LOCAL CIVIL RULES

for the

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

(with revisions through October 2007)

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SCOPE AND PURPOSE OF LOCAL CIVIL RULES

1.01: *Scope*. These Local Civil Rules of practice shall govern the conduct of the United States District Court for the District of South Carolina, except when the conduct of this Court is governed by federal statutes and rules. These rules shall be cited: "Local Civil Rule_____DSC."

1.02: *Suspension or Modification*. For good cause shown in a particular case, the Court may suspend or modify any Local Civil Rule.

1.03: *Modification and Implementation of Federal Rules.*

[Deleted effective December 1, 2000.]

1.04: *District Court Web Site*. This District maintains a web site (www.scd.uscourts.gov) from which the federal and local rules of procedure and related materials may be obtained. Frequently requested information such as court phone numbers and addresses, as well as copies of each judge's standard orders, may also be obtained from the web site.

DIVISION ASSIGNMENT AND TRANSFER

3.01: *Venue in Civil Cases*.

(A) *Division Assignment*. Except for actions by prisoners[1] and social security cases[2], all civil cases must be assigned to that division of the district:

(1) where a substantial part of the events or omissions giving rise to the claim occurred, where any natural defendant resides or where any corporate/other organization defendant does business relating to the events or omissions alleged; or

(2) if none of the criteria in (A)(1) apply, then where any natural plaintiff resides or where any corporate/other organization plaintiff does business relating to the events or omissions alleged; or

(3) in other cases not governed by the foregoing, where any corporate/other organization defendant resides.[3]

(B) *Endorsement and Certification*. Counsel must endorse on the Complaint the division where the case is assignable. The endorsement of counsel as to the division where such case is assignable will constitute a certification by the counsel that the case is properly assigned in compliance with this rule.

(C) *Transfer between Divisions*. Any case may be transferred for case management or trial from one division to another division on motion of any party for good cause shown or *sua sponte* by the Court.

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[1] See Local Civil Rule 83.VIII.01, *et seq*.

[2] See Local Civil Rule 83.VII.01, *et seq*.

[3] See 28 U.S.C. § 1391(c).

SUMMONS

4.01: *Timely Service of Summons and Complaint.* In the event a pleading asserting a claim is not served on each party against whom a claim is asserted within one hundred twenty (120) days after the filing of the pleading, the party asserting a claim shall advise in writing the Court and all parties previously served at the expiration of said one hundred twenty-day (120) period of the identity of the party not served and why service has not been effected.

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

5.01: *Filing of Discovery*. Interrogatories under Rule 33 Fed. R. Civ. P. and responses thereto, Requests under Rule 34 Fed. R. Civ. P. and responses thereto, and Requests for Admissions under Rule 36 Fed. R. Civ. P. and responses thereto (collectively "discovery material") shall be served upon other counsel or parties, but shall not be filed with the Court. Transcripts of depositions taken under Rule 30 or Rule 31 Fed. R. Civ. P. (collectively "deposition") shall not be filed with the Court. The party responsible for serving the discovery material or taking the deposition shall retain the original and become the custodian thereof.

If relief is sought with respect to any discovery material or deposition, a copy of the relevant portion of the discovery material or deposition shall be filed with the Court contemporaneously with the filing or presentation of the request for relief. *See* Local Civil Rules 7.04 and 7.06.

If discovery material or depositions are to be used at trial or are necessary to resolution of a pretrial motion which might result in a final order on any issue, the portions to be used shall be filed with the Clerk of Court at the outset of the trial or at the filing of the motion insofar as their use can be reasonably anticipated.

When original discovery material or an original deposition is needed for appeal purposes and is not in the record, upon application and order of the Court the necessary discovery material or deposition shall be filed with the Clerk of Court.

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 business 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 first business 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.

5.03: *Filing Documents under Seal.* Absent a requirement to seal in the governing rule, statute, or order, any party seeking to file documents under seal shall follow the mandatory procedure described below. Failure to obtain prior approval as required by this Rule shall result in summary denial of any request or attempt to seal filed documents. Nothing in this Rule limits

the ability of the parties, by agreement, to restrict access to documents which are not filed with the Court. *See* Local Civil Rule 26.08.

(A) A party seeking to file documents under seal shall file and serve a "Motion to Seal" accompanied by a memorandum, *see* Local Civil Rule 7.04, and the attachments set forth below in (B) and (C). The memorandum shall: (1) identify, with specificity, the documents or portions thereof for which sealing is requested; (2) state the reasons why sealing is necessary; (3) explain (for each document or group of documents) why less drastic alternatives to sealing will not afford adequate protection; and (4) address the factors governing sealing of documents reflected in controlling case law. *E.g.*, *Ashcroft v. Conoco, Inc*., 218 F.3d 288 (4th Cir. 2000); and *In re Knight Publishing Co.*, 743 F.2d 231 (4th Cir. 1984).

(B) The motion shall be accompanied by (1) a non-confidential descriptive index of the documents at issue and (2) counsel's certification of compliance with this rule.

(C) A separately sealed attachment labeled "Confidential Information to be Submitted to Court in Connection with Motion to Seal" shall be submitted with the motion. The sealed attachment shall contain the documents at issue for the Court's *in camera* review and shall not be filed. The Court's docket shall reflect that the motion and memorandum were filed and were supported by a sealed attachment submitted for *in camera* review.

(D) The Clerk shall provide public notice of the Motion to Seal in the manner directed by the Court. Absent direction to the contrary, this may be accomplished by docketing the motion in a manner that discloses its nature as a motion to seal.

(E) No settlement agreement filed with the Court shall be sealed pursuant to the terms of this Rule.

5.04: *Filing Documents by Electronic Means.* Documents may be filed, signed, and verified by electronic means to the extent and in the manner authorized by the Court's Electronic Case Filing Policies and Procedures Manual and the Attorney User Manual. A document filed by electronic means in compliance with this Local Rule constitutes a written document for the purposes of applying these Local Rules, the Federal Rules of Civil Procedure, and the Federal Rules of Criminal Procedure.

5.05: *Service of Documents by Electronic Means.* Filed documents may be served by electronic means, including through the Court's transmission facilities, or as otherwise provided and authorized by the Court's Electronic Case Filing Policies and Procedures Manual and the Attorney User Manual. Transmission of the Notice of Electronic Filing constitutes service of the filed document upon each attorney in the case who is registered as Filing User in accordance with

procedures established by the Court. Any other attorney, party, or parties shall be served according to these Local Rules, the Federal Rules of Civil Procedure, and the Federal Rules of Criminal Procedure.

MOTIONS FOR EXTENSION, ENLARGEMENT, OR SHORTENING OF TIME

6.01: *Motion for Enlargement or Shortening of Time, Extension of Discovery*. Any application, including a proposed consent order, for enlargement or shortening of time (except as otherwise allowed by consent under Local Civil Rules 12.01, 29.01, and 37.01) must be accompanied by an affidavit or other statement giving the reasons therefor.

Motions for extension should also include the following information: (1) the date of the current deadline; (2) whether the deadline has previously been extended; (3) the number of additional days requested, as well as the proposed date of the new deadline; and (4) whether the extension requested would affect other deadlines.[4] A proposed amended scheduling order in the form used by the assigned judge, including all deadlines not then expired, shall be attached to the motion. Motions for extension of time for completion of discovery will be granted only in unusual cases and upon a showing that the parties have diligently pursued discovery during the originally specified period. This showing requires a specification of the discovery (including depositions by witness name and date) which has been completed and the depositions (including witness name) and other discovery which remain to be completed.

6.02: *Protection Requests*. A request for protection from trial or other appearance shall be directed to the judge to whom an action is assigned. Such requests should: (1) identify the action(s) in which protection is sought by short caption and civil action number; (2) identify the dates and reasons for which protection is sought; (3) provide any other information relevant to the request; and (4) comply with any other requirements imposed by the judge to whom the action is assigned.

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[4] Scheduling orders generally allow a minimum amount of time between the various deadlines listed in Local Civil Rules 16.01 and 16.02 to ensure the orderly progress of the case. (*E.g.*, sufficient time is required between the motion deadline and trial date to brief and resolve any motion.)

PLEADINGS ALLOWED: FORM OF MOTIONS

7.01: *Filing of Motions*. All motions shall be filed with the Clerk of Court.

7.02: *Duty to Consult before Filing any Motion*. Absent exemption in the governing Federal or Local Civil Rule or as set forth below, all motions shall contain an affirmation by the movant's counsel that prior to filing the motion he or she conferred or attempted to confer with opposing counsel and attempted in good faith to resolve the matter contained in the motion. If a conference could not be held despite an attempt to do so, counsel shall explain why such conference could not be held. Counsel is under no duty to consult with a *pro se* litigant. The following motions are excluded from this Local Civil Rule:

(A) Motion to dismiss;

(B) Motion for summary judgment;

(C) Motion for new trial or judgment as a matter of law;

(D) Other similar dispositive motions; and

(E) Motions filed in real estate mortgage foreclosure cases.

7.03: *Motions to be Promptly Filed.* Attorneys are expected to file motions immediately after the issues raised thereby are ripe for adjudication.

