

LOCAL CRIMINAL RULES

for the

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

(as amended and corrected through April 28, 2000)

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SCOPE AND CITATION OF LOCAL CRIMINAL RULES

1.01: *Scope.* These local criminal 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 Criminal Rule ____ DSC."

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

1.03: *Modification and Implementation of Federal Rules.* Unless otherwise ordered by the Court, the following provisions of the Federal Rules of Civil Procedure are not applicable to cases filed in this District:

Fed.R.Civ.P. 26(a)(1) (initial disclosures)

Fed.R.Civ.P. 26(a)(2)(B) (expert disclosures)

Fed.R.Civ.P. 26(a)(2)(C) (timing of expert disclosures)

Fed.R.Civ.P. 26(f) (meeting of the parties)¹

See Local Civil Rules 26.1.1, 26.1.3 and 33.1.1..

The following Federal Rule provisions are replaced, modified or implemented by the noted Local Civil Rules:

Fed.R.Civ.P. 26(a)(2)(B) & (C) -- Local Civil Rule 26.1.3
(expert disclosures)

Fed.R.Civ.P. 26(a)(3) -- Local Civil Rules 16.2.2,
(pretrial disclosures) 26.3 & 32.1

Fed.R.Civ.P. 29 -- Local Civil Rule 29.1
(discovery procedure stipulations)

Fed.R.Civ.P. 30(a)(2)(A) & -- Local Civil Rule 30.1.1
31(a)(2)(A)(limits on depositions)

¹The exemption from Fed.R.Civ.P. 26(f) modifies Fed.R.Civ.P. 16(b) and 26(d) to the extent of any reference to Rule 26(f). Since the Fed.R.Civ.P. 26(f) meeting of the parties has been eliminated by the Local Civil Rules, the delay of discovery contemplated by Fed.R.Civ.P. 26(d) is not applicable in this district.

Fed.R.Civ.P. 30(d) (conduct of depositions)	-- Local Civil Rule 30.1.3
Fed.R.Civ.P. 32(a)(4) (fairness designations)	-- Local Civil Rule 32.1
Fed.R.Civ.P. 33(a) (limits on interrogatories)	-- Local Civil Rule 33.2
Fed.R.Civ.P. 48 (number of jurors)	-- Local Civil Rule 48.1
Fed.R.Civ.P. 67 (deposit in Court)	-- Local Civil Rule 67.1

MOTION PRACTICE

12.01: *Filing of Motions.* All criminal and civil motions shall be filed with the Clerk of Court.

12.02: *Duty to Consult Before Filing Any Motion.* All motions filed shall contain an affirmation by the movant's counsel that prior to filing the motion he or she consulted with opposing counsel and attempted in good faith to resolve the matter contained in the motion, unless movant's counsel certifies that such consultation would serve no useful purpose or could not be timely held. Counsel is under no duty to consult with a *pro se* litigant. The following dispositive motions are excluded from this rule:

- (A) Motion to dismiss;
- (B) Motion for summary judgment;
- (C) Motion to suppress; and
- (D) Motion for new trial or judgment NOV.

Motions filed in real estate mortgage foreclosure cases are also excluded.

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

12.04: *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 may be waived if a full explanation of the motion as set forth in Local Criminal Rule 12.05 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.

12.05: *Form and Content of Memoranda.*

- (1) A memorandum shall contain:
 - (A) A concise summary of the nature of the case;
 - (B) A concise statement of the facts that pertain to the matter before the Court for ruling;
 - (C) The argument (brevity is expected) relating to the matter before the Court for ruling with appropriate citations;
 - (D) Copies of any unpublished decisions, out-of-state court decisions, or decisions published in the various specialized reporting services (e.g., CCH Tax Reports, Labor Reports, U.C.C. Reporting Service, etc.);

- (E) Where the supporting memorandum opposes a motion for summary judgment, a short and concise statement of the material facts shall be set forth.
- (2) Unless an exception is granted by the Court, no memorandum shall exceed:
- (A) 35 double-spaced pages, in the case of an initial brief of any party (Rules 12.04 - 12.05); and
 - (B) 15 double-spaced pages, in the case of any reply (Criminal Rule 12.07).

