UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MITCHELL H. COHEN
UNITED STATES COURTHOUSE
ONE JOHN F. GERRY PLAZA
4TH AND COOPER STS.
CAMDEN, NEW JERSEY 08101

BASIC ELEMENTS OF CIVIL PRACTICE IN THE CAMDEN VICINAGE

Camden, New Jersey
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INTRODUCTION

This is an outline of basic federal civil practice and procedure in the United States District Court for the District of New Jersey. This monograph summarizes procedures for typical civil cases, and it attempts to give you guidance to find the sources of these procedures in the statutes and rules.

The evolution of modern practice continues to be rapid. Developments in the Judicial Improvements Act of 1990 and the 2000 amendments to the Federal Rules of Civil Procedure, amendments to the Local Civil Rules, and the Court's implementation of the Case Management/Electronic Case Filing System (CM/ECF) have required updating the previous editions of this monograph.

This is a statement of certain "essentials" that members of the bar must know in order to practice in the United States District Court for the District of New Jersey, with emphasis upon the Camden Vicinage. **It is not an official publication of the United States District Court and should never be cited as authority.**

Basic but essential civil case procedures are discussed. The directives are easy to follow and they are necessary to enable this court to function efficiently on a day to day basis. This document is intended to provide both an overview of federal civil practice for the less experienced lawyer and a review of recent changes in practice and procedure. Feel free to copy this document and make it available to your colleagues.

Note also that the court maintains a web page. The Web site contains helpful information concerning the Court and its procedures, including the Local Rules. The Court's Web site can be accessed at: http://www.njd.uscourts.gov.

Compliance with the necessary operating directives and rules is a duty owed not only to the Court, and to the interests of a particular client, but also to the people of this nation who demand that the federal courts be able to dispose of a myriad of complex litigation in a "just, speedy and inexpensive manner." Your comments and suggestions for improving our civil litigation system are welcomed and encouraged.

THE FEDERAL RULES OF CIVIL PROCEDURE

The Federal Rules of Civil Procedure can be found in Title 28 of the United States Code. If your law office does not have a copy of the rules you are urged to obtain this volume, as it is absolutely essential for federal practice. A paperback edition of the Federal Rules of Civil Procedure, which may be ordered from West Publishing Company (telephone 1-800-328-9352), also contains the Federal Rules of Evidence and the Federal Rules of Appellate Procedure.

Even if you believe that you are quite comfortable with the Federal Rules of Civil Procedure, you are urged to scan the table of contents and various titles assigned to each of the Federal Rules of Civil Procedure, and to study recent amendments, especially to Rules 4 (process), 11 (signing of pleadings), 16 (pretrial conferences), 26-36 (discovery), 37 (discovery sanctions) and 72-73 (proceedings before magistrate judges).

THE LOCAL CIVIL RULES FOR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Many of the Local Civil Rules (L.Civ.R.) of the United States District Court for the District of New Jersey, concern civil practice. These Local Civil Rules are supplements to the Federal Rules of Civil Procedure. Too often counsel seem to be unfamiliar with these rules. They are not difficult to understand, and familiarity with them will assist you and your clients in litigating in the federal court.

Any attorney admitted to a case pro hac vice should also obtain and read the Local Civil Rules, because the attorney is bound by them.

The Local Civil Rules were thoroughly amended in December, 1991 and are periodically reviewed and amended. These Local Civil Rules are available by down-loading from the Court's Web site: Http://www.njd.uscourts.gov/.

West Publishing's Rules Governing the Courts of the State of New Jersey also contains the Local Civil Rules together with all Appendices and a helpful Index. An authoritative annotated version of the Local Rules is published and updated annually in paperback form, in Allyn Z. Lite, New Jersey Federal Practice Rules (Gann Law Books, Newark, N.J.), and it serves as a federal counterpart to Sylvia Pressler, Rules Governing the Courts of the State of New Jersey. Finally, the New Jersey Institute for Continuing Legal Education has published the New Jersey Federal Civil Practice Handbook, which is supplemented annually.

ATTORNEYS

The admission of attorneys to practice before this court is governed by L.Civ.R 101.1., while discipline of attorneys is governed by L.Civ.Rs. 103.1 and 104.1.

Counsel of Record - Appearance as counsel of record shall be filed with the Clerk only by a member of the bar of this Court, see L.Civ.R. 101.1(c)(4). It is no longer required that a member of the New Jersey Bar maintain an office in New Jersey in order to practice before this court.

Pro Hac Vice Admission - Appearance pro hac vice is governed by L.Civ.R. 101.1(c). A member in good standing of the bar of any court of the United States or of the highest court of any state may be permitted to appear and participate in a particular case, on motion, in the discretion of the court, if the L.Civ.R. 101.1 requirements are satisfied.

Even if an attorney has been admitted pro hac vice to participate in a case, only an attorney at law of this Court may file papers, enter appearances for parties, sign stipulations, and sign and receive payments on judgments, decrees or orders. Local counsel remains responsible for the conduct of the litigation and for the conduct of pro hac vice counsel. Local counsel must continue to appear at all proceedings (unless excused) and must continue to sign all briefs and pleadings even though pro hac vice counsel is otherwise litigating the case. For example, local counsel must appear at the Scheduling Conference and all other pretrial conferences and at trial, unless expressly excused by the court.

Note that a lawyer admitted pro hac vice is required to make payment of $150 on each admission payable to the Clerk, USDC, See L.Civ.R. 101.1(c)(3).

Additionally, a lawyer admitted pro hac vice may not accept a contingent fee in a tort case in excess of the New Jersey State Court Contingency Fee Rule (N.J. Ct. R. 1:21-7, as amended), and must contribute to the New Jersey Lawyer's Fund for Client Protection (N.J. Ct. R. 1:28-2(a)).

Withdrawal of Appearance - Withdrawal of counsel's appearance is governed by L.Civ.R. 102.1. Unless other counsel is substituted, no attorney may withdraw an appearance except by leave of court, which means by motion upon notice to the client and other litigants. After a case has first been set for trial, substitution and withdrawal shall not be permitted except by a leave of court.

Pro Bono Panel - Members of the bar of this court are encouraged to volunteer their services on behalf of deserving indigent litigants. Such service is in the public interest of providing equal justice for all, and it is in the highest standards of the bar.

To add your name to the Pro Bono Panel of attorneys, you may access the form on the Court's Web site, http://www.njd.uscourts.gov/ under "Attorney Services," and forward the form to the Clerk's Office in the vicinage in which you practice or from which you would accept pro bono

assignments. The Court always welcomes additional attorneys to volunteer for pro bono service, and indeed greatly appreciates such service.

When a District Judge or Magistrate Judge determines that an indigent litigant's request for counsel should be granted, see 28 U.S.C. §1915(e), the Clerk is directed to select a member of the Panel who is requested to enter an appearance. Guidelines for the Pro Bono Panel appear as Appendix H to the Local Civil Rules.

Additionally, the Court has prepared a Pro Bono Primer which sets forth general guidelines for pro bono representation. These guidelines also can be accessed on the Court's Web site, http://www.njd.uscourts.gov/, under "Attorney Services" then "Pro Bono Representation." When an attorney accepts a pro bono appointment, reasonable reimbursement for depositions and experts, within a monetary ceiling, may be available through a fund administered by the Clerk of the Court, who may be consulted for further details. The provisions for taxing of costs and fees for a prevailing party and for award of counsel fees remain available to the indigent litigant and appointed counsel under various statutes and Local Rules. Such attorney fee statutes are found, for example, in the Social Security Act (42 U.S.C. §405(g)), the Civil Rights Acts of 1868 and 1871, as amended (42 U.S.C. §1988), Title VII of the Civil Rights Act of 1964, as amended [employment discrimination] (42 U.S.C. §2000e), and the Privacy Act (5 U.S.C. §552a(g)), among others.

Discipline of Attorneys - The Rules of Professional Conduct of the American Bar Association, as revised by the Supreme Court of New Jersey, govern the conduct of members of the bar admitted to practice in this court; See L.Civ.R. 103.1.

Discipline of attorneys, including attorneys admitted pro hac vice, is governed by L.Civ.R. 104.1, which speaks in detail to questions of disciplinary action and reinstatement.

In addition, rules relating to the conduct of parties, lawyers, the media and others in connection with judicial proceedings -- civil and criminal -- are set forth in L.Civ.Rs. 101.1, 105.1, 401.1, L.Cr.R. 101.1. Lawyers should take note in particular of L.Civ.R. 105.1(a) and its touchstone of appropriate conduct: "A lawyer representing a party in a civil matter triable to a jury shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer or other person knows or reasonably should know that it will have a substantial likelihood of causing material prejudice to an adjudicative proceeding." L.Civ.R. 105.1(a). The rules should be consulted for specific applications in various contexts.

Criminal Justice Act Panel - District and Magistrate Judges appoint the Federal Public Defender or private counsel to represent indigent defendants in criminal cases, petitioners in habeas corpus cases, and in several other non-civil circumstances under the Criminal Justice Act, 18 U.S.C. §3006A. Private appointed counsel may receive compensation under the Act at a current rate of $90.00.

The Court has adopted a Plan of Implementation of the Criminal Justice Act. The plan, a copy of which can be obtained from the Clerks Office or by down-loading it from the Court's Web site, encompasses a panel of experienced criminal attorneys, a training panel to give less experienced attorneys an opportunity to develop their knowledge of federal criminal procedures and practice, as well as opportunities for training and education.

JURISDICTION

Attorneys are sometimes embarrassed because they institute an action in the United States District Court and later learn that the court lacks either subject matter jurisdiction or personal jurisdiction over the defendant. The scope of this monograph does not permit a discussion of the

issues concerning jurisdiction. However, please give more than cursory attention to this issue before bringing suit in our Court and/or preparing an answering pleading on behalf of a client who has recently been named as a defendant in our Court.

The complaint must state the basis for the Court's subject matter jurisdiction. Complaints that are defective in this regard will be subject to dismissal upon the Court's own motion pursuant to Rule 12(h)(3), Fed.R.Civ.P., which compels the court to dismiss an action "whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter."

