for attorney's fees must be filed with the Clerk of Court within fourteen (14) days of the service of the petition. *See also* Local Civil Rule 83.VII.07 (attorney's fees in social security cases).

*[Prior time limits located in this section were deleted effective December 1, 2000. Counsel should note that the time limits for attorney fee applications found in Fed. R. Civ. P. 54 are significantly shorter than previously set by the predecessor to this Local Civil Rule.]*

- (B) *Interest on Attorney's Fee Awards Entered after Judgment.* When attorney's fees are granted by order entered after entry of judgment and unless otherwise directed by the Court, the Clerk of Court shall: (a) apply the same interest rate to the attorney's fee award as applies to the underlying judgment; and (b) run interest from the next day following the date of entry of the order awarding fees. *See* Fed. R. Civ. P. 58(a)(1)(C) (a separate judgment is not required for an order disposing of a motion for attorney's fees).

Local Civil Rule 73.03: *Special Provisions for Consent for Reference of Civil Cases under 28 U.S.C. § 636(c).*

- (A) *Notice.* Unless otherwise directed by the Court, the Clerk of Court shall notify the parties in all civil cases that they may consent to have a Magistrate Judge conduct any and all proceedings in the case and order the entry of a final judgment. Notice may be provided by attachment of an appropriate form document to the scheduling order or pre-scheduling order. In categories of cases in which scheduling orders are not generally issued (*i.e.*, cases exempt under Fed. R. Civ. P. 26(a)(1)(B)) and which are not exempted by the Court from this requirement, the Clerk of Court will forward the notice to all parties after a defendant appears.
- (B) *Execution of Consent.* The parties may consent by submitting a proposed consent to reference signed by all parties.
- (C) *Approval.* After the consent forms have been signed and filed, the Clerk of Court shall transmit a proposed order of reference to the District Judge to whom the case has been assigned for approval in his or her discretion.

Local Civil Rule 83.I.08: *Rules of Disciplinary Enforcement ("RDE")*.

*RDE RULE II*  
*DISCIPLINE IMPOSED BY OTHER COURTS*

- (A) 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, inform the Clerk of Court in writing within fourteen (14) days of such action. *See supra* LCR 83.I.08(B) (Clerk of District Court shall inform Clerk of Bankruptcy Division).
- (B) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been subjected to public discipline by another court, this Court may impose reciprocal or other discipline pursuant to the procedures set forth below. Prior to imposing any discipline, the Court shall issue a notice directed to the attorney containing:
  - (1) A copy of the judgment or order from the other court; and
  - (2) An order to show cause directing that the attorney informs this Court within thirty (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 (D) hereof that the imposition of the identical discipline by this Court would be unwarranted and the reasons therefor.
- (C) 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.
- (D) Upon the expiration of thirty (30) days from service of the notice issued pursuant to the provisions of (B) above, this Court shall impose the identical discipline unless the respondent-attorney demonstrates, or this Court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:
  - (1) That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
  - (2) 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

- (3) That the imposition of the same discipline by this Court would result in grave injustice; or
  - (4) 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.
- (E) 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.
- (F) This Court may at any stage appoint counsel to prosecute the disciplinary proceedings or defend a respondent-attorney. *See infra* RDE V(A).
- (G) If an attorney admitted to practice before this Court is disbarred or suspended by the Supreme Court of South Carolina, such suspension or disbarment shall be immediately effective in this court. The nature and term of discipline shall be identical unless this Court determines that the misconduct justifies a more severe disciplinary action, in which case the attorney will be given notice and an opportunity to demonstrate that the imposition of a more severe disciplinary action is unwarranted.

Local Civil Rule 83.I.08: *Rules of Disciplinary Enforcement ("RDE")*.