The page limitation is exclusive of affidavits, supporting documentation and copies of authority required to be attached by Rule 12.05(1)(d).

12.06: *Responses to Motions.* Any memorandum of opposing counsel must be filed with the Clerk within fifteen (15) days of the filing of the motion. Counsel shall furnish a copy of any such memorandum to opposing counsel at the time of filing. If no memorandum in opposition is filed within fifteen (15) days, the Court will decide the matter on the record and such oral argument as the movant may be permitted to offer, if any.

Any motion supported by discovery material shall specify with particularity the portion of the discovery material relied upon in support of counsel's position and summarize the material in support of counsel's position.

12.07: *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.

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

12.09: *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.

12.10: *Draft Orders Submitted By Counsel.*

- (A) *Matters to Which Applicable.* This 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:¹
- (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 Criminal Rule 12.10(b)(I) will remain subject to modification until the final order is signed.
 - (3) Proposed orders will make reference to supporting evidence (*e.g.* by name of witness or exhibit number) where applicable.
 - (4) Copies of proposed orders will be provided to all counsel of record at the same time and in the same manner as provided to the Court; *provided, however,* that if the Court requests proposed findings and conclusions to be submitted before trial, the Court may postpone the required exchange until after trial.
 - (5) Unless otherwise ordered, opposing counsel will have 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.

¹ Anderson v. City of Bessemer, 470 U.S. 564, 571-71 (1985); Aiken County v. BSP Division of Envirotech Corp., 866 F.2d 661, 676-77 (4th Cir. 1989).

MOTIONS RE: DISCOVERY

16.01: *Motion to Compel Discovery.* 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 such response has been received, within twenty (20) days after the same was due. Motions to compel discovery may be filed without supporting memoranda and may be heard at the discretion of the Court.

16.02: *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 Rule 6.1 and 29.1) must be accompanied by an affidavit or other statement giving the reasons therefor. Motions for extension of time for discovery will be granted only in unusual cases and upon a showing that the parties have diligently pursued discovery during the original specified period.

TIME

17.01: *Time of Issuance of Subpoenas in Criminal Cases.* Subpoenas for witnesses in criminal cases shall be delivered to the Marshal or other person qualified by Fed.R.Crim.P. 17(d) to make service at least seven (7) days prior to the Monday of the week in which the case is set for trial unless otherwise ordered by the Court. The failure of the Marshal or other qualified person to serve a subpoena not delivered within the time period shall not constitute sufficient cause for a continuance.

TRIAL PROCEDURE

26.01: *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.

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

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

CLOSING ARGUMENTS

29.01: *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. Rule 29.1 of the Fed.R.Crim.P. governs closing in criminal cases. The time allowed for argument in both criminal and civil cases shall be limited by the Court as the cause may seem to require.

RELEASE FROM CUSTODY

46.01: *Security.* Unless a personal recognizance or an unsecured bond is authorized for a defendant or a material witness, every bond or undertaking shall be secured by either cash, negotiable United States Government securities, trust receipts issued in favor of the United States by the Trust Department of a national bank or a state bank which is a member of the Federal Reserve System, or one or more approved sureties (not exceeding three for any defendant unless the Court approves a higher number).

46.02: *Corporate Surety.* Only a corporate surety in good standing with the United States Treasury Department and which has designated a resident agent in the District of South Carolina as required by statute is acceptable as a surety on a bond for a defendant (or a material witness). If any corporate surety fails to pay a forfeiture on a bond ordered by the Court, upon proper notice to that surety and opportunity for it to be heard as to why it has failed to pay a forfeiture decreed, the Court may order the Clerk to strike its name from the list of approved corporate sureties eligible to execute bonds to be performed in the District of South Carolina, and to notify the Secretary of Treasury of such action.