The most common jurisdictional basis is federal question jurisdiction under 28 U.S.C. §1331, for claims arising under the constitution and laws of the United States. There is no monetary floor for federal question cases.

In diversity actions under 28 U.S.C. §1332, the plaintiff must allege the citizenship of each plaintiff and defendant, so that it is clear on the face of the pleading that complete diversity exists. The jurisdictional floor for diversity cases is now $75,000, exclusive of interest and costs.

Congress also codified "supplemental jurisdiction" in 1990 at 28 U.S.C.A. §1367, whereby the federal court can exercise jurisdiction over other claims so long as federal question jurisdiction exists as to a claim against a defendant and the other claims "are so related in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." This doctrine of supplemental jurisdiction does not apply, however, where the original jurisdiction in the case is founded solely in diversity of citizenship. See 28 U.S.C.A. §1367(b). Finally, the court may decline to exercise supplemental jurisdiction under various circumstances. See 28 U.S.C.A. §1367(c).

Under certain circumstances, a case filed in state court can be removed to this District Court if it could have been filed here to begin with, for example if a federal question is presented or if complete diversity exists. Removal is not a separate jurisdictional basis, but it is a procedure which can be exercised by timely compliance with appropriate removal statute at 28 U.S.C. §§1441-46. A party challenging removal must generally file a motion for remand within thirty (30) days after filing of the notice of removal, see 28 U.S.C. §1447(c).

At the first conference with the Court, counsel will be asked to state the jurisdictional basis of the action in this Court. If there is any question about the jurisdiction of the Court, counsel may be directed to address an appropriate motion to this point.

With respect to asserting jurisdictional defenses, counsel are referred to Rule 12(b), Fed.R.Civ.P..

PLACES OF COURT

The United States District Court for the District of New Jersey is by statute one unified federal district encompassing the entire State of New Jersey, 28 U.S.C. §110. Our District Court was established in 1789. The Court established a Historical Society in 1984. You are invited to the Historical Society's Web site to learn more about the Court's history, http://history.njd.uscourts.gov/. Regular continuous sessions of Court are conducted in Camden, Newark, and Trenton. This monograph primarily concerns the Camden Vicinage. In general, actions arising out of or having pertinent contact with the following southern New Jersey counties will be allocated to and tried in the Camden Vicinage: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem.

The Newark vicinage is composed of the following eight northern New Jersey counties: Sussex, Passaic, Morris, Bergen, Hudson, Essex, Union, and Middlesex.

The Trenton vicinage is now composed of the following counties: Warren, Hunterdon, Somerset, Mercer, Monmouth, and Ocean.

More information concerning how cases are allocated to a vicinage and under what circumstances an action might be transferred from one vicinage to another is set forth in L.Civ.R. 40.1.

ELECTRONIC CASE FILING SYSTEM

Attorneys are required to electronically file documents with the Court. Electronic Filing is governed by the Court's Policies and Procedures, as amended September 2005, which can be accessed at the Court's Web site. The Policies and Procedures provide information for redaction of sensitive information from filed documents, in accordance with new L.Civ.R. 5.3. Certain personal data identifiers must be partially redacted from a document, pursuant to the Judicial Conference Policy on Privacy and Public Access to electronically filed documents.

Any request to seal a document must be made by a formal motion under L.Civ.R. 7.1. The rule governing sealed documents and protective orders in civil matters is L.Civ.R. 5.3. This new rule sets forth procedures to be followed in requesting documents and Court proceedings to be sealed. Local Civil Rule 5.3, is intended to reflect Supreme Court and Third Circuit Law in regards to Protective Orders and Sealing of documents and hearings.

CAPTIONS AND PLEADINGS

The style and format of your pleadings will rapidly indicate to your adversary and to the Court whether you are familiar with federal practice. More importantly, proper information in the caption of any paper to be filed with the Court expedites the processing of the matter. L.Civ.R. 10.1 discusses the form of pleadings and it should be reviewed.

L.Civ.R.10.1(a) requires that the initial pleading of party filed in any cause other than criminal:

- Shall state in the first paragraph the complete and proper address (town and state) of each party or
- If the party is not a natural person, the address of its principal place of business
- Must contain the complete and proper address of counsel
- The Court must be advised of any change in address by filing a notice with the Clerk within five days of the change.
- The Court must be advised of any change to an e-mail address by sending an e-mail to ecfchange@njd.uscourts.gov.

L.Civ.R. 10.1(b), as amended, requires the following:

- Size 8 ½" x 11", black lettering, typewritten or printed without interlineation or erasures
- Caption bears docket number and name of judge assigned to the action or proceeding
- On first page, name of office, post office address and telephone number of the attorney of record for the filing party

The following caption is correct because it contains the required information.

Anne S. Jones, Esquire
Smith and Jones, P.C.
P.O. Box 555
Anytown, New Jersey 08100
(609)555-0123

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW JERSEY

ELLEN BROWN,	:	
Plaintiff,	:	Hon. Stanley S. Brotman
v.	:	Civil No. 05-0000
ASHTABULA COAL CO., INC.,	:	(Description of Paper Filed: Complaint, Answer, Order, etc.)
Defendant.	:	

Note that Rule 7.1 of the Federal Rules of Civil Procedure has been added in 2002 to require a non-governmental corporate party to an action to file with the Court two copies of a disclosure statement identifying any parent corporation and any publicly held corporation that owns 10% or more of its stock or stating there is no such corporation.

THE ASSIGNMENT TO A DISTRICT JUDGE AND MAGISTRATE JUDGE

The Clerk's Office assigns cases to the District Judges on a random basis that is calculated to lead to an equitable allotment of the caseload among our District Judges. It would be improper for counsel to attempt to intrude into this process by asking the Clerk which Judge will receive the next filed case. Counsel are to have no foreknowledge of the identity of the District Judge to whom their action will be assigned.

The case is maintained on the District Judge's individual docket and calendar for all purposes, including trial. The Magistrate Judge (also assigned when the case is filed) works with each District Judge in managing the cases and calendars, holding various pretrial conferences (see "Civil Case Management" below) and deciding most non-dispositive motions. In the Camden vicinage each Magistrate Judge is assigned cases based on an odd/even system. Magistrate Judge Rosen currently

handles all cases which are designated by an odd docket number while Magistrate Judge Donio handles those designated by an even number, with exceptions for related cases and conflict situations.

SERVICE OF INITIAL PROCESS AND SUBPOENAS

Rule 4 of the Federal Rules of Civil Procedure concerns the methods for service of initial process, the form of summons and the person to be served. Initial process such as a summons should be distinguished from a subpoena, which is usually served after a civil action has been instituted in our court.

In the past, the United States Marshals served civil process. That is no longer the case. Counsel must prepare the summons (as was always the practice) and attend to the service and return of service of initial process themselves. Summonses may be obtained by down-loading the form from the Court's web site or from the Clerk's Office.

Counsel should review the 1993 and 2000 amendments to Rule 4 concerning service of process. The amended rule was designed to facilitate the service of the summons and complaint. It provides for procedures to encourage waiver of service upon parties and also imposes a penalty on a defendant who without cause fails to comply with a request for waiver by the serving party. See Rule 4(d), Fed. R. Civ. P. The rule also notes with particularity the procedures to be followed in obtaining a waiver of service, in serving an individual in the United States, in serving individuals in foreign countries, in serving an infant or incompetent; in serving the United States, and in serving a corporation and association. The 2000 Amendments to Rule 4(i)require service on the United States when a United States officer or employee is sued in an individual capacity in connection with duties performed on behalf of the United States.

The Clerk is authorized under L.Civ.R. 4.1 to sign and enter orders specially appointing persons whom counsel designate to personally serve process consistent with Rule 4(c), Fed. R. Civ. P.. The Clerk's Office in Camden has appropriate forms for your use in specially designating process servers.

Subpoena forms may also be obtained by down-loading the form from the Court's web site or from the Clerk's Office. They may be signed by counsel as an officer of the Court. The rule to be consulted concerning the issuance of subpoenas is Rule 45, Fed. R. Civ. P..

Generally speaking, a subpoena may be served at any place within the district of the issuing Court or at any place outside the district within 100 miles of the place of deposition, hearing, trial, or inspection. Rule 45(b)(2), Fed. R. Civ. P.. Further, a person subpoenaed to produce documents or items for inspection need not appear in person unless commanded to do so for trial depositions or a hearing. Note that failure to comply with a subpoena may constitute a contempt of court. Rule 45(e), Fed. R. Civ. P..

DUTIES OF THE MAGISTRATE JUDGE

The United States Magistrate Judge is a judicial officer selected and appointed for a term of eight years by the Judges of the entire District Court after considering the recommendations of a Merit Selection Panel. 28 U.S.C. §631.

The duties of federal magistrates judges have grown in recent years, notably through the 1976 and 1979 amendments to the Federal Magistrates Act, 28 U.S.C. §§631-639 and the 1983 and 1993

additions to the Federal Rules of Civil Procedure at Rules 72-73. [Amendments in 1997 to Rule 73 caused a repeal to Rules 74-76.]

In the District of New Jersey, the broadest statutory authority for conducting a wide range of judicial proceedings has been given to the magistrate judges primarily through L.Civ.R.72.1.

Duties in civil matters include hearing and deciding various non-dispositive motions, conducting trials by consent of the parties (both jury and non-jury), civil case management (including the exercise of general supervision of the civil calendars and conducting pretrial conferences) and the other duties stated in L.Civ.R. 72.1(a). When a dispositive motion is referred to the Magistrate Judge by a District Judge, the Magistrate Judge enters a report and recommendation which is then reviewed by the District Judge (see 28 U.S.C. §636(b)(1)(c) and L.Civ.R. 73.1). Nationally, Magistrate Judges presided over 18% of all civil jury trials for the one year period ending September 30, 2003.

Duties in criminal matters include trials of misdemeanors (jury) and petty offenses (non-jury), issuing arrest warrants and search warrants, and conducting a variety of criminal proceedings, such as determining pretrial detention or release. L.Cr.R. 5.1.