7.04: *Supporting Memoranda*. All motions made other than in a hearing or trial or to compel discovery shall be timely filed with an accompanying supporting memorandum which shall be filed and made part of the public record. However, unless otherwise directed by the Court, a supporting memorandum is not required if a full explanation of the motion as set forth in Local Civil Rule 7.05 is contained within the motion and a memorandum would serve no useful purpose. Where appropriate, motions shall be accompanied by affidavits or other supporting documents.

Any motion to compel discovery shall set forth the grounds for the motion, including a statement explaining why the discovery should be had within the context of the action (where the motion challenges objections) or the relevant dates of service and facts demonstrating noncompliance or supporting a challenge to the sufficiency of the response. Legal authorities need not be included in the statement unless unusual legal issues are present or a privilege has been asserted. Relevant portions of the discovery material shall be filed with the motion. *See* Local Civil Rule 5.01.

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,[5] 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.[6]

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

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[5] Cases published in the South Eastern Reporter, Federal Supplement, Federal Reporter, or Supreme Court Reporter need not be provided.

[6] 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 five 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).

7.06: *Responses to Motions*. Any memorandum or response of an opposing party must be filed with the Clerk of Court within fifteen (15) days of the service of the motion unless the Court imposes a different deadline. If no memorandum in opposition is filed within fifteen (15) 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.

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 five (5) days after service of the response, unless otherwise ordered by the Court.

7.08: *Hearings on Motions*. Hearings on motions may be ordered by the Court in its discretion. Unless so ordered, motions may be determined without a hearing.

7.09: *Frivolous or Delaying Motions*. Where the Court finds that a motion is frivolous or filed for delay, sanctions may be imposed against the party or counsel filing such motion.

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:[7]

(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.

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[7] *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).

(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 ten (10) business 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.

TIME

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 (20) 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).

PRETRIAL CONFERENCES, SCHEDULING, AND MANAGEMENT

In order to accommodate the requirements of Fed. R. Civ. P. 16 (scheduling conferences and orders) and to facilitate compliance with Fed. R. Civ. P. 26(a)(1) (required initial disclosures) and 26(f) (conference of the parties and report to the Court) in cases not exempted below, this District adopts the procedures set out in Rules 16.01-16.02 below.

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)(E) (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)(E), 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)(E)(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.[8] 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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[8] 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)(E) (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).

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)(E), 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);[9] 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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[9] 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.

(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.

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;[10]

(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));

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[10] 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.

(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));

(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.[11]

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 thirty (30) days of

[11] 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.

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).

16.03: *Alternative Dispute Resolution ("ADR") Statement and Certification.* Within the time set forth in the Scheduling Order (Local Civil Rule 16.02(C)(4)), counsel for each party shall file and serve a statement certifying that counsel has: (1) provided the party with any materials relating to ADR which were required to be provided by the Local Civil Rule 16.01 Pre-Scheduling Order; (2) discussed the availability of ADR mechanisms with the party; and (3) discussed the advisability and timing of ADR with opposing counsel.

16.04: *Mediation: Definitions.*

(A) *Mediation*. An informal process in which a third-party mediator facilitates settlement discussions between parties. Any settlement is voluntary. In the absence of settlement, the parties lose none of their rights to trial by judge or jury.

(B) *Mediator*. A neutral person who acts to encourage and facilitate the resolution of a pending civil action. The mediator has no authority to make a decision or impose a settlement. Mediators are normally compensated by the parties. *See* Local Civil Rule 16.11.

16.05: *Actions Subject to Mediation*. All civil actions filed in the District are subject to mediation under these Local Civil Rules. Parties may, however, decline to participate in mediation by so notifying the Court.

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 (20) 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 (20) 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.

16.07: *The Mediation Conference*.

(A) *When the Conference is to be held*. Unless otherwise ordered, the initial mediation conference shall be held within thirty (30) days of the agreement upon or order appointing a mediator. Unless otherwise ordered, mediation shall be completed within thirty (30) days after the initial mediation conference.

(B) *Discovery, Motions, and Trial*. The case will not be called for trial during the period allotted for completion of mediation as set by these Local Civil Rules or Court order. Extensions of time allotted for mediation shall be obtained from the Court only on a showing of good cause. Except by order of the Court, the mediation conference shall not be cause for delay of other proceedings in the case, including the completion of discovery, the filing and hearing of motions, or any other matter which would delay the trial of the case following the period allotted for mediation.

(C) *Privacy*. Mediation conferences are private and reserved for the parties and their representatives. Other persons may attend only with the permission of all the parties and the mediator.

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 ten (10) days of the date of the mediation conference. A copy shall be forwarded to the mediator.

16.09: *Sanctions for Failure to Attend Mediation Conference.* If a person fails to attend a duly ordered mediation conference without good cause, the Court may impose upon the party or the party's principal any lawful sanctions, including, but not limited to, the payment of attorney's fees, mediator's fees, and expenses incurred by persons attending the conference, and any other sanction authorized by Rule 37(b) of the Federal Rules of Civil Procedure.

16.10: *Authority and Duties of Mediators*.

(A) *Authority of Mediators*. The mediator shall at all times be authorized to control the conference and the procedures to be followed.

(B) *Duties*. The mediator shall set up the mediation conference. The mediator shall define and describe the following to the parties at the beginning of the conference:

(1) The process of mediation;

(2) The difference between mediation and other forms of conflict resolution;

(3) The fact that the mediation conference is not a trial; the mediator is not a judge, jury, or arbitrator; and the parties retain the right to trial if they do not reach a settlement;

(4) The inadmissibility of conduct and statements as evidence in any arbitral, judicial, or other proceeding;

(5) The circumstances under which the mediator may meet alone with either of the parties or with any other person;

(6) Whether and under what conditions communications with the mediator will be held in confidence during the conference;

(7) The duties and responsibilities of the mediator and the parties;

(8) The fact that any agreement will be reached by mutual consent of the parties; and

(9) The costs of the mediation conference.

(C) *Private Consultation/Confidentiality*. The mediator may meet and consult separately with any party or parties or their counsel during the conference. Confidential information disclosed to a mediator by parties or by witnesses in the course of mediation shall not be divulged by the mediator.

(D) *No Waiver of Privilege*. No communication by a party or attorney to the mediator in private session shall operate to waive any attorney-client, work product, or other privilege.

(E) *Mediator not to be called as Witness*. Except when ordered by the Court for exceptional circumstances shown, the mediator shall not be listed or called as a witness or be compelled by subpoena or otherwise to divulge any records or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports, and other documents received or created by the mediator while serving in that capacity shall be confidential.

(F) *Duty of Impartiality*. The mediator has a duty to be impartial and to advise all parties of any circumstances bearing on possible bias, prejudice, or partiality.

(G) *Declaring Impasse*. It is the duty of the mediator to determine when an impasse exists in the mediation or when the mediation should end. A mediation cannot be unilaterally ended without the permission of the mediator.

(H) *Reporting Results of Conference*. The mediator shall, within thirty (30) days of conclusion of the mediation, forward a completed Alternative Dispute Resolution Tracking Form to the attention of the ADR Program Director.

(I) *Statistical Data*. The Clerk of Court may require additional statistical data from the mediator or parties.

(J) *Immunity*. The mediator shall not be liable to any person for any act or omission in connection with any mediation conducted under these Local Civil Rules.

16.11: *Compensation of the Mediator*.

(A) *By Agreement*. When the mediator is stipulated to by the parties, compensation shall be agreed upon between the parties and the mediator.

(B) *By Court Order*. When the mediator is appointed by the Court, the mediator shall be compensated by the parties at an hourly rate set by agreement of the parties or by the appointing Court.

(C) *Payment of Compensation by the Parties*. Unless otherwise agreed to by the parties or ordered by the Court, fees for the mediation conference shall be paid in equal shares per party. Payment shall be due upon conclusion of the conference unless other arrangements are made with the mediator, or unless a party advises the mediator of his or her intention to file a motion to be exempted from payment of mediation fees pursuant to Local Civil Rule 16.11(D).

(D) *Indigent Cases*. A party may move before the Court to be exempted from payment of mediation fees based upon indigency. Applications for indigency shall be made and considered by the Court before the mediation conference has been scheduled. *See* Local Civil Rule 16.12(F).

16.12: *Mediator Certification and Decertification*. The Clerk of Court or designee may receive applications for certifications of persons to be appointed as mediators. Approval shall require the consent of at least one district judge. The application shall be on a form approved by the Clerk of Court. For certification, a person must:

(A) Be admitted to practice law in this state, in the highest court of another state, or of the District of Columbia and meet the following qualifications:

(1) Have practiced law for at least five (5) years;

(2) Have received a juris doctorate degree or its equivalent from a law school approved by the American Bar Association or the South Carolina Supreme Court under Rule 402(c)(3), South Carolina Appellate Court Rules, as now in force or as hereafter modified;

(3) Be a member in good standing in each jurisdiction where he or she is admitted to practice law;

(4) Not currently be disbarred or suspended from the practice of law and not be the subject of any pending disciplinary proceedings in any jurisdiction;

(5) Not have been, within the last five (5) years, denied admission to a bar for character or ethical reasons or disciplined for professional misconduct; and

(6) If not a member of the South Carolina Bar, agree to be subject to the Rules of Professional Conduct, Rule 407, South Carolina Appellate Court Rules, as now in force or as hereafter modified; to the Rule on Disciplinary Procedure, Rule 413, South Carolina Appellate Court Rules, as now in force or as hereafter modified, and/or Local Civil Rule 83, to the same extent as an active member of the South Carolina Bar practicing before this Court.