46.03: *Disclosure of Interest.* In every corporate surety bond proffered for filing in a criminal case in the District of South Carolina, the Court requires the attorney-in-fact who executes the bond on behalf of the corporate surety to disclose under oath the identity of the premium payor; for any bond (or combination of bonds) which exceed(s) fifty thousand dollars (\$50,000) in amount for any one defendant (or material witness), whether the surety is a corporate surety or an individual, the attorney-in-fact or individual surety must disclose the details of any collateral pledged to the surety to induce it (or him or her) to issue the bond and the details of any agreement to indemnify the surety should it (or he or she) be ordered to pay any forfeiture of the bond.

46.04: *Use of Real Property as Security.* Whenever an individual presents himself or herself as a surety to be justified on the basis of real property he or she owns, such individual must demonstrate by satisfactory evidence that the unencumbered equity that he or she has in such property is sufficient in amount to secure his or her undertaking on the bond, and such individual must agree to place a lien on the real property if he or she seeks to justify on a bond of more than twenty-five thousand dollars (\$25,000). The Court may require independent appraisal evidence of value in the discretion of the judicial officer before whom the surety seeks to justify. In no event will an individual who seeks to justify exclusively on the basis of equity in real property be approved as a surety for an amount in excess of seventy-five percent (75%) of his or her equity.

46.05: *Use of Personal Property as Security.* The Court will not accept a pledge of personal property other than as provided in Local Criminal Rule 46.01 above.

46.06: *Prohibited Sureties.* Bail bondsmen who are authorized to write bonds in the courts of South Carolina are not by such authorization eligible to serve as sureties in this Court,

and no such bondsman (or local corporation) will be approved as a surety unless he (or she or it) meets the standards required of any other corporate or individual surety as specified by federal statutes, Rule 46 of the Fed.R.Crim.P., and these Rules. Members of the Bar and their spouses, officers and employees of this Court and officers and employees of the United States Marshal's Service are prohibited from acting as a surety unless the Court, by a special order that is filed as a public record, creates an exception based on the financial need of a particular defendant or material witness.

RULES BY DISTRICT COURTS

57.I.1: *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 and Local Criminal Rule 57.

57.I.2: *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.

57.I.3: *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 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.

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 dollars (\$100), with the Clerk of this District Court. If the application is in order and upon approval of the Court, the Clerk shall then issue to the applicant a certificate of admission to the Bar of this Court.

57.I.4: *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 Court.

~~57.I.5: *Appearances by Attorneys Not Admitted in the District.* Upon motion, 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 shall set 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 pursuant to Local Civil Rule 83.I.08 and Local Criminal Rule 57.I.8. The motion shall be accompanied by an application fee of \$75. The appearance of such a person in a particular action(s) shall confer jurisdiction upon this Court for any alleged misconduct of that person in all matters related to that action(s). The Court may revoke admission under this Rule at its discretion.~~

57.I.6: *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 Criminal Rule and the associated local counsel. In such a case, the service of all pleadings and notices as required shall be sufficient if served only upon 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.

57.I.7: *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.

57.I.8: *Federal Rules of Disciplinary Enforcement ("FRDE").* 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.

FRDE 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 shall, in addition to suspending that attorney in accordance with the provisions of this Rule, also refer the matter to counsel for the institution of a disciplinary proceeding before the Court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.
- (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 may in its discretion make no references with respect to convictions for minor offenses.
- (F) An attorney suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

FRDE 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 this 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 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 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.

FRDE 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.

FRDE 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.

FRDE 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 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, 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 pending another proceeding against the respondent-attorney, the disposition of which in the judgment of the counsel should be awaited before further action by this Court is considered, or for any other valid reason, counsel shall file with the Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise setting forth the reasons 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 Defined: 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 FRDE Rule 1(B);
 - (8) Conduct violating applicable rules of professional conduct of another jurisdiction.

FRDE 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.

FRDE RULE VII. REINSTATEMENT

- (A) After Disbarment or Suspension. An attorney suspended or disbarred 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 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 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 year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

FRDE 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.

FRDE 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.

FRDE RULE X. DUTIES OF THE CLERK

- (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 the Court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk of this Court shall promptly obtain a certificate and file it with this Court.
- (B) Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another Court, the Clerk of this Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court, and, if not, the Clerk shall promptly obtain a certified 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 this Court shall, within ten days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other Court, a certificate of the conviction or a certified or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.
- (D) The Clerk of this Court shall, likewise, promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this court.