Appeals from the Magistrate Judge's judgments and other orders follow the procedures set forth in L.Civ.R. 72.1(c). Note that the procedure for such appeal or objection (and the scope of review on appeal) depends upon the type of determination made. Note also that, in the case of non-dispositive motions, the filing of a motion to appeal does not operate to stay the order pending appeal to a District Judge. A stay of a Magistrate Judge's order pending appeal must be sought in the first instance from the Magistrate whose order has been appealed, upon due notice to all interested parties, pursuant to L.Civ.R.72.1(c)(1)(B).

Additionally, Rule 73, Fed. R. Civ. P., was amended in 1997, to conform with Section 636(c)(3), in which a party may appeal a judgment directly to the U.S. Court of Appeals in any case referred to a Magistrate Judge under 28 U.S.C. § 636(c)(1).

CIVIL CASE MANAGEMENT

A. OVERVIEW OF FEDERAL CASE MANAGEMENT

Individualized management of civil cases is a distinctive hallmark of the federal system in general and the District of New Jersey in particular. In most cases, the litigants can expect to meet with the judicial officer, usually the Magistrate Judge, shortly after the answer is filed, and periodically as necessary thereafter, to discuss the case and to schedule it for almost all important parts of the pretrial process, including the date for trial. The schedule will include deadlines for amending pleadings and joining new parties, for completing factual discovery, for exchanging expert reports, for filing threshold and final dispositive motions, for commencement of the arbitration hearing or mediation program where appropriate, and for preparation of the Final Pretrial Order.

Federal case management involves more than just setting and enforcing deadlines. Case management is a process of consultation between counsel and the judge leading to a resolution of the cases through settlement or trial. Lawyers should take advantage of the opportunity to bring special needs to the attention of the judge and their adversaries. The initial conference (called the Scheduling Conference) and subsequent conferences (called Discovery or Status Conferences) also present the forum for quick and informal resolution of actual and anticipated disputes about the scope of discovery, joinder of parties, and communication problems among the lawyers. Often litigants can agree, with the judge's assistance, to drop non-meritorious claims or defenses without the necessity of motion practice.

The pretrial management process also provides opportunities to settle the case. From the initial conference until the final pretrial conference, the subject of settlement will be discussed. Special settlement conferences are convened when it appears that the parties desire a more intensive effort to resolve the case with judicial mediation or assistance. Because the overwhelming majority of federal civil cases are terminated by settlement rather than by trial, the pretrial management efforts to settle cases receive much attention in the process.

This section, then, is designed as a practical case management handbook for the federal practitioner in the District of New Jersey. The section begins with an examination of the roles of the judges and lawyers in the process, and then turns to the underlying authority and philosophy of case management, as expressed in the Federal Rules of Civil Procedure and Local Rules of the District Court.

This section examines the newest developments under the 1993 and 2000 Amendments to the Federal Rules of Civil Procedure, the Civil Justice Reform Act of 1990, and the District Court's adoption of new Local Rules as they impact upon case management.

This section also discusses the implementation of civil case management in greater detail. It looks at the types of cases subject to normal or more intensive case management, as well as the categories of cases generally receiving no case management. The section outlines the objectives and procedures for scheduling, status, discovery and final pretrial conferences. The section probes the degree of flexibility of case management orders by examining the procedures for enlargements of time and for other relief from such orders, and it devotes attention to the enforcement of case management orders, such as through sanctions. The section gives some practical pointers to help attorneys put their best cases forward through informed and constructive use of the process.

B. ROLES OF DISTRICT JUDGES, MAGISTRATE JUDGES, AND LAWYERS

Every case is assigned to a District Judge and a Magistrate Judge. The Clerk's Office assigns cases to the District Judge on a random basis that is calculated to lead to an equitable allotment of the caseload. The case is maintained on the District Judge's individual docket for all purposes, including trial. The Magistrate Judge assigned to the case works with the District Judge in managing the cases and calendars, holding various pretrial conferences, and deciding most non-dispositive motions.

The case assignment of the Magistrate Judges varies within the District. In Newark, six Magistrate Judges are each paired with two or three of the ten District Judges; the assignment of the District Judge necessarily determines the assignment of his or her paired Magistrate Judge. In Camden and Trenton, the two Magistrate Judges in each courthouse are assigned civil cases on an odd-even docket number basis; the docket number determines the Magistrate Judge's assignment, so that the Magistrate judge can be assigned to any District Judge's case. In Camden, Magistrate Judge Donio handles even numbered cases while Magistrate Judge Rosen is assigned odd numbered cases.

The lawyers' role in pretrial management can be captured by three words:

Preparation

Attentiveness

Professionalism

Preparation includes a thorough review of the file and a meaningful projection of the steps necessary to resolve the case by settlement, dispositive motion practice, arbitration, or trial. Attentiveness means paying attention to what you need to learn in discovery, as well as what you owe to your adversary, so that the objectives of a speedy, efficient, and just resolution are met. Professionalism

has at least a two-fold application for case management -- the ethical and responsible interaction with your adversary and your fulfillment of duties as an officer of the court.

C. FEDERAL RULES OF CIVIL PROCEDURE AND LOCAL RULES GOVERNING CASE MANAGEMENT

1. Federal Rules of Civil Procedure 16 & 26(f)

For almost 50 years from their adoption in 1938, the Federal Rules of Civil Procedure imposed almost no direction on the subject of managing a case before trial, with Fed. R. Civ. P. 16 calling for a pretrial conference and final pretrial order but little else. Meanwhile, a tradition of more intensive judicial involvement emerged in the early 1970's in the District of New Jersey, including increased use of preliminary pretrial conferences and entry of the resulting management orders. The local practice augmented the Federal Rules, and its success lead to efforts to strengthen them. By the 1980's, the need to require more specific judicial management on a national level became apparent.

Rule 16(a) lists objectives of pretrial conferences, namely:

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation; and

(5) facilitating the settlement of the case.

Rule 16(b) introduces the concept of the Scheduling Conference -- the initial conference in the case - conducted in person or by telephone, by a District Judge or a Magistrate Judge. The Rule 16(b) conference is mandatory in all cases except when exempted by local rule as inappropriate. (See

L.Civ.R.72.1(a)(3)(c), for cases included and exempted). Under Rule 16(b), the resulting Scheduling Order must set limitations upon the time:

(1) to join other parties and to amend the pleadings;

(2) to file and hear motions; and

(3) to complete discovery;

(4) modifications of the times for disclosure and the extent of discovery to be permitted;

(5) the date or dates for conferences before trial, a final pretrial conference, and trial; and

(6) any other matters appropriate in the circumstances of the case.

The Advisory Committee saw these directives as assuring "that at some point both the parties and the pleadings will be fixed," and that motion timetables will preclude "stalling techniques," and that discovery deadlines address "problems of procrastination and delay by attorneys" in the discovery context. Notes of Advisory Committee on the Civil Rules (1983).

Rule 16(b) addresses amendments to scheduling orders, providing that the scheduling order may be modified only for good cause shown. Rule 16(c) contains a long and non-exclusive listing of subjects to be discussed at pretrial conferences, giving wide latitude to the judge and participants. The intention is to encourage better planning and management of litigation. The subjects include formulation of issues, necessity of amendments to pleadings, stipulations, evidentiary rulings, settlement, extra-judicial dispute resolution procedures, disposition of motions, and special

procedures for complex issues and unusual proof problems. See Rule 16(c)(1)-(16). The Advisory Committee intended to provide the Court the authority to enter "orders designed to facilitate settlement or to provide for an efficient and economical trial." Notes of Advisory Committee on the Civil Rules (1993).

Rule 16(d) provides for a Final Pretrial Conference "held as close to the time of trial as reasonable under the circumstances," requiring the attendance of actual trial counsel.

Rule 16(e) provides for entry of an order after any conference under the rule, and it contains the standard for amendment of the final pretrial order: "only to prevent manifest injustice."

Finally, Rule 16(f) sets the standard for enforcement of duties imposed on attorneys and parties by the case management process, including sanctions for failure to attend, for lack of preparation, or failure to obey scheduling or pretrial orders. The Local Civil Rules of the U. S. District Court for the District of New Jersey provide more specific case management guidance, expressly in L.Civ.R. 16.1. Following consideration of the Civil Justice Expense and Delay Resolution Committee for the United States District Court for the District of New Jersey (submitted October 1, 1991), the Court adopted the Plan for Implementation of the Civil Justice Reform Act of 1990 and made important changes to the Local Civil Rules. The revisions to these rules and others are designed to meet the principles and guidelines of the Civil Justice Reform Act of 1990, 28 U.S.C.A. §§ 471-472 (1990), as well as the 1993 Amendments to the Federal Rules of Civil Procedure, for litigation management and cost and delay reduction. The Act's principles, listed in 28 U.S.C.A. § 473(a), include:

(1) systematic, differential treatment of civil cases ...;

(2) early and ongoing control of the pretrial process through involvement of a judicial officer ...;

(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences ...;

(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

(5) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel ...; and

(6) authorization to refer appropriate cases to alternative dispute resolution programs that

(A) have been designated for use in a district court; or

(B) the court may make available, including mediation, minitrial, and summary jury trial.

Accordingly, L.Civ.R. 16.1(g) builds upon the strengths of early and consistent judicial case management. The Magistrate Judge will convene a Scheduling Conference within 60 days of filing an initial answer, unless deferred due to the pendency of a dispositive or other motion, pursuant to L.Civ.R.16.1(a)(1). The rule gives explicit authority to the Magistrate Judge to conduct further conferences, revise scheduling orders for good cause, and convene settlement conferences. See L.Civ.R. 16.1(a)(2).

The 1993 amendments to the Federal Rules of Civil Procedure have been fully adopted by this court and implemented in the Local Rules. Specifically, Rule 26(a) mandates the voluntary early disclosure of certain basic information, including the names, addresses, and phone numbers of individuals likely to have discoverable information that the party may use to support its claims or defenses (Rule 26(a)(1)(A)); copies of documents that may likewise be used (Rule 26(a)(1)(B)); a computation of damages, including all documents relied upon in the computation (Rule 26(a)(1)(c)). Note, that the 2000 amendments to Rule 26, Fed. R. Civ. P., narrowed the scope of the disclosure obligation by a disclosing party. A party is obligated to identify witnesses and documents that the disclosing party may use to support its claims or defenses. Therefore, "[a] party is no longer obligated to disclose witnesses or documents, whether favorable or unfavorable, that it does not intend to use." Notes of Advisory Committee on Civil Rules (2001). The 2000 amendments also limited attorney-controlled discovery to a case that is relevant to the claim or defense of a party. The Court may, on a showing of good cause, permit broader discovery in a particular case if its relevant to the subject matter in the action.