(B) Have completed a civil mediation training program approved by the South Carolina Supreme Court or its designee, or this District Court, or any other equivalent training program or experience;

(C) Demonstrate familiarity with the statutes, rules, and practice governing mediation conferences in the District of South Carolina;

(D) Be of good moral character and adhere to any ethical standards applicable to attorneys or mediators practicing before this Court, or in the courts of the State of South Carolina;[12]

(E) Pay any administrative fees established for mediators by the District of South Carolina; and

(F) Agree to provide mediation to indigents without pay (or with pro rata reduction in fees to be paid if fewer than all parties are indigent).

It is the duty of every person approved as a mediator to notify the Clerk of Court of any change in his or her ability to satisfy all requirements for mediators set forth above.

Certification may be revoked or not renewed at any time it is shown to the satisfaction of the chief judge or his or her designee that a mediator no longer meets the above qualifications or has not faithfully observed these Local Civil Rules.

16.13: *Expedited Trial*. The following procedure is established to encourage the expeditious trial of matters likely to require a minimum of preparation time and judicial involvement before trial. Expedited trial will generally mean trial between three and eight months after joinder of the issues.

16.14: *Expedited Trial: Request and Conference*.

(A) Counsel may, at any time, request the Court to set the case for an expedited trial.

(B) The request should specify the anticipated scope of discovery and time required for completion, the number and type of any anticipated pretrial motions, and the anticipated date by which the matter can be ready for trial. Unless the request is included with the Fed. R. Civ. P. 26(f) report (as supplemented by Local Civil Rule 26), counsel shall confer with opposing counsel regarding the above matters, and the nature of any differences shall be set forth in the request for expedited trial.

(C) Upon receipt of the request, the Court will consider the same and may schedule a conference[13] on the request. The Court may, however, act on the request on the basis of correspondence and/or documents in the file.

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[12] This Court hereby adopts and incorporates standards established for mediators practicing in the courts of South Carolina as may be currently in existence or hereafter adopted or modified. Mediators who violate these Local Civil Rules or applicable ethical standards are subject to discipline under the procedures set out in Local Civil Rule 83 for discipline of attorneys.

[13] The conference may be conducted in person or by telephone.

(D) Opposing counsel may submit additional information in favor of or opposing expedited trial at or before the conference, including additional information by way of answers to the Fed. R. Civ. P. 26(f) report to the Court. *See* Local Civil Rule 26.03.

16.15: *Expedited Trial Conference*. The following matters should be considered at the conference.

(A) Whether the case is appropriate for expedited trial;

(B) Limitations on discovery;

(C) Limitations on motions (including limitation of supporting memoranda);

(D) Limitations on witnesses;

(E) Appropriateness of mediation;

(F) The trial date;

(G) Modifications to the pretrial brief requirements;

(H) Any other appropriate matters.

PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

17.01: *Representation*. Representation of minor and incompetent parties in a civil action shall be in accordance with Fed. R. Civ. P. 17(c). Appointments of guardians ad litem by any state court shall satisfy the requirements of the Federal Rules of Civil Procedure unless the Court finds that the interests of the parties so represented are not being adequately protected.

17.02: *Settlement or Dismissal of Actions*. No civil action to which a minor or incompetent person is a party shall be compromised, settled, discontinued, or dismissed without an Order of Approval entered by the Court. It shall be the responsibility of counsel for the minor or incompetent parties to prepare a proposed Order of Approval for submission to the Court. The Order of Approval shall bear the written consent of (1) counsel for all the parties to the action; (2) the legal representative of minor or incompetent parties; and (3) in the case of minors, at least one of the natural parents or persons standing *in loco parentis*. Unless otherwise ordered by the Court, the Order of Approval shall contain statements as to the following:

(A) That all parties are properly represented and are properly before the Court, that no questions exist as to misjoinder or nonjoinder of parties, and that the Court has jurisdiction over the subject matter and the parties;

(B) If the minor or incompetent parties are plaintiffs, a summary of contentions sufficient to show that the complaint states a claim upon which relief can be granted; if the minor or incompetent parties are defendants, a statement of contentions sufficient to show that no affirmative defenses could clearly be raised in bar of recovery;

(C) A summary of services rendered by counsel for the minor or incompetent parties, along with an opinion as to the fairness and reasonableness of the settlement, if any; and

(D) In cases involving claims for personal injuries asserted by minor or incompetent parties, an estimate of actual and foreseeable medical, hospital and related expenses, and a statement by an examining physician setting forth the nature and extent of the plaintiff's injuries, extent of recovery, and prognosis.

17.03: *Approval of Counsel Fees and Payment of Judgments*. In its Order of Approval, the Court shall approve or fix the amount of the fee to be paid to counsel for the minor or incompetent parties and make appropriate provision for the payment thereof. The Order of Approval shall also provide the manner in which judgments, if any, are to be paid and may make specific provisions for the payment of medical, hospital, and similar expenses when allowed by applicable law.

[Former Local Civil Rule requirements as to automatic disclosures have been significantly modified in compliance with Federal Rule changes effective December 1, 2000. The former Local Civil Rule exemptions from automatic disclosure and expert witness disclosure requirements have been eliminated.]

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 ten (10) 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 ten (10) 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)(E) 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.[14]

(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.

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)(E).

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[14] 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.

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;[15]

(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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[15] 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)(E) 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).

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)(E) 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 thirty (30) 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.[16]

In other appropriate cases not covered by Fed. R. Civ. P. 26(a)(1)(E), 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).

26.05: *Civil Pretrial Briefs.* All attorneys having civil cases set for trial shall furnish the Court a pretrial brief at least five (5) business 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.

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[16] Cases listed in Fed. R. Civ. P. 26(a)(1)(E) 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).

(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 five (5) 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.

26.06: *Supplementation of Civil Pretrial Briefs and Disclosures.* The information required by Local Civil Rules 26.05 and 26.07 may be amended or supplemented as necessary if the case is not reached for trial during the designated term or if other circumstances require amendment or supplementation.

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 five (5) business 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.

26.08: *Protective Orders and Agreements.* There is no requirement for prior judicial approval of protective agreements intended to limit access to and use of materials gained in discovery. Protective agreements or orders which address the filing of documents with the Court shall, however, require compliance with Local Civil Rule 5.03, or such other procedures as the Court directs, before any document is filed under seal. Discovery materials protected by a court order issued pursuant to Fed. R. Civ. P. 26(c) shall not be filed without compliance with Local Civil Rule 5.03 unless the order provides other procedures to satisfy the requirements of governing case law. *See* Local Civil Rule 5.03.

26.12: *Disclosure*. Any non-governmental corporate party to an action in this Court shall file a statement identifying all of its parent corporations and listing any publicly held company that owns ten percent (10%) or more of the party's stock. A party shall file a statement with its initial pleading filed in the Court and shall supplement this statement within a reasonable time of any change in the information.

STIPULATIONS REGARDING DISCOVERY PROCEDURE

29.01: *Modifications of Discovery Procedure.* Where these Local Civil Rules or the Federal Rules of Civil Procedure allow modifications by written stipulation of discovery procedures or limitations (*i.e.*, Fed. R. Civ. P. 26 and 29), the stipulation may be accomplished by correspondence. The procedural modifications may include the granting of an extension of time to respond to written discovery requests, but no extension may place the due date less than thirty (30) days before the end of the discovery period. *See also* Local Civil Rule 37.01. Note, however, that Fed. R. Civ. P. 29 specifically prohibits stipulations extending the time for responding to discovery "if [the extension] would interfere with any time set for completion of discovery, for hearing of a motion, or for trial." The latter may be made only with approval of the Court. *See also* Local Civil Rules 6.01 and 37.01.

DEPOSITIONS UPON ORAL EXAMINATION

30.01: *Limitations on Depositions.* A deposition taken pursuant to Fed R. Civ. P. 30(b)(6) shall be considered as one deposition regardless of the number of witnesses presented to address the matters set forth in the notice.

30.02: *Objections to Telephone Depositions.* A party who objects to a telephonic deposition shall make the objections known at least ten (10) 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).

30.03: *Video Depositions*.

[Deleted effective October 7, 2005. Topic covered by Federal Rule of Civil Procedure 30(b)].

30.04: *Conduct During Depositions.*[17]

(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[18] 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

[17] 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.

[18] 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.

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 five (5) business 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.

(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 three (3) business 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).

DEPOSITIONS UPON WRITTEN QUESTIONS

31.01: *Limitations on Depositions.*

[Deleted effective December 1, 2000.]

USE OF DEPOSITIONS IN COURT PROCEEDINGS

32.01: *Excerpts from Depositions to be Offered at Trial.*

[Deleted effective December 1, 2000.]

INTERROGATORIES TO PARTIES

33.01: *Limitations on Interrogatories.*

[Deleted effective December 1, 2000.]

FAILURE TO MAKE DISCLOSURE OR COOPERATE IN DISCOVERY: SANCTIONS

37.01: *Motion to Compel Discovery.*

(A) *Timeliness of Motion*. Motions to compel discovery must be filed within twenty (20) days after receipt of the discovery response to which the motion to compel is directed or, where no response has been received, within twenty (20) 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.