FRDE 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.

FRDE 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.

57.I.9: *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 his 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 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 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 this 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. He 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 his work. He 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 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 his law school as being of good character and competent legal ability, which certification shall be filed with the Clerk and may be withdrawn by the Dean at any time by mailing notice to the Clerk;
 - (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 his services from the person on whose behalf he 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;

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

57.II.1: *Fair Trial Directives: Court Personnel.*

- (A) All Court supporting personnel, including but not limited to, marshals, deputy marshals, court clerks and office personnel, probation officers and office personnel, bailiffs, court reporters and employees or subcontractors retained by the Court or the Marshal, and the Judges' office personnel, are prohibited from disclosing to any person, without authorization by the Court, information relating to a pending grand jury proceeding or criminal case that is not part of the public records of the Court. Further, all such personnel are forbidden to divulge any information concerning grand jury proceedings, *in camera* arguments, and hearings held in chambers or otherwise outside the presence of the public.
- (B) All Court supporting personnel, including but not limited to, marshals, deputy marshals, court clerks and office personnel, probation officers and office personnel, bailiffs, court reporters and employees or subcontractors retained by the Court or the Marshal, and the Judges' 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.

57.II.2: *Fair Trial Directives: Attorneys.*

- (A) It is the duty of any lawyer or law firm not to release or authorize the release of information or opinions, which a reasonable person would expect to be disseminated by any means of public communication, in connection with pending or imminent criminal litigation with which any lawyer or law firm is associated if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

With respect to a grand jury or other pending investigation of any criminal matter, any lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person

would expect to be disseminated by any means of public communication that goes beyond the public record or that is not necessary (1) to inform the public that the investigation is underway, (2) to describe the general scope of the investigation, (3) to obtain assistance in the apprehension of a suspect, (4) to warn the public of any dangers, or (5) to aid in the investigation.

From the time of arrest, issuance of an arrest warrant or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, any lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement, which a reasonable person would expect to be disseminated by any means of public communication, relating to that matter and concerning:

- (1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status; if the accused has not been apprehended, any lawyer associated with the prosecution may release any information necessary to aid in his apprehension or to warn the public of any dangers he may present;
- (2) The existence or contents of any confession, admission, or statement given by the accused or the refusal or failure of the accused to make any statement;
- (3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;
- (4) The identity, testimony, or credibility of prospective witnesses, except that any lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;
- (5) The possibility of a plea of guilty to the offense charged or a lesser offense;
- (6) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude any lawyer or law firm during this period, in the proper discharge of his or its official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency,

and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him.

During a jury trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial which a reasonable person would expect to be disseminated by any means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that any lawyer or law firm may quote from or refer without comment to public records of the Court in the case.

After the completion of a trial or disposition without trial of any criminal matter, and prior to the imposition of sentence, any lawyer associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement for dissemination by any means of public communication if there is a reasonable likelihood that such dissemination will affect the imposition of sentence.

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

- (B) 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.

57.II.3: *Fair Trial Directives: Copies of Public Records.* The members of the news media and others may obtain copies of all public records from the Clerk upon payment of copying fees.

57.II.4: *Fair Trial Directives: 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.

57.II.5: *Fair Trial Directives: 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.

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

57.IV.01: *Petition for Attorney's Fees.* Except as otherwise provided by statute or ordered by the Court, a motion for attorney's fees claimed by a prevailing party must be filed with the Clerk within thirty (30) days of the entry of the final judgment in the District Court or from the date of affirmance of the judgment on appeal. A copy of the petition shall also be served on the opposing party. Noncompliance with this time limit shall be deemed a waiver of any claim for attorney's fees.

The petition for attorney's fees shall comply with the requirements set forth in *Barber v. Kimbrell, Inc.*, 577 F.2d 216 (4th Cir. 1978), and shall state any exceptional circumstances and the ability of the party to pay the fee. Where appropriate, a memorandum in opposition to a petition for attorney's fees must be filed with the Clerk within fifteen (15) days of the filing of the petition. (For Social Security cases, see Local Civil Rule 9.1.7.)