Local Civil Rule 26.1 has been amended to require parties to investigate and disclose digital information including computer-based information. This may include "currently maintained computer files, whether in current or historic media or formats, such as digital evidence which may be used to support claims or defenses." L.Civ.R. 26.1(d). The voluntary disclosure rules are rigorously enforced. Violation can lead to severe sanctions.

The disclosure of these items follows a mandatory conference of counsel where they must consult and prepare a discovery plan which is to be submitted to the court prior to the initial scheduling conference. Rule 26(f) and L.Civ.R. 26.1(b).

The 1993 amendments, as well as modifications to the Local Civil Rules of this court, also provide for disclosure of expert reports, including all opinions to be expressed, the data relied upon, and the basis and reasons for any conclusions. Rule 26(a)(2). The timing of the service of expert reports and expert depositions are governed by the Scheduling Orders. The amended rule also addresses the issues of sanctions for failing to comply with the disclosure and other requirements of Rule 26.

After the answer is filed in a case, an order for a scheduling conference will issue giving counsel the date and time of the next scheduling conference, reminding them of their obligations under Rule 26, and informing counsel on the prescriptive limitations on discovery of no more than ten depositions and twenty-five interrogatories. Rule 26(b) and Rule 26(d). Further, counsel will be ordered to meet to prepare a discovery plan which should be presented to the Court not later than twenty four hours prior to the conference.

L.Civ.R. 37.1(a)(1) provides for judicial resolution of case management disputes on an informal basis where possible. First, as with discovery disputes, counsel must confer to resolve any case management dispute. Second, if not resolved, the dispute must be presented to the Magistrate Judge by telephone conference call or letter. This presentation of a dispute must precede any motion practice. Third, if the Magistrate Judge is unable to resolve the dispute on the basis of the informal presentation, a motion may be filed under L.Civ.R. 16.1(g).

A. CIVIL CASE MANAGEMENT CONFERENCES AND ORDERS

1. Scheduling Conference

The Scheduling Conference is usually convened before the assigned Magistrate Judge after the first answer is filed. This conference is held in practically all cases. See L.Civ.R. 72.1(a)(3)(c) for

exceptions. If the case would benefit from an expedited conference, you should first confer with counsel and then present your request to the Magistrate Judge. Typically, the Scheduling Conference is held in the Magistrate Judge's chambers or conference room, although his or her courtroom may also be used particularly when a pro se litigant is involved. The conference is meant to be off-the-record and informal, to encourage frank dialogue. The Magistrate Judge's decisions resulting from the conference are always confirmed in a Scheduling Order.

Counsel who are well-prepared for the Scheduling Conference have the advantage of being better able to articulate their clients' needs. You are expected to be thoroughly familiar with the file and to have thought about the issues raised by the case prior to the conference.

Occasionally, the Scheduling Conference will be held by telephone in simple cases, such as motor vehicle personal injury cases involving two attorneys. All other procedures for Scheduling Conferences apply, including submission of the joint discovery plan before the conference. You may, after consulting with your adversary, request that a Scheduling Conference be conducted by telephone if appropriate.

At the Scheduling Conference, the Magistrate Judge will ask counsel to discuss discovery deadlines and types of discovery, including the time within which experts must be identified and their reports exchanged. The Magistrate Judge may further address any overdue discovery and also consider limitations upon the scope, method or order of discovery as may be warranted by the circumstances of the case, to avoid duplication, harassment, delay or needless expenditures of costs. Amendments to pleadings may be addressed, and the necessity for dispositive motions and their scheduling will be considered.

Counsel will also discuss whether Arbitration under L.Civ.R. 201.1 is appropriate. Arbitration is compulsory but non-binding in cases where the relief sought consists only of money damages not in excess of $150,000 exclusive of interest, costs and punitive damages (L.Civ.R. 201.1.(d)(1)), with exceptions for cases based on alleged violations of constitutional rights, tax refund suits, and Social Security actions (L.Civ.R.201.1.(d)(2)), or if the case involves complex or novel legal issues, or if legal issues predominate over factual issues, or if other good cause is shown why specific policy concerns make arbitration inappropriate (L.Civ.R. 201.1(e)(6)). Keep in mind that parties may choose Arbitration by Consent in other cases where money damages are sought, or by leave of court upon motion.

The Magistrate Judge will also ask counsel whether the case is appropriate for disposition by other means of dispute resolution. These include mediation pursuant to L.Civ.R. 301.1, appointment of a special master, or other special procedures that the parties may devise. When the parties agree to an alternate dispute resolution ("ADR") mechanism (i.e., other than court-annexed Arbitration or mediation), they must present their agreement to a Judge or Magistrate Judge for approval. Should the parties agree to some form of alternative dispute resolution, the court may administratively terminate the civil action without prejudice pending completion of the ADR procedure. [See Guidelines for Arbitration and Appendix M to the Local Civil Rules [hereinafter cited as Guidelines for Arbitration, at subsection X.] Logically, the parties may propose a hybrid ADR procedure, where certain discovery is completed under the normal rules before going to the selected ADR procedure and administratively terminating the case on the docket.

Settlement will be discussed at the initial conference, especially in non-complex cases, and you should therefore be prepared to discuss settlement. Be prepared, after client consultation, to

make a reasonable settlement demand or offer, if possible. It is often helpful to identify the information that you need to settle the case, short of plenary discovery. Many attorneys can achieve early settlement following the prompt and candid exchange of this information. Also, you should not hesitate to request that the Magistrate Judge set a date for a follow-up settlement conference.

The result of this initial conference is the Scheduling Order. The Magistrate Judge and staff usually prepare, file and serve this order, which binds all parties pursuant to Fed. R. Civ. P. 16(b) and L.Civ.R. 16.1(b), which states:

> The Magistrate Judge shall after consultation with counsel, enter a scheduling order which may include, but need not be limited to, the following:
>
> a. date by which parties must move to amend pleadings or add new parties;
>
> b. date for submission of experts' reports;
>
> c. dates for completion of fact and expert discovery;
>
> d. dates for filing of dispositive motions after due consideration whether such motions may be brought at an early stage of proceedings (i.e., before completion of fact discovery or submission of experts' reports);
>
> e. a pretrial conference date; and
>
> f. any designation of the case for arbitration, mediation, appointment of a special master or other special procedure.

The Scheduling Order may further include such limitations on the scope, method or order of discovery as may be warranted by the circumstances of the particular case to avoid duplication,

harassment, delay or needless expenditure of costs. The Scheduling Order will also set the date of the next conference. The Scheduling Order, and any amendment thereto, is enforceable under Fed. R. Civ. P. 16(f).

2. Status Conference

When the developments of a civil case cannot be reasonably well anticipated, due, for example, to absent parties or pending dispositive motions, a Status Conference will be scheduled as a follow-up to the Scheduling Conference. If necessary, the court will amend the Scheduling Order upon good cause shown at the Status Conference to accommodate the parties' reasonable needs or to take account of newly added parties or other litigation developments. The Amended Scheduling Order then governs the case through the date of trial. A telephone conference is also available in appropriate situations for a Status Conference.

3. Discovery Conference

L.Civ.R. 16.1(a)(2) gives the judge authority to conduct further discovery conferences as he or she deems necessary and appropriate.

These conferences are intended for the ongoing management of discovery in the action, and it is most appropriate in more complicated cases. Counsel may request such a conference in an effort to resolve discovery disputes or discuss possible amendments to the Scheduling Order.

The court can, and often does, direct attorneys to appear for a Discovery Conference, after which a Discovery Order or Amended Scheduling Order is entered. Such an order may, among other things, identify or narrow the issues for discovery purposes, and enforce or modify the plan and schedule for discovery. It may also set any appropriate limitations upon discovery, revisiting the discovery plan, if necessary, to take unanticipated developments into account.

4. Final Pretrial Conference

Important case management issues can be addressed at the Final Pretrial Conference. Local practice and Fed. R. Civ. P. 16(d) require that trial counsel attend. Thus, Rule 16(d) states:

> Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

The Magistrate Judge also normally conducts the Final Pretrial Conference. This conference is held in all cases to assure that the litigation has been properly prepared for trial and to arrive at procedures to streamline trial. Trial counsel should always be well-prepared to discuss the settlement of the case at this conference.

The Magistrate Judge normally sets the date for the Final Pretrial Conference during an earlier conference in the case. In Arbitration cases, the Final Pretrial Conference is not scheduled until a party seeks a trial de novo following an Arbitration hearing and award.

The local practice far exceeds the bare-bones requirements of Rule 16(d), above. The most striking feature of the Final Pretrial Order in this District is that it is jointly prepared by the attorneys themselves in a single document stating each party's position with respect to all issues of jurisdiction, facts, law, admissions and stipulations, expert and non-expert witnesses, proposed trial exhibits and more. The written instructions for the format of the Joint Final Pretrial Order appropriate for the case can be accessed on the Court's Web site by clicking on Rules. These instructions are similar but not uniform throughout the District. When counsel cooperate in the preparation of this document, trial surprises are curtailed and the case is ready for disposition by settlement or trial.

Remember to give due care to the preparation of the Joint Final Pretrial Order, because, according to Fed. R. Civ. P. 16(e), "[t]his order shall control the subsequent course of the action unless modified by a subsequent order." The court will not permit modification of this order except as required "to prevent manifest injustice," as provided in Fed. R. Civ. P. 16(e). In short, the Joint Final Pretrial Order supersedes all pleadings filed in the case.

C. ENLARGEMENTS OF TIME AND AMENDING ORDERS

Individualized case management assures that the parties can present special or unanticipated needs in a case to a judicial officer to enlarge time or otherwise amend prior orders. The scheduling orders and other case management orders govern subsequent developments in the case, however, unless amended for good cause shown under Fed. R. Civ. P. 16(b).