37.02: *Sanctions.*

[Deleted effective December 1, 2000]

SELECTION OF JURORS

47.01: *Jury Selection Plan*. A copy of the Jury Selection Plan may be obtained from the Clerk of Court.

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) working 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.

47.03: *Jury Lists*. Within seven (7) working 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.

47.04: *Examination of Jurors*. The Court shall conduct the examination of prospective jurors. If the voir dire questions are not timely submitted with the pretrial brief, counsel shall have waived the right to submit voir dire questions. *See* Local Civil Rule 26.05(O) (pretrial brief requirements). Requests for voir dire should not repeat questions covered by any juror questionnaire used for the relevant term of court. *See* Local Civil Rule 47.02.

47.05: *Contact with Trial Jurors*.

(A) Under no condition shall an attorney or party litigant personally or through any person acting for such attorney or party litigant ask questions of or make comments to a member of that jury or the members of the family (for definition of family members, *see* Local Civil Rule 47.03, *supra*) of such a juror until after such juror has been permanently dismissed from jury service and has left the Courthouse premises.[19]

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[19] A juror is not dismissed from jury service until all cases for which the juror has been selected for the term are concluded.

(B) Attorneys or party litigants who choose to contact a juror after such juror has been permanently dismissed and has left the Courthouse premises, do so at their own peril. Under no circumstances shall an attorney, party litigant, or any person acting therefor, ask questions of or make comments to a member of that jury that are calculated to harass or embarrass a juror or to influence the juror's actions in future jury service.

47.06: *Responsibilities of United States Marshal*. The United States Marshal shall be responsible for preserving the integrity of all juries.

NUMBER OF JURORS - PARTICIPATION IN VERDICT

48.01: *Number of Jurors.*

[Deleted effective December 1, 2000]

JUDGMENTS AND COSTS

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 full business 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.

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 fifteen (15) 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 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).

54.03: *Application for Costs*. The items set forth below detail the costs normally allowed in the District when filing Bill of Costs pursuant to 28 U.S.C. § 1920 and Fed. R. App. P. 39(e) and are subject to final approval by the Court. Bill of costs shall be filed within the time limits set by Fed. R. Civ. P. 54(d)(2)(B) for applications for attorney's fees. Noncompliance with this time limit shall be deemed a waiver of any claim for costs.

(A) *Fees of the Clerk of Court* (28 U.S.C. §§ 1914, 1917, and 1920(1); Fed. R. App. P. 39(e)).

(1) *Taxable*:

(a) Filing fee of complaint;

(b) Filing fee of notice of appeal;

(c) Filing fee in state court in a removal case;

(d) Costs for preparation of record on appeal;

(e) Fee charged by out-of-district court for filing notice to take *de bene esse* depositions;

(f) Premium paid to supply cost bond required for removal of a case to a federal court;

(g) Service fees for summons and complaint with attachments thereto;

(h) Service fees for trial subpoenas for witnesses taxed as costs; and

(i) Service fees for deposition subpoenas for depositions taxed as costs.

(2) *Not taxable*:

(a) Miscellaneous fees not listed above; and

(b) Filing fee in case instituted by the United States.

(B) *Fees of the United States Marshal* (28 U.S.C. §§ 1921 and 1920(1)).

(1) *Taxable*:

(a) Service fees for summons and complaint, attachment, and other process;

(b) Service fees for trial subpoenas;

(c) Service fees for deposition subpoenas for depositions taxed as costs;

(d) Expenses of caring for property attached, etc. (actual amount incurred, not necessarily the amount of the required deposit);

(e) Sales commission; and

(f) Insurance premium for indemnity of Marshal required for maritime attachments.

(2) *Not taxable*: Service fees for discovery subpoenas.

(C) *Fees of Court Reporter* for all or any part of the transcript necessarily obtained for use in the case (28 U.S.C. §§ 1920(2) and 1915(e); Fed. R. App. P. 39(e)).

(1) *Taxable*:

(a) The costs of the original of a trial transcript, daily transcript, and of a transcript of matters prior or subsequent to trial are taxable:

(i) When requested by the Court (which is rare). Mere acceptance by the Court does not constitute a request;

(ii) At trial stage when, prior to incurring expense, the Court determines that it is necessary;

(iii) When prepared pursuant to stipulation of parties with agreement to tax as costs; and

(iv) When used on appeal.

(b) If an *in forma pauperis* party prevails and the United States paid for the transcript, it is taxed in favor of the United States.

(2) *Not taxable*:

(a) Costs of copies;

(b) Costs of daily copy solely for convenience of counsel.

When there is no appeal, the trial transcript is rarely taxed unless necessity is shown because of the facts and complexities of a particular controversy.

(D) *Fees and Disbursements for Printing* (28 U.S.C. § 1920(3); Fed. R. App. P. 39(c); Fourth Circuit Local Civil Rule 12). These are not usually involved in trial court proceedings, but rather are taxed by the United States Court of Appeals and allowance added to costs recoverable in trial court (28 U.S.C. § 1923(c), superseded by Fed. R. App. P. 39(c)).

(E) *Fees of Witnesses* (itemized on reverse side of AO133 (28 U.S.C. §§ 1821 and 1920(3))). Fees provided by statute at the rate in effect when the witness appeared are strictly adhered to. No distinction is made between fact and expert witnesses. Allowances for mileage and subsistence are set by the Administrator of General Services and are available from the Financial Administrator, Clerk's Office at Columbia, or from the divisional offices.

(1) *Attendance Fee*. A fee as set out at 28 U.S.C. § 1821(b) is allowed for each day (1) in attendance and (2) necessarily occupied in going to and returning from the place of attendance.

(2) *Travel*. When subsistence is allowed, only one round trip is allowed unless the Court adjourns for a weekend or for some other reason.

(a) By car -- round trip at the authorized rate.

(b) By common carrier -- actual expenses paid to and from witness's residence by shortest route.

The maximum amount of mileage allowed for a nonresident witness appearing at a deposition is one hundred (100) miles each way (Fed. R. Civ. P. 45(b)(2)).

(3) *Miscellaneous Allowances*. Toll charges, bridges, tunnels, ferries, taxicab between place of lodging and carrier terminals, and parking fees.

(4) *Subsistence Allowance*. As authorized by the Administrator of General Services. High-cost area claims require receipts for lodging and, when practicable, other items of subsistence (other than meals) which are in excess of ten dollars ($10).

Subsistence is allowed for witnesses who live too far to be expected to travel to and from their residence daily while in attendance. When the hearing or trial begins at 9:30 a.m. or earlier, the evening before is allowed. When the witness is released late in the day, the evening of the day the witness testifies is allowed.

(5) *Corporate Parties*. Stockholders, directors, officers, and employees of a corporate party are taxed unless the witness is the real party in interest.

(6) *Not taxable*:

(a) Discovery witness fees and the subpoena service fees;

(b) Expert witness fees.

(F) *Fees for Exemplification and Copies of Papers* (necessarily obtained for use in case) (28 U.S.C. § 1920(4)).

(1) *Taxable:*

(a) Cost of *one* copy of a document is taxed when introduced into evidence in lieu of original (which is either not available for introduction into evidence or not introduced at request of opposing counsel);

(b) The fee of an official for certification or proof regarding nonexistence of a document is taxable;

(c) The cost of securing translation if the document translated is taxable or the translation is necessary for exemplification of matters before the Court;

(d) Maps and one copy of photographs introduced into evidence;

(e) The cost of patent file wrappers and prior art patent are taxable at the rate charged by the patent office. *But see* (F)(2)(a) below.

(2) *Not taxable*:

(a) Expenses for services of persons checking patent office records to determine what should be ordered are not taxable;

(b) Costs of compiling summaries, computations, and statistical comparisons;

(c) The salaries and time of persons who prepare copies and exhibits;

(d) Copies of exhibits obtained for counsel's own use; and

(e) Costs of models are not taxable unless previously authorized by order even though introduced as an exhibit.

(G) *Docket Fees* (under 28 U.S.C. § 1923 (28 U.S.C. § 1920(5)).

(1) The prevailing party is entitled to twenty dollars ($20) on trial or final hearing (includes a default whether entered by Court or Clerk).

(2) Two and 50/l00 dollars ($2.50) is allowed for each deposition (in whole or in part) read into evidence.

(3) Additional attorney's fees. The Clerk of Court taxes only the fees provided by 28 U.S.C. § 1923. The Court in its discretion allows the attorney's fees authorized by statute or rule and determines what is reasonable. If attorney's fees are allowed, they are included in the taxable costs.

(H) *Costs Incident to Taking Depositions* (28 U.S.C. § 1920(2)). This includes stenographer's fee, costs of original transcription, and postage.

(1) Depositions used at trial in lieu of live witness;

(2) Discovery depositions introduced as part of the record on motion for summary judgment if the prevailing party in the case prevails on summary judgment;

(3) Depositions used during trial for impeachment purposes where the party using the deposition for impeachment prevails;

(4) Depositions not admitted at trial but which were "reasonably necessary" at the time of their taking. *See, e.g.*, *LaVay Corporation v. Dominion Federal Savings & Loan Association*, 830 F.2d 522, 528 (4th Cir. 1987).