57.V.01: *Prompt Disposition of Criminal Cases.* The Plan for Achieving Prompt Disposition of Criminal Cases adopted by Judges for this District can be obtained from the Clerk of Court.

57.VI.01: *Requests for Federal Custody.* If custody of a defendant awaiting trial in this District is requested by another United States Court, the Marshal shall not surrender custody of such defendant unless the United States District Judge to whom the defendant's case has been assigned for trial or other disposition so orders after considering all relevant factors and giving such notice to interested parties as he deems appropriate.

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

- (A) The wanting State must deliver to the Marshal a specific writ signed by the judge of a court of competent jurisdiction. Such writ shall include an express direction that the defendant will be promptly returned to the Marshal at the wanting State's expense upon conclusion of the matter for which the defendant is sought. A counterpart order signed by a United States District Judge as to whether the State writ will be honored shall be submitted as well.
- (B) The Marshal shall notify both the United States Attorney and the defendant's counsel of the request and allow each a period of three (3) days in which to consent or object. The three (3) day period may be waived.
- (C) The appropriate United States District Judge will determine whether the wanting State's request will be granted, deferred or denied. In so doing, he shall consider the Speedy Trial Act, the Interstate Agreement on Detainers, and any other relevant factors. If said Judge determines to honor the wanting State's request, he shall sign an order so indicating.

57.VII.01: *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 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 can be obtained from the Office of the Clerk of Court without charge.

PROCEDURE FOR MISDEMEANORS AND OTHER PETTY OFFENSES

58.01: *Forfeiture of Collateral.* Pursuant to Rule 58 of the Fed.R.Crim.P., payment of a fixed sum may be accepted in minor traffic, weapons, driving under the influence, trespassing, wildlife, boating, larceny, check fraud, assault, and other similar misdemeanor cases. The amount of collateral to be forfeited may be increased if the defendant fails to timely respond.

58.02: *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 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 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 but not limited to 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; or 29 U.S.C. §794.

(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) Two full-time Magistrate Judges in Columbia shall be assigned cases filed in the Columbia, Orangeburg, Aiken and Rock Hill Divisions on a rotational basis;
 - (b) The full-time Magistrate Judge in Charleston shall be assigned cases filed in the Charleston and Beaufort Divisions;
 - (c) The full-time Magistrate Judge in Greenville shall be assigned cases filed in the Greenville, Spartanburg, Anderson, and Greenwood Divisions.
 - (d) The full-time Magistrate Judge in Florence shall be assigned cases filed in the Florence Division.
 - (e) All cases challenging conditions of confinement filed by a federal prisoner incarcerated in this judicial district shall be assigned to all full-time Magistrate Judges and the part-time Magistrate Judge in Aiken on a rotational basis.

- (2) *Criminal Cases.* For the convenience of administration, unless otherwise specified by order of the Chief Judge of the district, criminal cases shall be assigned by division as follows:
 - (a) Two full-time Magistrate Judges in Columbia shall be assigned, on a rotational basis criminal cases filed in the Columbia and Rock Hill Divisions not arising at Fort Jackson or Shaw Air Force Base;
 - (b) The full-time Magistrate Judge in Charleston shall be assigned cases filed in the Charleston, Orangeburg and Beaufort Divisions;
 - (c) The full-time Magistrate Judge in Greenville shall be assigned cases filed in the Greenville, Spartanburg, Anderson, and Greenwood Divisions;
 - (d) The full-time Magistrate Judge in Florence shall be assigned cases filed in the Florence Division;
 - (e) The part-time Magistrate Judge in Aiken shall be assigned criminal cases filed in the Aiken Division;
 - (f) The part-time Magistrate Judge in Aiken shall be assigned cases originating at Fort Jackson and Shaw Air Force Base.
- (3) *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.
- (4) *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.
- (5) *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.
- (6) *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 two full-time Columbia Magistrate Judges.