The joint discovery plan and the resulting scheduling order contain the roadmap of the case, and the passage of time itself can extinguish certain rights. The march of time will reach and overcome the first three deadlines set in the scheduling order under L.Civ.R. 16.1(b)(1), namely, the dates for amending pleadings or adding new parties, the dates for submission of expert reports, and dates for completion of fact and expert discovery.

For example, the expiration of the deadline for amending pleadings or adding new parties, set under Fed. R. Civ. P. 16(b)(1) and L.Civ.R. 16.1(b)(1)(A), can extinguish the right to amend pleadings which is otherwise to be "freely given when justice so requires" under Fed. R. Civ. P. 15(a). See, e.g., Harrison Beverage Co. v. Dribeck Importers, Inc., 133 F.R.D. 463 (D.N.J. 1990)(denying certain proposed amendments as untimely); Leased Optical Departments-Montgomery Ward, Inc. v. Opti-Center, Inc., 120 F.R.D. 476 (D.N.J. 1988) (permitting tardy amendment but imposing monetary conditions).

Similarly, expiration of the time for identifying expert witnesses and serving their reports can result in barring expert testimony absent good cause shown by articulated reasoning. Koplove v. Ford Motor Co., 795 F.2d 15 (3d Cir. 1986) (affirming summary judgment due to absence of expert on element of claim requiring expert testimony where deadline had expired).

Extensions of discovery -- the most common subject of requests for enlargements of deadlines in this District -- can be especially critical. The "good cause" showing means much more than indicating that time is expiring and more discovery is needed. This standard also implies that counsel have used their allotted time well. For example, if a party did little to comply with the scheduling order's time limits for discovery, a refusal to extend time for further discovery is appropriate. Public Loan Co. v. FDIC, 803 F.2d 82 (3d Cir. 1986) (noting that "[a]ny prejudice the appellants suffered from denial of discovery resulted from a self-inflicted wound").

The good cause standard for amendments to scheduling and management orders derives from the way in which such orders are viewed. The Third Circuit has indicated that Rule 16 "scheduling orders are at the heart of case management," and if they can be disregarded by non-compliance, "their utility will be severely impaired." Koplove v. Ford Motor Co., 795 F.2d at 18.

When a party seeks an extension of time, it must make application in writing, served prior to the expiration of the period sought to be extended, and disclose in the application the date service of process was effected and all similar extensions previously obtained, as required by L.Civ.R. 6.1(a)(1),(2) and (3).

The "application" refers to the letter presented to the Magistrate Judge after consultation among all counsel, as required by revised L.Civ.R.16.1(f)(1) for case management disputes. If

informal resolution of the application is not possible, or if one of the parties appears pro se (see L.Civ.R. 16.1(f)(2)), then the party seeking the extension must file a case management motion.

The application, or any subsequent motion if necessary, must (1) disclose the views of all counsel obtained after conferring (i.e., whether other counsel oppose or consent to the request), and (2) state the facts giving rise to the necessity and fairness of the relief sought (i.e., the showing of "good cause"), with special reference to the facts showing due diligence of counsel or the occurrence of developments unanticipated in the prior order and the lack of prejudice to an opponent. This means, of course, that the consent of all counsel is not sufficient to obtain an extension, nor will opposition automatically defeat a requested extension. The presence of consent or opposition will be considered, but the granting of an enlargement will turn upon the showing of good cause.

It is most helpful to include with the application, for ease of reference, a copy of the operative scheduling or case management order, together with a proposed form of amendment thereto, reciting all the dates, deadlines or procedure affected by the proposed change.

Judges learn much about an attorney's professionalism by the care that he or she takes to frame and comply with scheduling orders. Similarly, the attorney seeking an enlargement of time reveals something about his or her professionalism as a litigator. Does the attorney act in a timely way, anticipating the approach of a deadline, or does the attorney wait until the deadline day (or, perhaps fatally, beyond the deadline) to seek an extension? Does the attorney confer with all counsel, receive their views and faithfully report them in the application, or does the attorney make half-hearted efforts or assumptions about the opponents' views? Does the attorney make a straight-forward presentation of facts showing good cause and lack of prejudice, or does he or she assemble a broadside of half-truths and blame to deflect personal responsibility? Does he or she carefully

prepare a proposed amended order accurately reflecting what is sought and all deadlines or procedures affected by the amendment, or does the attorney submit a terse proposal merely to the effect that the application is granted?

D. ENFORCING CASE MANAGEMENT ORDERS; SANCTIONS

The scheme of case management in each civil case is carefully crafted in the District of New Jersey, resulting from hard work and time expended by the advocates and judges, who have sought to address the needs of each case for reasonable pretrial preparation. Consequently, the resulting court orders are enforceable against counsel and clients, and orders for enforcement may include preclusion of evidence, entry of orders or dismissal or default, and monetary sanctions against the attorneys, parties, or both, pursuant to Fed. R. Civ. P. 16(f).

Scheduling and other case management orders may contain both positive and negative admonitions and deadlines. A "positive" directive may say that "each party and its attorneys shall cooperate in producing its employees for deposition in New Jersey," while a "negative" directive may say that "no party may serve more than 10 interrogatories including subparts." In either case, the court's directive creates a procedure or protocol for the case, which is enforceable because the matter has been determined and ordered. In the above examples, the litigant who believes his or her adversary has failed to adhere to the directive to cooperate in producing employee witnesses, like the litigant who is served with excessive interrogatories, has a remedy through enforcing the order.

The party ignoring expert witness deadlines, to cite another example, may be precluded from calling an expert witness at trial unless relieved from the scheduling order for good cause. Koplove v. Ford Motor Co., 795 F.2d at 18. A party which undertakes a sluggish approach to discovery and fails to seek and obtain meaningful discovery in the allotted time may be denied an extension of

discovery and may then be confronted by a summary judgment motion it finds itself unable to oppose. In this circumstance, the denial of a reopening of discovery and the granting of the opponent's summary judgment motion are appropriate actions to enforce the scheduling order. Turner v. Schering-Plough Corp., 901 F.2d 335, 341 n.4 (3d Cir. 1990) (citing In re Fine Paper Antitrust Litigation, 685 F.2d 810, 818 (ed Cir. 1982), cert. denied, 449 U.S. 1156 (1983)).

The logical enforcement motion for a positive directive is the motion to compel the act which the court has ordered, applying Rules 16(f) & 37(b)(2), Fed. R. Civ. P., which may be filed after conferring with counsel and presenting a case management application to the Magistrate Judge. Similarly, the logical tool to enforce the negative directive is the motion for a protective order, again presented under Rule 16(f) and 37(b)(2), or alternatively under Rule 26(c). The Plan for the Implementation of the Civil Justice Reform Act of 1990 places increased emphasis upon the enforcement of reasonable discovery plans through informal presentation or formal motion practice, if necessary. The well-prepared attorney will learn these enforcement techniques and seek court intervention when necessary.

E. SETTLEMENT CONFERENCES AND PROCESSES

Settlement conferences are part of the case management process because they are an opportunity for resolution that can result from careful planning and negotiation. Indeed, the 1983 revision to Rule 16 "puts settlement on a par with trial preparation as an objective of pretrial conferencing." D.M. Provine, Settlement Strategies For Federal District Judges at 22 (Federal Judicial Center, 1986).

Attorneys are encouraged to request a settlement conference in writing or by telephone at any time. The Magistrate Judge will usually conduct the settlement conference upon such request. The

District Judges also will convene settlement conferences in most cases upon request, if consistent with their schedules.

It is often helpful for plaintiff's counsel, after consulting with the client, to prepare and submit a Settlement Brochure a few days before the conference to help frame the discussions and to apprise defendant of plaintiff's position before the conference. This document is not required by any rule.

TELEPHONE CONFERENCES

The Federal Rules of Civil Procedure have recognized the advantage of telephone conferences in several situations. For example, the 1983 amendment to Rule 16(b), Fed. R. Civ. P., authorizes telephone use in Scheduling Conferences, and L.Civ.R. 16.1(f)(1) mentions the telephone conference as an available option, in the discretion of the District Judge or Magistrate Judge, in addressing certain case management disputes, and L.Civ.R. 16.1(g)(3) provides for motion argument by telephone. Telephone conferences can also be an efficient method of resolving discovery disputes occurring at depositions where time is of the essence. Since such procedures can be disruptive of the court's schedule parties should first attempt to resolve their disputes.

Scheduling Conferences in simple personal injury cases, for example, are often held by telephone, upon notice from the Magistrate Judge to counsel. Plaintiff's counsel is usually requested to complete the conference call to all counsel and the court at the appointed hour. The court will not arrange conference calls.

Most pretrial motions and case management disputes can be efficiently resolved by telephone conference call. L.Civ.R. 37.1(a)(1) requires that counsel contact the Magistrate Judge by telephone or letter regarding any discovery or case management dispute before filing any formal motion. The

court can, and will, enter an order resolving the dispute at the conclusion of a telephone conference call.

DISCOVERY

Discovery is governed by Rules 26 - 37 and 45 of the Federal Rules of Civil Procedure, and by Local Civil Rules 16.1, 26.1, 33.1, and 36.1 of this court.

Generally speaking, "[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party . . . Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(i)(ii), and (iii)." Rule 26(b)(1), Fed. R. Civ. P..

As noted earlier, for good cause, the court may expand the scope of discovery to include any matter relevant to the subject matter of the action. Note, however, that the court has broad authority to limit otherwise relevant discovery taking into consideration, among other things, the burden or expense of the proposed discovery, a party's resources, and the issues in dispute. Rules 26(b)(2), Fed. R. Civ. P.; L.Civ.Rs. 16.1(b)(1)(F) and 26.1. Further, as previously noted, there is a presumptive limitation on the number of interrogatories each party may serve (25), as well as a limitation on the number of depositions (10). Further, there is a presumptive limitation of one day of seven hours for any deposition. A party seeking additional time, must show cause for an order to extend the examination. Rule 30(d)(2), Fed. R. Civ. P.

Practitioners should also note that in analyzing privilege issues, as a general rule, in diversity cases, the court will be guided by state law. However, in cases based upon federal question jurisdiction, the court will look to federal common law for guidance. Rule 501, Federal Rules of Evidence.