*RDE RULE X  
DUTIES OF THE CLERK OF COURT*

- (A) Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk of Court shall determine whether the clerk of court in which such conviction occurred has forwarded a certificate of such conviction to this Court or to the South Carolina Supreme Court or its disciplinary counsel. If a certificate has not been so forwarded, the Clerk of Court shall promptly obtain a certificate and file it with this Court.
- (B) Upon being informed that an attorney admitted to practice before this Court has been subjected to public discipline by another court, the Clerk of Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court, and, if not, the Clerk of Court shall promptly obtain a certified copy or exemplified copy of the disciplinary judgment or order and file it with this Court.
- (C) 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 Court, within fourteen (14) days of that conviction, disbarment, suspension, censure, or disbarment on consent, shall 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 addresses of the defendant or respondent.
- (D) The Clerk of 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.
- (E) The Clerk of Court shall be responsible for circulating all notices relating to disciplinary action to all judges of this Court, including all magistrate, bankruptcy and district judges, as well as the Clerk of the Bankruptcy Division.

Local Civil Rule 83.II.01: *Handling of Exhibits*. The Clerk of Court shall be the custodian of all exhibits admitted into evidence. However, during any civil or criminal proceeding, the Court may order an attorney or a law enforcement agency to take possession of any exhibit(s) and be responsible for the safekeeping of the exhibit(s).

Upon the entry of final judgment, the Clerk of Court may, at any time following the expiration of thirty (30) days, notify the attorneys of record and the parties that the Clerk of Court intends to dispose of the exhibits in the manner indicated in the notice. If no attorney of record or a party in interest takes custody of or interposes an objection within fourteen (14) days of the posting of the notice, the Clerk of Court shall be authorized to dispose of the exhibits in the manner stated, unless otherwise ordered by the Court.

In the event of an appeal in a case involving exhibits that could not be mailed to the appellate court or stored in the Clerk of Court's facilities, the Court may, upon request of the Clerk of Court, transfer custody of these exhibits to the attorney or law enforcement agency offering the exhibit. Those exhibits not transmitted as part of the record on appeal should be retained and safeguarded by the attorney to be made available for use by the appellate court upon request.

Local Civil Rule 83.VII.05: *Commissioner's Brief*. The Commissioner will be allowed forty (40) days after service of the petitioner's brief to file its responsive brief. No extensions will be granted. The petitioner's reply brief, if any, will be filed within fourteen (14) days after service of the Commissioner's brief.

Local Criminal Rule 12.05: *Responses to Motions*. Any memorandum or response of an opposing party must be filed with the Clerk of Court as soon as possible but not later than the earlier of fourteen (14) days after service of the motion or one full business day prior to the pretrial conference, unless the Court imposes a different deadline.

Local Criminal Rule 26.04: *Pretrial Submissions.*

- (A) Examination of Jurors. The court shall conduct the examination of prospective jurors. All proposed voir dire questions must be submitted for the court's review seven (7) days prior to the selection of the jury. Copies of the requests for voir dire shall be served on opposing counsel.
- (B) Jury Instructions. All proposed jury instructions must be submitted for the court's review seven (7) days prior to the beginning of trial. Copies of the government's proposed jury instructions shall be served on opposing counsel. Proposed jury instructions from the defense are to be held *in camera* until all testimony is concluded.
- (C) Sanctions for Noncompliance. The Court may, in its discretion, impose a monetary or other sanction on counsel or the party in lieu of imposing the penalty of waiver.

Local Criminal Rule 57.VI.02: *Requests for State Custody*. If custody of a defendant awaiting trial in this District is requested by any State authority, the Marshal will only surrender custody of such defendant if authorized to do so by the United States District Judge to whom the defendant's case has been assigned for trial or other disposition. In the absence of an emergency request, the authorization shall be requested by the following procedure:

- (A) The requesting State must deliver to the Marshal a specific writ signed by the judge of a court of competent jurisdiction. Such writ shall include an express direction that the defendant will be promptly returned to the Marshal at the State's expense upon conclusion of the matter for which the defendant is sought. A counterpart order signed by a United States District Judge as to whether the State writ will be honored shall be submitted as well.
- (B) The Marshal shall notify both the United States Attorney and the defendant's counsel of the request and allow each a period of seven (7) days in which to consent or object. The seven-day (7-day) period may be waived.
- (C) The appropriate United States District Judge will determine whether the State's request will be granted, deferred or denied. In so doing, the Court shall consider the Speedy Trial Act, the Interstate Agreement on Detainers, and any other relevant factors. If said Judge determines to honor the State's request, the order shall so indicate.