DISTRICT COURTS AND CLERKS

55.01: *Orders and Judgments*. The Clerk of Court or a deputy clerk is authorized to enter judgments by default as provided for in Fed. R. Civ. P. 55(a) and 55(b)(1) without further direction of the Court pursuant to Fed. R. Civ. P. 58. However, such action may be suspended, altered, or rescinded by the Court for cause shown.

STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

62.01: *Stay by Supersedeas Bond*. The appellant shall not be entitled to a stay of execution of the judgment pending appeal unless the appellant executes a bond with good and sufficient sureties, approved by the Clerk of Court, payable to the Clerk of Court with condition, failing the appeal, to satisfy such judgment as the appellate court may render, when the judgment is:

(A) For the payment of money only, in an amount equal to 150% of the amount of the judgment if the judgment does not exceed ten thousand dollars ($10,000) or 125% if the judgment exceeds ten thousand dollars ($10,000);

(B) For the payment of money and also for the performance of some other act or duty, or for the recovery or sale of property or the possession thereof, in such sum, in addition to the sum required for money judgments only in (A) above, as the trial court may in writing prescribe; or if appellant wishes to supersede the judgment as to the payment of money only, the requirements of (A) above shall apply;

(C) Only for the performance of some act or duty or for the recovery or sale of property or the possession thereof (or if the judgment includes the payment of money and appellant does not wish to supersede the judgment in that respect), in such sum as the trial court may in writing prescribe.

The approval of the supersedeas bond by the Clerk of Court, unless contested by the opposing party, shall constitute a stay of the judgment when the judgment is for the payment of money only or the payment of money and some other act and the appellant wishes to supersede the judgment as to the payment of money only. In the event the Clerk of Court declines to approve the bond or approval is contested, the requirements of Local Civil Rule 62.02 below shall apply.

62.02: *Stay Must Ordinarily be Sought in the First Instance in Trial Court; Motion for Stay in Appellate Court*. In a civil action, application for a stay of the judgment or order of a trial court pending appeal or for approval of a supersedeas bond or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the trial court. A motion for such relief may be made to the appellate court in which the appeal is pending, but the motion shall show that application to the trial court for the relief sought is not practicable or that the trial court has denied an application or has failed to afford the relief which the applicant requested, with the reasons given by the trial court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon; if the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements or copies thereof.

SEIZURE OF PERSON OR PROPERTY

64.01: *Seizure of Person or Property*. All acts and duties pertaining to the seizure of person or property as provided by the law of the State of South Carolina authorized to be done by a judge or the clerk of the state court may be done in like cases by a judge of this Court or the Clerk of this Court, respectively.

SECURITY: PROCEEDINGS AGAINST SURETIES

65.01: *Temporary Relief Order*. At the hearing to consider a request for temporary relief, the moving party shall provide a proposed order for the Court's consideration, as prescribed in Fed. R. Civ. P. 65(d).

DEPOSIT IN COURT

67.01: *Deposit of Registry Funds in Interest-Bearing Accounts (Fed. R. Civ. P. 67).*

(A) *Receipt of Funds.*

(1) No money shall be sent to the Court or its officers for deposit into the Court's registry without a Court order by the presiding judge in the case or proceeding.

(2) All money ordered to be paid into the Court or received by its officers in any case pending or adjudicated shall be deposited with the Treasurer of the United States in the name and to the credit of this Court pursuant to 28 U.S.C. § 2041 through depositaries designated by the Treasury to accept such deposit on its behalf.

(3) The party making the deposit or transferring funds to the Court's Registry shall serve the order permitting the deposit or transfer on the Clerk of Court.

(B) *Investment of Registry Funds.*

(1) Funds on deposit with the Court are to be placed in interest-bearing instruments in the Court Registry Investment System (CRIS) administered through the United States District Court for the Southern District of Texas, which shall be the only investment mechanism authorized.

(2) Under CRIS, monies deposited in each case under Local Civil Rule 67.01(A) will be "pooled" together with those on deposit with the Treasury to the credit of other courts in the CRIS and used to purchase Treasury Securities, which will be held at the Federal Reserve Bank, Dallas/Houston Branch, in a safekeeping account in the name and to the credit of the Clerk, United States Court for the Southern District of Texas, hereby designated custodian for the Court Registry Investment System.

(3) An account for each case will be established in the CRIS titled in the name of the case giving rise to the investment in the System. Income received from fund investments will be distributed to each case based on the ratio each account's principal and income has to the aggregate principal and income total in the Fund each week. Weekly reports showing the income earned and the principal amounts contributed in each case will be prepared and distributed

to each court participating in CRIS and made available to litigants and/or their counsel.

(C) *Registry Investment Fee*.

(1) The custodian is authorized and directed by this Local Civil Rule to deduct, for maintaining accounts in the Fund, the registry fee. The proper registry fee is to be determined on the basis of the rates published by the Director of the Administrative Office as approved by the Judicial Conference.

(2) If registry fees were assessed against the case under the old 45-day requirement prior to the deposit into CRIS, no additional registry fee will be assessed.

CONDEMNATION OF PROPERTY

71.01: *Land Condemnation Proceedings*. The Clerk of Court is authorized to establish a master file in condemnation actions where the United States files separate actions and a single declaration of taking in the master file shall constitute the same in each of the actions to which it relates.

UNITED STATES MAGISTRATE JUDGES

73.01: *Authority of United States Magistrate Judges.*

(A) *Full-Time and Part-Time Magistrate Judges*. In addition to the powers and duties prescribed by 28 U.S.C. § 636, each United States Magistrate Judge is authorized to perform the following duties:

(1) Conduct extradition proceedings in accordance with 18 U.S.C. § 3184;

(2) Try persons accused of and sentence persons convicted of misdemeanors committed within this District in accordance with 18 U.S.C. § 3401.

(B) *Full-Time Magistrate Judges* are authorized to conduct any or all proceedings in any civil case which is filed in this Court in accordance with 28 U.S.C. § 636(c), upon consent of the parties and order of the District Judge to whom the case was assigned, pursuant to Local Civil Rule 73.02(B)(1).

73.02: *Assignment of Duties to Magistrate Judges.*

(A) *Criminal Cases*.

(1) *Misdemeanor Cases*. All misdemeanor cases shall be assigned by the Clerk of Court to the full-time or part-time Magistrate Judge designated for the division in which the case is brought.

(2) *Felony Cases*. All felony cases shall be assigned by the Clerk of Court to the full-time or part-time Magistrate Judge designated for the division in which the case is brought for the conduct of an arraignment and for such pretrial proceedings as are directed by the District Judge.

(B) *Civil Cases*.

(1) *Consensual References*. Where the parties consent to trial and disposition of a case by a full-time Magistrate Judge pursuant to 28 U.S.C. § 636(c), such case shall, upon the order of the District Judge to whom it was assigned, be reassigned to the full-time Magistrate Judge designated for the division in which the case is brought.

(2) *Automatic References*. The Clerk of Court shall assign the following matters to a full-time Magistrate Judge upon filing:

(a) All motions for remand, dismissal, or judgment on the pleadings in actions filed under 42 U.S.C. § 405(g) for review of an administrative determination regarding entitlement to benefits under the Social Security Act and related statutes;

(b) All motions for leave to proceed *in forma pauperis*;

(c) All pretrial proceedings in applications for post-conviction review under the provisions of 28 U.S.C. § 2241 *et seq*., 28 U.S.C. § 2254 *et seq*., and mandamus relief as well as for relief sought by persons challenging any form of custody under other federal jurisdictional statutes. This Local Civil Rule does *not* apply to actions arising under 28 U.S.C. § 2255.

(d) All pretrial proceedings in prisoner petitions for relief under 42 U.S.C. § 1983;

(e) All pretrial proceedings involving litigation by individuals proceeding *pro se*;

(f) All pretrial proceedings in prisoner petitions which do not challenge prison conditions, conditions of confinement, or any other form of custody;

(g) All pretrial proceedings involving litigation arising out of employment discrimination cases invoking federal statutes which proscribe unfair discrimination in employment, including 42 U.S.C. §§ 1981-1986; 42 U.S.C. § 2000e-2; 42 U.S.C. § 2000e-16(a); 29 U.S.C. § 206(d); 29 U.S.C. §§ 621-634; 29 U.S.C. § 794; 29 U.S.C. § 2601 *et seq.* (Family Medical Leave Act); or 42 U.S.C. § 12101 *et seq*. (Americans with Disabilities Act).

(C) *Method of Case Assignment*.

(1) *Civil Cases*. For the convenience of administration, unless otherwise specified herein or by specific order of the Chief Judge of the District, references of civil cases shall be assigned by division as follows:

(a) The Magistrate Judge(s) in Columbia shall be assigned cases filed in the Columbia, Orangeburg, Aiken, and Rock Hill Divisions.

(b) The Magistrate Judge(s) in Charleston shall be assigned cases filed in the Charleston and Beaufort Divisions.

(c) The Magistrate Judge(s) in Greenville shall be assigned cases filed in the Greenville, Spartanburg, Anderson, and Greenwood Divisions.

(d) The Magistrate Judge(s) in Florence shall be assigned cases filed in the Florence Division.

(e) If there is more than one Magistrate Judge assigned to a given courthouse, the cases covered by (a) - (d) above shall be assigned to those Magistrate Judges on a rotational basis.