Counsel should also be aware of the broad authority of federal courts to impose sanctions for failing to provide discovery, or failing to comply with discovery orders issued by the court. Rule 37, Fed. R. Civ. P.. The sanctions may include an award of expenses, including attorney's fees, but may also include striking pleadings, dismissing an action, or the possibility of a contempt citation. Rule 37(b), Fed. R. Civ. P.. Further, should a party fail to comply with the disclosure requirements of Rule 26, without substantial justification, the court can inform the jury of this fact and impose sanctions including the exclusion of withheld materials. Rule 37(c), Fed. R. Civ. P.. Of course, prior to the imposition of sanctions, the party against whom relief is sought has a right to be heard. Therefore, a party seeking discovery sanctions should do so by notice of motion filed in accordance with the Local Civil Rules of the court.

Rule 45, Fed. R. Civ. P. provides guidance with regard to the issuance of subpoenas to non-parties to the litigation. The Rule prescribes the procedures for the issuance of subpoenas. In addition to the clerk of the court, an attorney may also sign and issue a subpoena. Rule 45(c) requires counsel to take reasonable steps to avoid imposing an undue burden or expense upon subpoenaed parties. An attorney who breaches this obligation may be sanctioned. The sanction may include the payment of earnings lost by the witness, as well as reasonable attorney's fee. Finally, Rule 45 addresses issues relating to the enforcement of subpoenas.

Several pointers of local practice should be considered:

1. Start discovery promptly. Pretrial discovery deadlines will be set and enforced. Please do not request extensions of discovery unless diligent use of prior time can be demonstrated. L.Civ.R. 26.1(a) requires that "parties shall conduct discovery expeditiously and diligently."

2. Submit your joint discovery plan to the Magistrate Judge before the Scheduling Conference, under L.Civ. 26.1(b), discussed above.

3. Arrange for your experts to submit timely experts' reports. Plan necessary discovery early to obtain any facts needed as a basis for your expert's opinion. The court routinely sets deadlines by which date your proposed experts' reports (containing all information required by Rule 26(a)(2)(B) Fed. R. Civ. P.) must be served upon your adversary. Your expert's report must be accompanied by a curriculum vitae of the proposed expert witness. You may be barred from introducing expert opinion testimony at trial if you do not timely follow these procedures.

4. Cooperate fully with your adversary in scheduling the depositions of proposed expert witnesses when desired. Rule 26(b)(4)(A), Fed. R. Civ. P..

5. Interrogatories and requests for admission must be arranged to provide space for your opponent's answer, L.Civ.Rs. 33.1(a) and 36.1(a).

6. If the person who verifies an interrogatory answer does not have personal knowledge of the information contained in the answer, that person must identify the person or persons from whom the information was obtained or, if the source of the information is documentary, provide a full description of the document, including location, under L.Civ.R. 33.1(b).

7. If you assert a privilege as a basis for objecting to any discovery requested in interrogatories, requests for documents or requests for admission, you must identify the nature of the privilege (including work product) being claimed and provide sufficient information to inform your adversary of the actual basis of the privilege claimed, see L.Civ.R. 33.1(c) and Fed. R. Civ. P., 26 (b)(5). This usually involves, at a minimum, an inventory and identification of who prepared the document, when it was prepared, who it was distributed to, and the general subject matter of the document.

8. If you assert an objection on grounds such as burden, harassment, or irrelevance, your objection must also contain particularized facts or arguments substantiating your position.

9. Take advantage of the opportunities provided you at the Scheduling Conference to organize your discovery needs. If a non-routine case has gotten bogged down in discovery, propose a discovery plan and request a Discovery Conference.

10. Never file a discovery related motion unless you have first actually conferred with your adversary in detail in a good faith attempt to resolve your discovery dispute. Your efforts must then be documented in a "Local Civil Rule 37.1(b)(1) Affidavit." Counsel's failure to observe this rule is the prime reason for rejecting discovery motions. Diligent consultation between counsel is the prime mechanism for avoiding such motions.

11. Never file a discovery related motion unless you first contact the Magistrate Judge by letter or telephone. L.Civ.R. 37.1.(a)(1).

12. Always attach a copy of the disputed discovery responses to your discovery motion, as required by L.Civ.R. 37.1(b)(2). Don't leave the court to guess how a question or response is worded.

13. Never file discovery materials with the court. Discovery materials are not filed unless ordered or needed. Please see L.Civ.R. 26.1(c).

Other considerations for discovery motions are discussed in "Motions" below.

MOTIONS

The civil motion days in Camden are the first and third Friday of each month.

Civil motions are governed by L.Civ.R. 7.1, as amended in February 2005, except that additional requirements apply to discovery motions through L.Civ.R. 37.1(b). You should review these rules carefully.

All motions shall be made returnable before the District Judge to whom the case is assigned. The District Judge usually decides dispositive motions and generally refers non-dispositive motions (including most discovery motions) to the Magistrate Judge.

With regard to non-dispositive motions filed before the Magistrate Judge, the following procedures are still applicable.

Timetable – Motion Dates

All motion papers must be filed not fewer than 24 days prior to the date noticed for argument, referred to as the "motion date." In Camden, the designated motion dates are the first and third Fridays of every month, except that if the motion date falls on a holiday, the designated motion day

becomes the day preceding the non-holiday. (See L.Civ.Rs. 7.1(c) and 78.1.) A courtesy copy should also be sent to the Magistrate Judge.

Format

Your motion papers (filed original and courtesy copy) must contain the following:

(1) Notice of Motion indicating the motion date, the judge, the type of motion;

(2) A brief prepared in accordance with L.Civ.R. 7.2, or a statement that no brief is necessary and the reasons therefor in accordance with L.Civ.R. 7.1(d)(4). [See also discussion of "Briefs" below.]

(3) Proof of service of your motion papers.

(4) An affidavit or certification stating facts upon personal knowledge and attaching supporting exhibits, if any, which you want the court to consider. Affidavits shall not contain legal arguments or summations, at the risk of sanctions. Affidavits from attorneys are rarely appropriate. See L.Civ.R. 7.2(a).

(5) A proposed Order. L.Civ.R. 7.1(e).

Discovery Motions

In addition to the above, any motion related to discovery must also be accompanied by:

(6) An affidavit of counsel "certifying that the moving party has conferred with counsel for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion without the intervention of the court and has been unable to reach agreement. The affidavit shall set forth the date and method of communication used in attempting to reach agreement on the subject of the motion." Please see L.Civ.R. 37.1(b)(1). This serves the important underlying purpose of encouraging direct dialogue among counsel to resolve discovery disputes without burdening the court.

(7) "Discovery motions shall have annexed thereto copies of only those pertinent portions of depositions, interrogatories, demands for admission and responses, etc. which are the subject matter of the motion." See L.Civ.R. 37.1(b)(2).

Opposition

The opposition brief (filed original and courtesy copy), specifying the return date of the motion on the cover, must be filed and served upon the adversary, at least fourteen (14) days before the return date, see L.Civ.R. 7.1(d)(2), unless the Court otherwise orders or an automatic extension is obtained pursuant to L.Civ.R.7.1(d)(5). The "automatic extension" for filing opposition is available for dispositive motions only, as follows, in accordance with L.Civ.R.7.1(d)(5):

> The time within which to file papers, including the brief, in opposition to a dispositive motion may be extended once by the party opposing the motion for a period not to exceed 14 days. Such extension does not require the consent of the adversary, the Court, or the Clerk. To obtain the automatic extension a party must file with the Clerk, and serve upon all other parties, a letter invoking the provisions of this rule before the date on which opposition papers would otherwise be due under L.Civ.R.7.1(d)(2). That letter shall set forth the new motion date, which shall be the next available motion date following the originally noticed date. No other extension of the time limits provided in L.Civ.R.7.1(d)(2) and (3) shall be permitted without an Order of the Court, and any application for such an extension shall advise the Court whether other parties have or have not consented to such request.

In discovery motions, and motions related to case management, any opposition must also be filed and a courtesy copy delivered to the Magistrate Judge fourteen (14) days before the return date, see L.Civ.R. 16.1(g)(2), unless the court extends the time for opposition. Untimely opposition in discovery and case management motions will not be considered, and the Magistrate Judge "may proceed to decide the motion on the basis of the papers received when the deadline for submitting opposition has expired." L.Civ.R. 37.1.(b)(3).

No reply papers are permitted in discovery and case management motions except by leave of court, and reply papers in other motions must be filed and a courtesy copy to the Judge within seven (7) calendar days after service of the opposition papers. L.Civ.R. 7.1(d)(3); L.Civ.R. 16.1(g)(2); L.Civ.R. 37.1(b)(3).

Oral Argument

A motion will be decided on the papers submitted, pursuant to Rule 78, Fed. R. Civ. P., unless a party requests oral argument and the request is granted by the Judge or Magistrate Judge. (See L.Civ.R. 78.1.) Any request for oral argument should be clearly marked on the front page of a brief or other document filed by the party making such request. In the absence of a request for oral argument, the Court, sua sponte, may direct that oral argument be held. See L.Civ.R. 7.1(b)(4).

Oral argument is not generally heard on motions pertaining to discovery or case management except as expressly required by the judge. A party who seeks oral argument on a discovery motion should so request in writing when the motion or opposition is filed. See L.Civ.R. 37.1(b)(4). Please check with the Judge's chambers in advance of the return date to determine if the court will hear oral argument.

Motions for Reconsideration

A party may seek reconsideration by filing a motion for reargument within ten business (10) days after the entry of the court's order or judgment on the original motion. See L.Civ.R. 7.1(i). This rule requires that a brief be filed with the motion, setting forth concisely the matter or controlling decisions which counsel believe the court has overlooked. The page limit is 15 pages. L.Civ.R. 7.2(b). This rule does not permit reargument of the same propositions or authorities. Note that opposition to a reconsideration motion is due within seven (7) business days after service of the motion. (L.Civ.R. 7.1(i))

Oral Opinions

Often a motion is decided by an oral opinion read into the record whether or not counsel are present for oral argument. A copy of the transcript can be ordered by submitting a District of New Jersey Transcript Purchase Order to the Office of the Clerk, see L.Civ.R. 80.1(b), available from the

Court's website at http://www.njd.uscourts.gpv/. When an oral opinion is being transcribed, the Judge may make revisions before it is filed, pursuant to L.Civ.R. 52.1.