- (7) *Pro Se Litigants with Prior Cases.* New cases filed by *pro se* litigants with prior cases shall, if possible, be assigned to the previous 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.
 - (8) 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 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.

APPENDIX A

AMENDED PLAN

OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA FOR THE RANDOM SELECTION OF GRAND AND PETIT JURORS

Pursuant to the Jury Selection and Services Act of 1968 (Public Law 90-274, as Amended), the following Amended Plan is hereby adopted by this Court, subject to approval by a reviewing panel and to such rules and regulations as may be adopted from time to time by the Judicial Conference of the United States.

The District of South Carolina is hereby divided into areas for jury selection purposes, pursuant to Section 1869(e) of the Act, as follows:

- (1) Area A - comprising the Anderson, Greenville, Greenwood and Spartanburg Divisions.
- (2) Area B - comprising the Columbia, Florence and Rock Hill Divisions.
- (3) Area C - comprising the Aiken, Beaufort, Charleston and Orangeburg Divisions.

Provisions of this Plan apply to all areas in the District.

The Court finds that electronic data processing methods can be advantageously used for establishing master wheels, qualified wheels, qualifying jurors, randomly selecting grand and petit jurors, maintaining juror records and automating jury clerical work. Therefore, a properly programmed electronic data processing system is authorized by the Court in selecting grand and petit jurors.

The Court authorizes the Clerk of Court to manage the jury selection plan under the supervision and control of the Chief Judge for this District in accordance with the Automated Jury Selection System, a copy of which is attached hereto and made a part of this Plan.

The Clerk of Court, with the approval of the Chief Judge, is authorized to effect any changes in the data processing system to include, but not limited to, hardware, software, forms, mailing procedures, maintenance of records, etc., which will improve or provide a more efficient data processing system provided that such changes continue to insure that potential jurors are selected at random from a representative cross-section of the community and that no citizen is excluded on account of race, color, religion, sex, national origin or economic status, in compliance with the objectives and requirements of the District Jury Selection Plan.

Voter registration lists represent a fair cross-section of the community in the District of South Carolina, and such lists, as established by the South Carolina Election Commission and maintained by a programmed electronic data processing center shall serve as the source for all grand and petit jurors serving in the District of South Carolina. Accordingly, names of grand and petit jurors serving on or after the effective date of this Plan shall be selected at random from the voter registration lists of all the Counties within the State.

MASTER JURY WHEELS - The Clerk shall maintain a master jury wheel for each of the jury areas within the District which shall be a properly programmed electronic data processing device. The master jury wheels shall consist of the names of all registered voters for each area as determined by the South Carolina Election Commission on or immediately after January 1 every other calendar year. The master jury wheel shall consist of not less than ½ of 1 per centum of the total number of persons on the source list which is the Voter Registration List. The South Carolina Election Commission will furnish the Clerk of Court

with a master list of all registered voters on computer tapes. The master list will be in alphabetical order by counties and will serve as the master jury wheels for the District. The master jury wheels shall be emptied and refilled during the 30-day period beginning January 1 of every other calendar year.

EXCUSES ON INDIVIDUAL REQUEST - The District Court hereby finds that jury service by members of the following occupational classes or groups of persons would entail undue hardship or extreme inconvenience to the members thereof, and the excuse of such members will not be inconsistent with the Act, and shall be granted upon individual request to:

- (1) Persons over 70 years of age;
- (2) Persons who have served as a Federal grand or petit juror within the last 2 years;
- (3) Persons having active care and custody of a child or children under 10 years of age whose health and/or safety would be jeopardized by their absence for jury service; or persons who are essential to the care of aged or infirm persons;
- (4) Persons whose services are so essential to the operation of a business, commercial or agricultural enterprise that it must close or cease to function if they are required to perform jury duty;
- (5) Volunteer safety personnel who serve without compensation as firefighters or members of a rescue squad or ambulance crew for a public agency.

EXCUSES BASED ON DISTANCE FROM THE COURT - The Court finds that all parts of the jury areas are reasonably accessible and no excuse on the basis of distance should be granted.