(f) All cases challenging conditions of confinement filed by a federal prisoner incarcerated in this judicial district shall be assigned to all Magistrate Judges on a rotational basis.

(2) *Social Security Cases*. Social Security cases shall be assigned to the full-time Magistrate Judges on a rotational basis without regard to division of filing.

(3) *Post-Conviction Review and Prisoner Cases.* Petitions for habeas corpus relief, mandamus relief and civil rights cases described in Local Civil Rule 73.02(B)(2)(c) and (d) shall be assigned to full-time Magistrate Judges on a rotational basis without regard to division of filing.

(4) *Other Prisoner Cases.* Complaints filed by prisoners not challenging conditions of confinement shall be assigned on a divisional basis to a full-time Magistrate Judge.

(5) *Employment Discrimination Cases*. Employment discrimination cases shall be assigned in the division where they are filed. Cases filed in the Columbia, Rock Hill, Orangeburg, and Aiken Divisions will be divided on a rotational basis between the full-time Columbia Magistrate Judges.

(6) *Pro Se Litigants with Prior Cases.* New cases filed by *pro se* litigants with prior cases shall, if possible, be assigned to the Magistrate Judge and District Judge to whom the prior case was assigned unless the prior case was consolidated due to common issues of law or fact.

(7) Nothing in this subsection shall limit the district-wide jurisdiction of a Magistrate Judge, prohibit a District Judge from assigning a specific matter to a specific Magistrate Judge, or prohibit the reassignment of a specific matter between Magistrate Judges on the concurrence of the Magistrate Judges and District Judge involved.

(D) *General*. Nothing in these Local Civil Rules shall preclude the Court or a District Judge from reserving any proceeding for conduct by a District Judge, rather than a Magistrate Judge. The Court, moreover, may by order modify the method of assigning proceedings to a Magistrate Judge as changing conditions may warrant.

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)(E)) 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.

RULES BY DISTRICT COURT

ATTORNEYS AND STUDENT PRACTICE

83.I.01: *Roll of Attorneys*. The Bar of this Court consists of those attorneys heretofore admitted and those attorneys hereafter admitted as prescribed by Local Civil Rule 83.I.01-.03.

83.I.02: *Eligibility*. A member in good standing of the Bar of the Supreme Court of South Carolina is eligible for admission to the Bar of this Court.

83.I.03: *Procedure for Admission*. Before being presented to the District Court for taking the required oath, an applicant for admission shall certify in a written application that such applicant:

(A) Is a member in good standing of the Bar of the Supreme Court of South Carolina;

(B) Has studied the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Evidence, the South Carolina Rules of Professional Conduct (Rule 407 of the South Carolina Appellate Court Rules), and the Local Civil and Criminal Rules of the Court; and

(C) Has either completed the required trial experiences listed in Rule 403 of the South Carolina Appellate Court Rules for the examination and admission of persons to practice in South Carolina or has completed a "judicial clerkship with equivalent courtroom experience" as defined below and certified by the judge for whom the clerkship was served.

A "judicial clerkship with equivalent courtroom experience" requires that all of the following be satisfied: (1) the applicant must have served for at least one year as a law clerk to a federal or state judge; (2) the applicant must have observed the equivalent of at least four complete trials (jury selection through verdict); (3) the applicant must have observed at least six oral arguments of motions or appeals; and (4) at least two of the trial equivalents and two of the oral arguments must have been in the federal court system. An applicant may demonstrate satisfaction of these requirements by submitting a certification signed by the judge for whom the clerkship was served in the form provided by the Clerk of Court. To the extent an applicant relies on experiences beyond the clerkship to satisfy the requirements of (2)-(4) above, he or she should attach a partially completed state court form (S.C.C.A. Rule 403(e)) or comparable documentation of the required courtroom experience.

In addition to these certifications, the written application shall contain the certification of two attorneys who are members in good standing of the Bar of this Court that, to the best of their

knowledge, information, and belief, the applicant is of good moral character and professional reputation and meets the requirements for admission.

The applicant shall file the application, accompanied by a fee of one hundred and fifty dollars ($150), with the Clerk of this District Court. If the application is in order and upon approval of the Court, the Clerk of Court shall then issue to the applicant a certificate of admission to the Bar of this Court.

83.I.04: *Representation by Local Counsel who Must Sign all Pleadings*. Litigants in civil and criminal actions, except for parties appearing *pro se*, must be represented by at least one member of the Bar of this Court who shall sign each pleading, motion, discovery procedure, or other document served or filed in this Court. The attorney identification number is also required on each pleading, motion, discovery procedure, or other document served or filed in this District Court.

83.I.05: *Appearances by Attorneys not Admitted in the District*.

(A) Upon motion of an attorney admitted to practice before this Court, any person who is a member in good standing of the Bar of a United States District Court and the Bar of the highest court of any state or the District of Columbia may be permitted to appear in a particular matter in association with a member of the Bar of this Court. A motion seeking admission under this Rule.

(1) shall be accompanied by an Application and Affidavit setting forth the movant's qualifications for admission and the movant's agreement to abide by the ethical standards governing the practice of law in this Court;

(2) shall be submitted to this Court upon the forms prescribed by this Court which can be obtained on this Court's website or from the Clerk of Court;

(3) shall be accompanied by an application fee of two hundred and fifty dollars ($250); and

(4) shall include a certificate of consultation. *See* Local Civil Rule 7.02.[20]

(B) The appearance of an attorney pursuant to this Rule shall confer jurisdiction upon this Court for any alleged misconduct in any matter related to the action for which the appearance is allowed. The Court may revoke admission under this Local Civil Rule at its discretion.

(C) This Rule is intended to allow for occasional appearances by attorneys who do not conduct a substantial portion of their practices in this District. It is not intended to substitute for regular admission to the Bar of this Court. In determining whether admission under this Rule would violate its intended purpose, the Court may consider, inter alia, whether the attorney resides in South Carolina (and, if so, the length of the residence), the frequency with which the attorney appears in the state and federal courts located in this state, the proportion of the attorney's practice attributable to cases filed in South Carolina, and other factors suggested by *South Carolina Medical Malpractice Joint Underwriting Ass'n v. Froelich*, 377 S.E.2d 306 (S.C. 1989), which, while not binding, has been adopted as a guide by this Court.

83.I.06: *Pleadings, Service, and Attendance by Local Counsel in Cases Where Out-of-State Attorneys Appear*. Pleadings and other documents filed in a case where an attorney appears who is not admitted to the Bar of this Court shall contain the individual name, firm name, address, and phone number of both the attorney making a special appearance under this Local Civil Rule and the associated local counsel. In such a case, the service of all pleadings and notices as required shall be sufficient if served upon only the associated local counsel. Unless excused by the Court, the associated local counsel shall be present at all pretrial conferences, hearings and trials and may attend discovery proceedings. Local counsel is expected to be prepared to actively participate if necessary.

83.I.07: *Withdrawal of Appearance*. No attorney whose appearance has been entered shall withdraw his or her appearance or have it stricken from the record except with leave of the Court. Any request to withdraw shall: (1) be filed with a certification that the motion has been served on the client or with a consent to withdrawal signed by the client; (2) shall provide the Court with a mailing address and phone number for the client; and (3) if the client is a

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[20] The consultation requirement found in Local Civil Rule 7.02 is applicable to motions under this Local Civil Rule. It is the general practice in this District to grant motions under Local Civil Rule 83.I.05 immediately upon receipt by the Court, if they are proper in form and absent notice that opposing counsel has indicated an intention to object. Prior consultation and disclosure of opposing counsel's stated intention are necessary to facilitate this process.

corporation, shall confirm that the client has been advised that a corporation cannot proceed without counsel and that counsel must be admitted in this District.

83.I.08: *Rules of Disciplinary Enforcement ("RDE").* All counsel admitted to practice before this Court or admitted for the purpose of a particular proceeding (*pro hac vice*) shall be admitted subject to the following rules, conditions, and provisions.

RDE RULE I
ATTORNEYS CONVICTED OF CRIMES

(A) 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 that the interests of justice require the same.

(B) 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 any other to commit a "serious crime."

(C) 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, in whole or in part, upon the conviction.

(D) Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Court, in addition to suspending that attorney in accordance with the provisions of this Local Civil Rule, shall 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.

(E) 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 in its discretion may make no references with respect to convictions for minor offenses.

(F) An attorney suspended under the provisions of this Rule will be immediately reinstated 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.

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 ten (10) days of such action.

(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 disciplined by another court, this Court shall forthwith 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 inform 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 the 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.

(G) If an attorney admitted to practice before this Court is disbarred or suspended by the Supreme Court of South Carolina, this Court shall immediately order the identical disciplinary action, unless the 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.

RDE RULE III
DISBARMENT ON CONSENT OR RESIGNATION IN OTHER COURTS

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

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

RDE RULE IV
STANDARDS FOR PROFESSIONAL CONDUCT

(A) 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 for a definite time, fined, and/or reprimanded, either publicly or privately, or subjected to other disciplinary action as the circumstances may warrant.

(B) Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Code of Professional Responsibility adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of any attorney-client relationship. The Code of Professional Responsibility adopted by this Court is the South Carolina Rules of Professional Conduct (Rule 407 of the South Carolina Appellate Court Rules) adopted by the Supreme Court of the State of South Carolina, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court.