Orders

When a motion is decided, an Order is entered which is either the proposed Order submitted with the moving papers (above), an Order drawn by the District Judge or Magistrate Judge, or an Order which the judge asks counsel to submit for approval. The judge electronically forwards the signed Order to the Clerk, who electronically dockets the Order and a Notice of Electronic Filing (NEF) with a hyperlink to the document is electronically forwarded to the parties in the case. A conformed copy of an Order, in hard copy, is mailed to pro se litigants. Since "a court marches upon its Orders," be sure that the Order you propose to the court is clear and consistent with the relief you are seeking. The proposed order should normally recite the motion that has been made and the precise disposition by the court.

BRIEFS

Briefs in Motions

Briefs in this court are separate documents, not attached to any other pleading or document. The original is filed with the Clerk. Please send a courtesy copy of the brief directly to the judge who will be handling the motion. The formal requirements for briefs (or equivalent memoranda) are few:

1. The return date of the motion must appear on the cover of the brief. L.Civ.R.7.1(d)(1).

2. The brief "shall include a table of contents and a table of authorities." L.Civ.R. 7.2(b).

3. The briefs on motions for summary judgment shall "furnish a statement which sets forth material facts as to which there exists or does not exist a genuine issue." L.Civ.R. 56.1.

4. The page limit is 40 ordinary typed or printed pages (and only 15 pages for a reply brief or a reargument motion brief) excluding only the tables of contents and authorities. L.Civ.R. 7.2(b).

5. A proof or acknowledgment of service must accompany each brief. L.Civ.R. 7.1(d)(1).

Briefs in Social Security Review Cases

Briefs in cases seeking review of a determination of the Secretary of the Department of Health and Human Services denying a claim for benefits under the Social Security Act are governed by the special procedure of L.Civ.R. 9.1. Note, that L.Civ.R. 9.1 was amended on February 19, 2002 which resulted in a complete overhaul of procedures for Social Security Cases.

TRIALS

Trial Briefs

Trial briefs are required to be submitted to the trial judge and served upon your adversary by the date specified in the Scheduling Order or Joint Final Pretrial Order. (See L.Civ.R. 16.1(e). Normally they are due ten days before the date first scheduled for trial. This deadline does not change even if the trial date is adjusted unless the entire Scheduling Order is revised. The trial brief must address each legal issue remaining in the case. Naturally, more attention should be paid to issues where the source of law itself is a matter of dispute, such as choice of law issues, questions of common law privileges or immunities, and common law maritime issues. Evidentiary issues that will arise at trial should also be addressed in the trial briefs. Although it is unnecessary to address settled

questions of law, your trial brief should apply the facts of your case to the law to fully inform the trial judge of your client's position.

Proposed Findings of Fact and Conclusions of Law

In non-jury cases you may be required to submit proposed findings before or after trial. Proposed findings should be separately numbered paragraphs, each stating one fact or one conclusion of law. Each conclusion of law should be supported by citation to controlling authority in case law or statute. Proposed findings of fact after trial may be required by the trial judge to cite to the page (and line) of supporting trial testimony or evidentiary exhibit. In the case of such post-trial submissions, it is best to ascertain the trial judge's preference for format of this important submission in each individual case.

Other Submissions Before Trial

Impanelment of the trial jury is governed by L.Civ.R. 47.1 and 48.1. The civil jury has not fewer than six members and not more than twelve. All jurors participate in deliberations. L.Civ.R. 48.1. Proposed voir dire questions should be submitted to the trial judge and served upon adverse counsel when the trial brief is submitted. Generally in this court, the trial judge asks the questions for jury selection, including appropriate voir dire questions proposed by counsel. Most judges permit counsel to ask reasonable follow-up questions during jury selection.

Proposed Requests for Jury Charge (filed original and courtesy copy) must also be served upon adverse counsel in all civil jury cases, again with the trial brief. Each proposed charge should be typed on a separate sheet, and the source or authority must be cited. The New Jersey Model Jury Charges are useful in diversity cases tried under New Jersey law, while counsel should consult Devitt and Blackmar's Federal Jury Charges (3 Vol.) in most other instances. If a "standard charge" is

proposed to be modified in any manner, the modification should be unambiguously delineated in your proposed charge.

Exhibit Lists

An exhibit list must be prepared and supplied to the trial judge and the courtroom deputy on the day of trial. This exhibit list is the same as the one you have included in the Joint Final Pretrial Order. Counsel must pre-mark all exhibits to conform to the numbers on the exhibit lists and to the exhibits listed in the Joint Final Pretrial Order. Some judges require a joint exhibit list which includes a statement of all objections to the exhibit. Counsel should meet before trial to examine and pre-mark all exhibits.

Trial Before the Magistrate Judge

Parties may consent to have their case tried before the Magistrate Judge. Where the parties consent, the Magistrate Judge may conduct a jury trial or non-jury trial in any civil action and order the entry of final judgment in accordance with 28 U.S.C. §636(c) and Rules 72-73, Fed. R. Civ. P. A consent form for this purpose is sent by the Clerk to the parties in each case, in accordance with the procedures set forth in L.Civ.R. 73.1. An appeal from final judgment lies directly to the U.S. Court of Appeals for the Third Circuit in the same manner as an appeal from any other judgment of this Court.

COURTROOM DEPUTIES

Each District Judge has an assigned Courtroom Deputy. They are as follows:

Senior Judge Rodriguez - Lillian Niedringhaus
Senior Judge Irenas - Denise Howard
Judge Simandle - Marnie Boyle
Judge Kugler - Barbara Fisher-Arthur
Judge Wolfson - Jackie Gore

Similarly, the Magistrate Judges have Courtroom Deputies, as follows:

Judge Rosen - Beth Bagnell
Judge Donio - Jeffrey McNeal

The primary function of the courtroom deputy is to calendar and regulate the movement of cases. The courtroom deputy acts as an intermediary between the District or Magistrate Judges, counsel and other court agencies. Generally, the courtroom deputy is responsible for scheduling conferences, hearings and miscellaneous proceedings. They also coordinate, with the Magistrate Judges, trial dates. However, the courtroom deputies do not usually get involved with scheduling or changing dates for legal arguments. Questions concerning motions should be directed to the law clerks for the particular judge.

The courtroom deputy also has responsibility for in-court functions. These functions include the mechanics of jury selection, swearing of witnesses, control and custody of exhibits. Any questions concerning courtroom procedure should be directed to the courtroom deputy.

In order to properly maintain control over a judge's trial schedule, the appropriate courtroom deputy should be copied on all correspondence relating to the trial date.

LAW CLERKS

Each District Judge has two law clerks and each Magistrate Judge has one. Law Clerks have terms of one or two years, depending on the preferences of the judicial officers, and some law clerks

may be permanent. Generally, the judges rely on their clerks to prepare bench memos and to do extended research on motions and trial matters.

Law clerks are chosen by the judge through a highly selective process, usually in September of the year before their clerkship

commences. Vacancies for federal clerkships are posted on the judiciary's website, http://www.njd.uscourts.gov.

It should seldom be necessary to speak with a law clerk on any subject other than the scheduling of briefs or hearing dates, and an attorney should never attempt to convey information to a law clerk without the explicit prior knowledge and consent of adverse counsel. A law clerk, like a judge, will not engage in an ex parte discussion of the merits of your case. Remember that communications with the law clerk are bound by the same ethical strictures as communications with the judge.

COSTS AND FEES

L.Civ.R. 54.3(a) of the Rules of the United States District Court for the District of New Jersey provides that "the Clerk shall not be required to enter any suit, file any paper, issue any process or render any other service for which a fee is prescribed by statute or by the Judicial Conference of the United States . . . unless the fee therefor is paid in advance."

There are exceptions to the above quoted Rule concerning, for example, indigent suitors, see 28 U.S.C. §1915, but in the case of most individuals and corporate entities, prepayment of court fees will be required.

The filing fees of the federal court are not complicated to understand. The filing fee for a complaint or a Notice of Removal in the United States District Court is $250.00. In our court, unlike the state court, there is no filing fee for an answer. A listing of certain basic federal costs and fees can be found at Appendix K of the Local Civil Rules, and in the New Jersey Lawyers Diary and Manual.

For a clear statement of the procedure for taxing costs, please consult L.Civ.R. 54.1 of the Rules of the United States District Court for the District of New Jersey, together with the underlying statutes in 28 U.S.C. §§1914-1930. An excellent discussion also appears in Allyn Z. Lite, New Jersey Federal Practice Rules 2005 at 142-156. Additionally, you can contact John T. O'Brien, Legal Coordinator for the Clerk's Office, who can provide information in regards to filing a motion for costs under L.Civ.R. 54.1.

Rates for a transcript prepared by an Official Court Reporter are governed by L.Civ.R. 80.1 and Appendix F established thereunder.

ARBITRATION UNDER LOCAL CIVIL RULE 201.1

Compulsory Arbitration under L.Civ.R. 201.1 became effective in March 1985 in this District for all cases in which money damages only are being sought in an amount not in excess of $150,000 exclusive of interest, costs and punitive damages, except for certain civil rights cases, tax refund suits, and ADEA, ERISA, Social Security and Title VII cases. See L.Civ.R. 201.1(d).

Cases falling into these categories will be assumed to not exceed $150,000 in damages, unless the plaintiff certifies when the complaint is filed that damages in excess of $150,000 are sought, see L.Civ.R. 201.1(d)(3). This subject of arbitrability is also

discussed at the Scheduling Conference, when the Magistrate Judge can make adjustments in cases that are not properly classified.