EXEMPTION FROM JURY SERVICE - The District Court hereby finds that exemption of the following groups of persons or occupational classes is in the public interest and would not be inconsistent with the Act, and accordingly members of such groups are barred from jury service:

- (1) Members in active service in the Armed Forces of the United States;
- (2) Members of the fire or police departments of any State, district, territory, possession or subdivision thereof;
- (3) Public officers in the executive, legislative, or judicial branches of the Government of the United States, or any State, district, territory, or possession or subdivision thereof, who are actively engaged in the performance of official duties. Public officer shall mean a person who is either elected to public office or who is directly appointed by a person elected to public office.

QUALIFICATIONS FOR JURY SERVICE - The Chief Judge shall determine whether a person is unqualified for, or exempt, or to be excused from jury service. Prior to this determination, the Clerk shall make a recommendation to the Chief Judge based on the information provided on the juror qualification form and other competent evidence. The Clerk shall enter the determination of the Chief Judge in the space provided on the juror qualification form and the alphabetical list of names drawn from the master jury wheel. If a person does not appear in response to a summons, such fact shall be noted on said list. In making such determinations, the Chief Judge of the District Court shall deem any person qualified to serve on grand and petit juries in the District Court unless he:

- (1) is not a citizen of the United States, eighteen years old who has resided for a period of one year within the judicial district;
- (2) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;
- (3) is unable to speak the English language;
- (4) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or
- (5) has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.

QUALIFIED JURY WHEEL - The Clerk, with the approval of the Chief Judge, shall maintain separate qualified jury wheels for each jury area in the District, and shall place in such wheels the names of all persons drawn from the master jury wheel and not disqualified, exempt, or excused pursuant to this Plan.

DISCLOSURE OF JUROR NAMES - Names drawn from the qualified jury wheel for petit juries shall not be made public until thirteen (13) working days before the jurors are to appear at the Courthouse, provided that the Chief Judge may order the names to be kept confidential in a case or cases when the interests of justice so require. Those names drawn for grand juries will not be made public at any time, unless so ordered by the Chief Judge.

PROCEDURE FOR ASSIGNING JUROR PANELS - When a petit jury is required at a place of holding court, the Clerk shall, after notice and with the approval of the presiding Judge, draw at random from the appropriate qualified wheel for each session of court such number of jurors as may be needed. Names of petit jurors will be drawn at least thirty (30) days prior to the convening of the session, unless a shorter time is designated by the Chief Judge.

A centralized petit jury may be used when ordered by the Chief Judge. When the services of a centralized petit jury are required, the Clerk shall draw names based on each jury area's percentage of the total names in the master wheel for a session of court.

Centralized grand juries or grand juries drawn from one jury area may be used, and grand jurors will be summoned for service for a period of one year. Special grand juries are summoned for eighteen (18) months and may serve a maximum of (36) months. When the services of a grand jury are required, the Clerk shall seat twenty-three (23) jurors and two (2) alternates. Centralized grand juries will be drawn based on each jury area's percentage of the total names in the master wheel. After the initial session of each grand jury, the grand jury may

be reconvened from time to time as the nature of the business requires on request of the United States Attorney and at the direction of the Chief Judge.

TEMPORARY EXCUSES OF JURORS WHO HAVE BEEN SUMMONED FOR JURY SERVICE - A juror summoned for jury service in this District may be temporarily excused upon a showing of undue hardship or extreme inconvenience by the Clerk and with the approval of the presiding Judge.

RANDOM METHOD OF REDUCING AND ENLARGING PANELS - The Clerk, with the approval of the presiding Judge, is authorized to reduce the size of a venire by a random method when it appears there are more jurors summoned than are necessary to dispose of the business of the Court.

When it appears that there are insufficient jurors to dispose of the business of the Court, the Clerk, with the approval of the presiding Judge, is authorized to add additional jurors to the venire by a random method from the list of those jurors previously temporarily excused. At the end of each quarter the names of individuals temporarily excused will be reinserted into the qualified wheel for possible resummoning.

Charleston, South Carolina
October 12, 1989.

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