RDE RULE V
DISCIPLINARY PROCEEDINGS

(A) When misconduct or allegations of misconduct which, as 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, that judge shall petition the chief judge to (1) refer the matter to the appropriate state disciplinary authority for investigation or prosecution, or (2) refer the matter to the United States Attorney or, if the United States Attorney has a conflict of interest, to other selected counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate. Should the Chief Judge be disqualified, the most senior active District Judge shall have the responsibility of enforcing this section. Should the matter be referred to a state disciplinary authority, or should there be a parallel state disciplinary proceeding, the Chief Judge may provide to such authority information and documents pertinent to the investigation, subject to the requirements of Rule 6(e), Federal Rules of Criminal Procedure, and an appropriate protective order.

(B) Counsel appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition, as well as the respondent-attorney, shall have the authority to issue subpoenas pursuant to Rule 17 of the Federal Rules of Criminal Procedure.

(C) 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 another proceeding pending against the respondent-attorney, the disposition of which in the judgment of the counsel should be awaited before further action by this Court is considered, or for any other valid reason, counsel shall file with the Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise setting forth the reasons for such recommendation.

(D) 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 thirty (30) days after service of that order upon that attorney, personally, or by mail, why the attorney should not be disciplined. The respondent-attorney shall have the right to be represented by counsel in these proceedings.

(E) 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, the chief judge shall set the matter for prompt hearing before a panel of three judges of this Court; provided, however, that if the disciplinary proceeding is predicated upon the complaint of a judge of this Court, the complaining judge shall not serve on the panel.

(F) The senior judge of the three-judge panel, within a reasonable time following the hearing, shall provide to the District Court a written report which shall include a recommendation as well as a transcript of the hearing and all pleadings and evidence.

(G) After receiving the report, the District Court, sitting *en banc*, shall by written order make a final determination.

(H) Misconduct, as the term is used herein, means any one or more of the following:

(1) Violation of any provision of the oath of office taken upon admission to practice of law;

(2) Violation of any provision of the South Carolina Rules of Professional Conduct as adopted by this Court;

(3) Commission of a crime involving moral turpitude;

(4) Conduct tending to pollute or obstruct the administration of justice or to bring the courts or the legal profession into disrepute;

(5) Conduct demonstrating a lack of professional competence in the practice of law;

(6) Conduct tending to obstruct the Court's disciplinary investigation;

(7) Conduct constituting a serious crime as defined in RDE Rule I(B);

(8) Conduct violating applicable rules of professional conduct of another jurisdiction.

RDE RULE VI
DISBARMENT ON CONSENT WHILE UNDER
DISCIPLINARY INVESTIGATION OR PROSECUTION

(A) 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:

(1) 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;

(2) 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;

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

(4) 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 or herself.

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

(C) 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.

RDE RULE VII
REINSTATEMENT

(A) After disbarment or suspension. An attorney suspended for less than a year may resume practice before this Court upon the expiration of the suspension ordered by the Supreme Court of South Carolina and this Court. An attorney disbarred or suspended for a year or more must reapply for admission and may not resume practice until reinstated by order of this Court.

(B) 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 (5) years from the effective date of the disbarment.

(C) 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 a three-judge panel of this Court; provided, however, that if the disciplinary proceeding was predicated upon the complaint of a judge of this Court, the complaining judge shall not serve on the panel. The judges assigned to the matter shall promptly, 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. The senior judge of the three-judge panel, within a reasonable time following the hearing, shall provide to the District Court a written report which shall include a recommendation pursuant to subparagraph F of this section. After receiving the report, the District Court, sitting *en banc*, shall by written order make a final determination and enter judgment pursuant to subparagraph F of this section.

(D) *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.

(E) *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.

(F) *Conditions of Reinstatement*. If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him, 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. The Court may impose any conditions of reinstatement that are reasonably related to the grounds for the lawyer's original suspension or disbarment, or to evidence presented at the hearing regarding the lawyer's failure to meet the criteria for reinstatement. Provided further, that if the petitioner has been suspended or disbarred for five (5) years or more, reinstatement may be conditioned, in the discretion of the District Court, 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.

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

RDE RULE VIII
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 last address of record with the Clerk 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 last address of record with the Clerk 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.

RDE RULE IX
APPOINTMENT OF COUNSEL

Whenever counsel other than the United States Attorney is to be appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition, this Court shall appoint as counsel one or more members of the Bar of this Court. The respondent-attorney may move to disqualify the United States Attorney or any other attorney so appointed on grounds of conflict of interest. Any motion for disqualification shall be determined by the chief judge or, should the chief judge be disqualified, the most senior active judge. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

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 this Court shall determine whether the Clerk of 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 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 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 ten (10) 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.

RDE RULE XI
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, including, but not limited to, the power to impose sanctions and to institute proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure.

RDE RULE XII
EFFECTIVE DATE

Any amendments to these disciplinary enforcement rules shall become effective immediately upon the entry and filing of any Order, provided that any formal disciplinary proceedings then pending before this Court shall be concluded under the procedure existing prior to the effective date of these amendments.

83.I.09: *Student Practice*.

(A) Upon the approval of the judge to whom the case is assigned, an eligible law student with the written consent of an indigent and the indigent's attorney of record may appear in this Court on behalf of that indigent in any case. Upon the

written consent of the United States Attorney or his or her authorized representative and the consent of the presiding judge, an eligible law student may also appear in this Court on behalf of the United States. Upon the written consent of the South Carolina Attorney General or his or her authorized representative and the consent of the presiding judge, an eligible law student may also appear in this Court on behalf of the State of South Carolina. In each case, the written consent shall be filed with the Clerk of Court.

(B) An eligible law student may assist in the preparation of pleadings, briefs, and other documents to be filed in this Court, but such pleadings, briefs or other documents must be signed by the attorney of record. A student may also participate in Court proceedings with leave of the Court, but only in the presence of the attorney of record. The attorney of record shall assume personal professional responsibility for the law student's work and for supervising the quality of the student's work. The attorney of record should be familiar with the case and prepared to supplement or correct any written or oral statement made by the student.

(C) In order to make an appearance pursuant to this Local Civil Rule, the law student must:

(1) Be duly enrolled in a law school approved by the American Bar Association;

(2) Have completed legal studies amounting to at least four (4) semesters (or the equivalent if the school is on some basis other than a semester basis), be enrolled in a clinical law course, and appear only as a requirement of that course;

(3) Be certified by the Dean of the law school as being of good character and competent legal ability, which certification shall be filed with the Clerk of Court and may be withdrawn by the Dean at any time by mailing notice to the Clerk of Court;

(4) Be introduced to the Court by an attorney admitted to practice before this Court;

(5) Neither ask for nor receive any compensation or remuneration of any kind for legal services from the person on whose behalf the student renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a state, or the United States from making such charges for its services as it may otherwise properly require; and

(6) Certify in writing that the student has read and is familiar with the South Carolina Rules of Professional Conduct.

EXHIBITS AND COURT REPORTERS

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 ten (10) 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.

83.II.02: *Court Reporters*. The Clerk of Court shall have supervisory and managerial authority over court reporters with the advice and consent of the Court, pursuant to the order of the District Court filed August 25, 1986 (M-86-3). A copy of this order may be obtained from the Clerk of Court.

FAIR TRIAL DIRECTIVES[21]

83.III.01: *Court Personnel*. All Court supporting personnel, including, but not limited to, marshals, deputy marshals, court clerks and office personnel, bailiffs, court reporters, and employees or subcontractors retained by the Court or the Marshal, and the judge's office personnel, are prohibited from disclosing to any person, without authorization by the Court, information relating to a pending civil case that is not a part of the public record of the Court which has been filed and served on the parties to the proceeding. Further, all such personnel are forbidden to divulge any information concerning arguments and hearings held in chambers or otherwise outside the presence of the public or in the case of jury trials outside the presence of the jury.

83.III.02: *Attorneys*.

(A) Except to the extent necessary to prepare a case, all lawyers are prohibited from disclosing to any person, without authorization by the Court, information relating to a pending civil case that is not a part of the public record of the Court which has been filed and served on the parties to the proceeding. Further, all such persons are forbidden to divulge any information concerning arguments and hearings held in chambers or otherwise outside the presence of the public or in the case of jury trials outside the presence of the jury.

(B) Nothing contained in these rules shall prohibit a lawyer from making a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue adversely prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. However, any statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

83.III.03: *Copies of Public Records*. Any person may obtain copies of public records from the Clerk of Court upon payment of copying fees. Representatives of federal agencies may obtain copies without charge.

83.III.04: *Conduct of Judicial Proceedings*. In any case, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the parties to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order.

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[21] Fair trial directives relating to criminal matters are more extensive and may be found in the Local Criminal Rules.

83.III.05: *Photographing and Reproducing Court Proceedings*. The taking of photographs and operation of tape recorders in the courtroom or its environs and radio or television broadcasting from the courtroom or its environs, during the progress of or in connection with judicial proceedings, whether or not court is actually in session, is prohibited. The Court may, however, permit: (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record; and (2) the broadcasting, televising, recording, or photographing of investitive, ceremonial or naturalization proceedings.