Arbitration cases are prepared and managed through the end of discovery like regular cases. The Scheduling Order will set all deadlines for amendments to the pleadings, joinder of new parties, exchange of experts' reports, and end of discovery, at which time the case is ready for its Arbitration Hearing. There are no adjournments of deadlines in Arbitration cases unless new parties are joined, lest the object of this program be frustrated by delays. L.Civ.R. 16.1(c). The Clerk sets the Arbitration date, usually on or shortly after the date proposed in the Scheduling Order. The Arbitration Clerk does not have authority to continue an arbitration hearing. The Arbitrator assigned to the case may grant a continuance which is not to exceed 30 days. A request to continue an arbitration hearing beyond the 30 days should be directed to the appropriate Magistrate Judge.

The hearing is conducted by a single Arbitrator who has been certified by the Chief Judge to be competent to perform these duties under L.Civ.R. 201.1(a). Attorneys wishing to become Arbitrators may apply through the Clerk.

Arbitration Hearing. The hearing is usually conducted at the Arbitrator's office or at the courthouse if space permits. Live testimony under oath is preferred where necessary to enable the Arbitrator to resolve factual issues and to ascribe weight to the evidence, although the Federal Rules

of Evidence are used only as guides to the admissibility of evidence. The subpoena power also exists for Arbitration Hearings. Expert testimony is sometimes presented in person and sometimes through the expert's reports; you are encouraged to produce live expert testimony where the Arbitrator would otherwise be unable to resolve conflicting written expert reports. A party desiring to have a record or transcript made of the hearing shall make all necessary arrangements for it. L.Civ.R. 201.1(f)(6).

Award and Trial De Novo. The Arbitrator enters an award and files it with the Clerk. The award usually consists of only the ultimate finding, although some Arbitrators have given detailed reasons (most often orally) for their decisions. An Arbitrator may award more than $150,000 and may also award punitive damages. The award becomes a final judgment thirty days after it is entered upon the docket, unless a party timely demands trial de novo, by filing a written demand with the Clerk and serving same upon all parties. Arbitration Tips. Successful arbitration results depend upon several factors:

1. Prepare your case fully for Arbitration, All discovery must be completed before the hearing.

2. Submit all exhibits to the Arbitrator ten days before the hearing.

3. Preserve a trial-like environment so that the Arbitrator is presented with a clear and clean case.

4. Make sure that your client is present for the entire hearing. When all parties attend and have confidence in the hearing process, the award usually ends the case.

5. Don't hold back on important evidence or cross-examination at the hearing. This is, in almost all instances, your client's "day in court", so put on your best case.

6. Be considerate of the Arbitrator. Be prompt, courteous and well-prepared. Remember that the Arbitrator is performing a judge-like function in an adjudicatory process.

Arbitration Judge and Clerk. The compliance judge for the Arbitration Program throughout the district is Magistrate Judge Rosen. The Deputy Clerk having responsibility for scheduling Arbitration hearings is Michelle Stortini, Arbitration Clerk, telephone (856) 757-5395.

MEDIATION UNDER LOCAL CIVIL RULE 301.1

The court-annexed Mediation program for complex cases began on an experimental basis in 1992, following the recommendation of the District Court's Civil Justice Expense and Delay Reduction Committee. The experiment's success led to the adoption of a formal program. Mediation is governed by L.Civ.R. 301.1 and the Guidelines for Mediation.

Unlike Arbitration under L.Civ.R. 201.1, the Mediation Program is designed for the negotiation and settlement of more complicated cases. Mediation may be required by the District Judge or Magistrate Judge in many kinds of civil actions. Additionally, parties may agree to mediation of their case by consent, and apply to the District Judge or Magistrate Judge for leave to mediate. L.Civ.R. 301.1(d). In any complex case, counsel should continuously consider whether the intensive efforts of a trained lawyer-mediator would aid the prospects for a fair and efficient resolution without trial.

The mediators are selected and designated by the Chief Judge based on competence, participation in the training program for mediators, and at least five years membership of the New Jersey Bar. L.Civ.R. 301.1(a).

The program is supervised by a compliance judge who is responsible for administering the program and entertaining any procedural or substantive issues arising out of mediation. L.Civ.R. 301.1(b). The compliance judge designates the mediator in each case. L.Civ.R. 301.1(a). Magistrate Judge Ronald J. Hedges has been designated as compliance judge at the present time.

The mediator receives compensation for services at a rate of $250.00 per hour, except that the first six hours of service are not compensated. L.Civ.R. 301.1(c). The rule requires that the compensation is borne equally by the parties. Id. Any dispute regarding payment of compensation may be directed to the designated compliance judge, under L.Civ.R. 301.1(b).

How does the Mediation work? The main features are:

1. **Promptness**: stay of proceedings. Court proceedings are stayed for a period of 90 days from the date of referral to mediation, which may be extended upon joint application of the parties and the mediator. L.Civ.R. 301.1(e)(5). This means that the process cannot continue more than 90 days unless the mediator, joined by all parties, believes that more time would be beneficial and the judicial officer approves.

2. **Position paper**. Regardless of the complexity of the case, the parties must distill their case into a position paper not exceeding ten pages, attaching essential documents and not pleadings. L.Civ.R. 301.1(e)(2).

3. **Informality**. The mediation consists of meetings with the mediator, jointly or ex parte. L.Civ.R. 301.1(e)(4). This lends flexibility and creativity to the mediation process, centering on negotiations, without a hearing to receive evidence, in contrast to Arbitration under L.Civ.R. 201.1.

4. **Confidentiality**. Because this is a settlement process, all information presented to the mediator shall be deemed confidential, unless requested otherwise, and shall not be disclosed by anyone, including the mediator, without consent. L.Civ.R. 301.1(e)(4). Also, no statements made or documents prepared for mediation shall be disclosed in any subsequent proceeding or construed as an admission. Id. One exception to

confidentiality exists for such information as is necessary to be disclosed to advise the court of an apparent failure of a party to participate. Id.

5. **Direct participation.** The parties themselves, as well as the attorneys, have a duty to participate in the mediation and cooperate with the mediator. L.Civ.R. 301.1(e)(1). The mediator shall require the attendance of parties themselves (including individuals with settlement authority or specific individuals) at mediation sessions. L.Civ.R. 301.1(e)(3). This contact between the parties and the dispute resolution process brings a directness and focus that speeds resolution.

Finally, the Court published Guidelines for Mediation, reprinted at Appendix Q to the Local Civil Rules, to aid in understanding the court-annexed mediation program, see L.Civ.R. 301.1(f).

CAMDEN VICINAGE - JUDGES AND COURT PERSONNEL

HONORABLE STANLEY S. BROTMAN, SENIOR DISTRICT JUDGE
Chambers - 6th Floor, Room No. 6030
Telephone - (856) 757-5062
Courtroom Deputy - Sara Asbell (856) 757-5306

HONORABLE JOSEPH H. RODRIGUEZ, SENIOR DISTRICT JUDGE
Chambers - 6th Floor, Room No. 6060
Courtroom 5D
Telephone - (856)757-5002
Secretary - Suzanne Murphy
Courtroom Deputy - Lillian Niedringhaus 757-5395

HONORABLE JOSEPH E. IRENAS, SENIOR DISTRICT JUDGE
Chambers - 3rd Floor (U.S. Courthouse Post Office)
Courtroom 1
Telephone - (856)757-5223
Secretary - Lucille O'Keefe
Courtroom Deputy - Denise Howard (856) 757-5433
Court Reporter - Frank Gable

HONORABLE JEROME B. SIMANDLE, DISTRICT JUDGE
Chambers - 6th Floor, Room 6010
Courtroom 4A
Telephone - (856)757-5167
Secretary - Maria Martinez
Courtroom Deputy - Marnie Boyle - (856) 757-5390
Court Reporter - Lisa Marcus

HONORABLE ROBERT B. KUGLER, DISTRICT JUDGE
Chambers - 6th Floor, Room
Courtroom 4D
Telephone - (856) 757-5019
Secretary - Marcy Golub
Courtroom Deputy - Barbara Arthur -(856) 968-4834
Court Reporter - Carl Nami

HONORABLE FREDA L. WOLFSON, DISTRICT JUDGE
Chambers - 6th Floor, Room 6020
Courtroom 3A
Telephone - (856)757-5057
Courtroom Deputy - Jackie Gore (856) 757-5057

Court Reporter - Vincent Russoniello

HONORABLE JOEL B. ROSEN, UNITED STATES MAGISTRATE JUDGE

Chambers - 2nd Floor, Room No. 2060
Courtroom 3C
Telephone - (856)757-5446
Secretary -Jackie Kotarski
Courtroom Deputy - Beth Bagnell (856) 757-5488

HONORABLE ANN MARIE DONIO, MAGISTRATE JUDGE

Chambers - 2nd Floor, Room No. 2010
Courtroom 3B
Telephone (856)757-5211
Secretary - Sharon Crescenti
Courtroom Deputy - Jeff McNeal -757-5319

OFFICE OF THE CLERK - WILLIAM T. WALSH, CLERK OF THE COURT

Telephone (856)757-5021
Deputy-in-Charge - Melissa Rhoads
Supervisors: Dee Seksnel (In Court Activities)
Marcy Barratt (Out-of-Court Activities)

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UNITED STATES BANKRUPTCY COURT

HONORABLE JUDITH H. WIZMUR, CHIEF BANKRUPTCY JUDGE

Chambers - 2nd Floor
Telephone (856)757-5126
Secretaries - Terry O'Brien and Dominique Welch

HONORABLE GLORIA M. BURNS, BANKRUPTCY JUDGE

Chambers - 2nd Floor
Telephone (856)757-5174
Secretary - Patricia DiRenzo

BANKRUPTCY CLERK'S OFFICE - JAMES J. WALDRON, BANKRUPTCY CLERK

Telephone (856)757-5422
Deputy-in-Charge - Mary Shashaty (856)757-5422

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U.S. MARSHAL'S OFFICE - MICKEY PEASE, DEPUTY-IN-CHARGE
Mitchell H. Cohen U.S. Courthouse, 1st Floor
Telephone - (856)757-5024

U.S. PROBATION OFFICE - RICHARD GALLO, Supervisor
U.S. Post Office & Courthouse, 1st Floor
Telephone - (856)757-5043

U.S. PRETRIAL SERVICES OFFICE - JOYCE RUFFIN, Supervisor
U.S. Post Office & Courthouse, 1st Floor
(856)757-5108