REMOVAL PROCEDURES

83.IV.01: *Service and Filing of Notice of Removal*. Service upon all adverse parties of a notice of removal filed pursuant to 28 U.S.C. § 1446(a) and the filing of such notice with the appropriate state court clerk shall constitute compliance with the requirements of 28 U.S.C. § 1446(d).

83.IV.02: *Contents of Notice of Removal*. Where removal is based on jurisdiction under 28 U.S.C. § 1332, the short and plain statement of the grounds for removal shall contain a statement of the date of the commencement of the action.

PRETRIAL BRIEF REQUIREMENTS

83.V: *[Pretrial brief requirements have been moved to Local Civil Rule 26.05 effective December 1, 2000.]*

CONDUCT OF TRIAL

83.VI.01: *Opening Statement*. Counsel for any party may summarize their pleadings to the jury or make a statement to the jury of the ultimate facts alleged in the pleadings and their theory of the case, but counsel shall not argue the case during the opening statement. The pleadings shall not be submitted to the jury for its deliberations.

83.VI.02: *Examination of Witness*. One counsel only, on each side, shall examine or cross-examine a witness. During examination in open court, the examining counsel shall stand.

83.VI.03: *Scope of Redirect*. Redirect examination in both civil and criminal trials shall be limited only to new matters brought out on cross-examination.

83.VI.04: *Closing Argument of Counsel*. In the trial of a civil action, the plaintiff shall open and conclude the testimony and argument unless the plaintiff's entire case shall be admitted by the defendant's pleadings, and the controversy shall be wholly upon matter of counterclaim or affirmative defense interposed by the defendant. A full opening of the case, both in testimony and argument, shall be made by the party having the opening, and the reply shall (unless under the circumstances otherwise ordered by the Court), both in testimony and argument, be restricted to a reply to new matter. Closing arguments in criminal cases are governed by Fed. R. Crim. P. 29.11. The time allowed for argument in both criminal and civil cases shall be limited by the Court as the cause may seem to require.

83.VI.05: *Excusing Witnesses*. In both criminal and civil cases, every witness is automatically excused when he or she steps off the witness stand, unless one of the parties objects.

SOCIAL SECURITY CASES

83.VII.01: *Copies of Pleadings*. An original for the Court and three (3) copies for service of the complaint and summons must be filed in social security cases. Only an original of all other pleadings must be filed with the Clerk of Court together with a certificate showing proof of service upon the United States Attorney.

83.VII.02: *Reference to Magistrate Judge.*

(A) After the briefing schedule (as set out in Local Civil Rules 83.VII.04 and 83.VII.05), the case will be referred to a United States Magistrate Judge for either a recommendation or a final order, dependent upon the consent of the parties and the District Court.

(B) The Court will issue an order referring social security cases to the assigned Magistrate Judge for final disposition in those cases where all parties have submitted their consent to such referral.

83.VII.03: *Answer of the Commissioner*. Because of the large volume of social security cases being filed in this District, the United States has been unable to obtain certified copies of transcripts required by 42 U.S.C. § 405(g) to be filed as a part of its answer within the sixty-day (60-day) time period. Therefore, the Commissioner is granted an additional sixty (60) days beyond the time otherwise allowed by law for the filing of its answer without the necessity of a motion so requesting.

83.VII.04: *Petitioner's Brief*. After the filing of an answer, the petitioner may file a written brief in the Clerk of Court's Office within thirty (30) days. Any motion for an extension of time must be accompanied by a proposed order.

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 ten (10) days after service of the Commissioner's brief.

83.VII.06: *Service of Briefs*. Briefs shall be served on each of the other parties.

83.VII.07: *Application for Attorney's Fees*. The following procedure will be used if the petitioner's attorney applies to the Court for an order fixing attorney's fees *to be paid out of past accrued benefits* for an award of past due benefits. This Local Civil Rule does not apply to fees awarded pursuant to the Equal Access to Justice Act.

(A) The original of any petition for attorney's fees will be filed with the Clerk of Court together with a certificate of service showing a copy served on the United States Attorney. The petition for attorney's fees shall be filed within sixty (60) days after the issuance of the notice of award of benefits from the Social Security Administration. Noncompliance with this time limit may be deemed a waiver of any claim for attorney's fees, unless the attorney can show good cause for the delay.

(B) The petition should comply with the requirements set forth in *Barber v. Kimbrell's, Inc*., 577 F.2d 216 (4th Cir. 1978), and should contain evidence (copy of Certificate of Social Insurance Award) that the case has reached the final determination, that the Commissioner is withholding the fee requested, and that the attorney and client entered a valid agreement for the fees. It should also contain a supporting statement or affidavit by the attorney if a substantial amount is involved or there are exceptional circumstances.

(C) The United States Attorney shall be allowed thirty (30) days in which to file any objections to the petition for attorney's fees.

(D) The petition, together with supporting materials and the Commissioner's objection, if any, will be forwarded to the appropriate District Judge or Magistrate Judge for consideration.

83.VII.08: *Objections to Report and Recommendation*. A party may file an objection to the Magistrate Judge's report and recommendation within the time prescribed in 28 U.S.C. § 636(b)(1).

ACTIONS FILED BY PRISONERS

83.VIII.01: *Filing of Civil Rights Actions.* All complaints filed by state, federal, and local prisoners seeking relief under 42 U.S.C. § 1983, *et seq.*, or under the holding in *Bivens v. Six Unknown Members of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), shall be filed with the Clerk of Court in compliance with the instructions of the Office of the Clerk of Court on the appropriate form(s) or on forms substantially similar. Instructions and the appropriate forms may be obtained from the Office of the Clerk of Court without charge.

83.VIII.02: *Procedure for State, Federal, and Local Prisoners Seeking to Proceed In Forma Pauperis.* The Court shall maintain an operating procedure for prisoners seeking to proceed *in forma pauperis*. The operating procedure, which is set forth in detail in a miscellaneous order of the Court, shall be fully effective as if reprinted in these Local Civil Rules.

83.VIII.03: *Filing of Habeas Corpus Actions.* All petitions filed by state, federal, and local prisoners seeking relief under 28 U.S.C. § 2254 or 28 U.S.C. § 2255 shall be filed with the Clerk of Court in compliance with the instructions of the Office of the Clerk of Court and on the appropriate forms or forms substantially similar. The instructions and the appropriate forms may be obtained from the Office of the Clerk of Court without charge.

83.VIII.04: *Successive Habeas Corpus Petitions*. The Anti-Terrorism and Effective Death Penalty Act of 1996 has placed limitations on successive petitions. In light of conflicting precedents in various federal jurisdictions and because most closed case records are at the Federal Records Center, a Magistrate Judge or District Judge may, in his or her discretion, authorize service of a petition under 28 U.S.C. § 2254 or 2255 where court records do not conclusively show that a petition is successive. In such circumstances, the respondents may raise successiveness as an affirmative defense.

83.VIII.05: *Federal Prisoners Seeking Relief under 28 U.S.C. § 2241*. All petitions filed by federal prisoners seeking relief under 28 U.S.C. § 2241 shall be filed with the Clerk of Court in compliance with the instructions and on the appropriate forms or on forms substantially similar. The instructions and the appropriate form(s) may be obtained from the Office of the Clerk of Court without charge.

83.VIII.06: *State and Local Prisoners Seeking Relief under 28 U.S.C. § 2241*. There is no standard form for state and local prisoners to use when seeking relief under 28 U.S.C. § 2241. Hence, state and local prisoners seeking relief under 28 U.S.C. § 2241 may prepare their own § 2241 petitions.

83.VIII.07: *Forms on Electronic Media.* The Office of the Clerk of Court is authorized to promulgate the civil rights forms or any habeas corpus forms on electronic media and is authorized to distribute copies of the forms to correctional institutions, detention institutions, or litigants. Such forms on electronic media, if promulgated, shall be deemed to be "forms substantially similar" to the appropriate forms.

BANKRUPTCY PRACTICE

83.IX.01: *Referral to Bankruptcy Judges*. Pursuant to 28 U.S.C. § 157(a), the Court hereby refers to the Bankruptcy Judges for this District all cases under Title 11 and all proceedings arising under Title 11 or arising in or related to a case under Title 11. *See* Procedures, 28 U.S.C. § 157.

83.IX.02: *Local Civil Rules of Bankruptcy Practice*. Pursuant to Bankruptcy Rule 9029, the Bankruptcy Judges of this District are hereby authorized to make such rules of practice and procedure as they may deem appropriate; provided, however, that in promulgating the rules governing the admission or eligibility to practice in the Bankruptcy Court, the Bankruptcy Judges shall require District Court admission except for appearances *pro se* or for appearances pursuant to the student practice rules of this Court.

(A) *Pro hac vice* admission. The Bankruptcy Judges, as judicial officers of the District Court, are hereby empowered to grant *pro hac vice* admission to the District Court for bankruptcy matters under rules identical to this Court's rules on such admission.

(B) *Exemption*. When appropriate, the Bankruptcy Judges may exempt certain filings such as the filing of claims from these requirements.

83.IX.03: *Jury Trials by Bankruptcy Judges*. The United States District Court for the District of South Carolina hereby specially designates the Bankruptcy Judges of this District to conduct jury trials pursuant to 28 U.S.C. § 157(e).

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