Proposed Amendments to the Local Rules of Court
of the United States District Court for the District of New Jersey

Note: New or amended text is redlined/underlined and deleted text is stricken. An edited version of the rule follows each comment section.

1. Civ. Rule 4.1 SERVICE OF PROCESS

The Clerk is authorized to sign and enter orders specifically appointing a United States Marshal, Deputy United States Marshal, or other person or officer ~~persons other than the Marshal~~ to serve process when such appointments are required or requested pursuant to Fed. R. Civ. P. 4(c).

***Explanation**: The proposed amendment mirrors the language of Fed. R. Civ. P. 4(c)(2), gives litigants the option of using different methods of service of process depending on the circumstances. The current rule could read to imply the issuance of an order for special service or process is a mandatory prerequisite to using a private process server, when the opposite is true under Fed. R. Civ. P. 4(c)(2).*

(edited version)

Civ. Rule 4.1 SERVICE OF PROCESS

The Clerk is authorized to sign and enter orders specifically appointing a United States Marshal, Deputy United States Marshal, or other person or officer to serve process when such appointments are required or requested pursuant to Fed. R. Civ. P. 4(c).

2. Civ. Rule 5.3 PROTECTIVE ORDERS AND PUBLIC ACCESS UNDER CM/ECF

(c) Motion to Seal or Otherwise Restrict Public Access

(2) Any motion to seal or otherwise restrict public access shall be available for review by the public. The motion papers shall describe (a) the nature of the materials or proceedings at issue, (b) the legitimate private or public interests which warrant the relief sought, (c) the clearly defined and serious injury that would result if the relief sought is not granted, and (d) why a less restrictive alternative to the relief sought is not available. Proposed Findings of Fact and Conclusions of Law shall be submitted with the motion papers in the proposed order required by (c)(5) below.

***Explanation**: The proposed amendment will assist in the preparation of orders and opinions and will remind lawyers of their obligations under the rule.*

(edited version)

Civ. Rule 5.3 PROTECTIVE ORDERS AND PUBLIC ACCESS UNDER CM/ECF

(a) Scope of Rule

(1) This rule shall govern any request by a party to seal, or otherwise restrict public access to, any materials filed with the Court or utilized in connection with judicial decision-making. This rule shall also govern any request by a party or parties to seal, or otherwise restrict public access to, any judicial proceedings.

(2) As used in this rule, "materials" include pleadings as well as documents of any nature and in any medium. "Judicial proceedings" include hearings and trials but do not include conferences in chambers.

(3) This rule shall not apply to any materials or judicial proceedings which must be sealed pursuant to statute or other law.

(4) Subject to this rule and to statute or other law, all materials and judicial proceedings are matters of public record and shall not be sealed.

(b) Discovery Materials

(1) Notwithstanding this rule, parties may enter into written agreements to keep materials produced in discovery confidential and to return or destroy such materials as agreed by parties and as allowed by law.

(2) Parties may submit to a Judge or Magistrate Judge an agreed-on form of order which embodies a written agreement as described above. Any such form of order must be accompanied by an affidavit or attorney certification filed electronically under the designation "affidavit/certification in support of discovery confidentiality order." The affidavit or attorney certification shall describe (a) the nature of the materials to be kept confidential, (b) the legitimate private or public interests which warrant confidentiality and (c) the clearly defined and serious injury that would result should the order not be entered. The affidavit or attorney certification shall be available for public review.

(3) No form of order submitted by parties shall supersede the provisions of this rule with regard to the filing of materials or judicial proceedings. The form of order may, however, provide for the return or destruction of discovery materials as agreed by parties. The form of order shall be subject to modification by a judge or magistrate judge at any time.

(4) Any order under this section shall be filed electronically under the designation "discovery confidentiality order."

(5) Any dispute regarding the entry of, or the confidentiality of discovery materials under, any order under this section shall be brought before a Magistrate Judge pursuant to L. Civ. R. 37.1(a)(1).

(c) Motion to Seal or Otherwise Restrict Public Access

(1) Any request by a party or parties to seal, or otherwise restrict public access to, any materials or judicial proceedings shall be made by formal motion pursuant to L. Civ. R. 7.1. Any such motion shall be filed electronically under the designation "motion to seal materials" or "motion to seal judicial proceedings," and shall be returnable on the next available return date.

(2) Any motion to seal or otherwise restrict public access shall be available for review by the public. The motion papers shall describe (a) the nature of the materials or proceedings at issue, (b) the legitimate private or public interests which warrant the relief sought, (c) the clearly defined and serious injury that would result if the relief sought is not granted, and (d) why a less restrictive alternative to the relief sought is not available. Proposed Findings of Fact and Conclusions of Law shall be submitted with the motion papers in the proposed order required by (c)(5) below.

(3) Any materials deemed confidential by a party or parties and submitted with regard to a motion to seal or otherwise restrict public access shall be filed under the designation "confidential materials" and shall remain sealed until such time as the motion is decided.

(4) Any interested person may move to intervene pursuant to Fed. R. Civ. P. 24 (b) before the return date of any motion to seal or otherwise restrict public access.

(5) Any order or opinion on any motion to seal or otherwise restrict public access shall include findings on the factors set forth in (c)(2) above as well as other findings required by law and shall be filed electronically under the designation "order or opinion to seal." Such orders and opinions may be redacted. Unredacted orders and opinions may be filed under seal, either electronically or in other medium.

(6) Notwithstanding the above, on emergent application of a party or parties or sua sponte, a Judge or Magistrate Judge may seal or otherwise restrict public access to materials or judicial proceedings on a temporary basis. The Judge or Magistrate Judge shall do so by order which sets forth the basis for the temporary relief and which shall be filed electronically under the designation "temporary order to seal." Any interested person may move pursuant to L. Civ. R. 7.1 and Fed. R. Civ. P. 24 (b) to intervene, which motion shall be made returnable on the next available return date.

(d) Settlement Agreements

(1) No party or parties shall submit a proposed settlement agreement for approval by a Judge or Magistrate Judge unless required to do so by statute or other law or for the purpose of retaining jurisdiction.

(2) Any settlement agreement filed with the Court or incorporated into an order shall, absent an appropriate showing under federal law, be deemed a public record and available for public review.

(e) Dockets

No docket shall be sealed. However, entries on a docket may be sealed pursuant to the provisions of this rule.

(f) Web Site

The Clerk shall maintain for public review on the official Court PACER Site a consolidated report which reflects all motions, orders, and opinions described in this rule.

(g) Effective Date

This Rule shall be effective as of the date of adoption and shall apply to all motions to seal or otherwise restrict public access made after that date.

3. Civ. RULE 10.1 FORM OF PLEADINGS AND OTHER DOCUMENTS

(b) All papers to be filed in any cause or proceeding in this Court shall be plainly printed or typewritten, without interlineations or erasures which materially deface them; shall bear the docket number and the name of the Judge assigned to the action or proceeding; and shall have endorsed upon the first page the name, office, post office address, and telephone number ~~and the initials of their first and last name, and last four digits of the social security number~~ of the attorney of record for the filing party. All papers shall be in black lettering on reasonably heavy paper size 8.5 x 11 inches; carbon copies shall not be used.

***Explanation**: The proposed amendment reflects the Court's Standing Order of July 26, 2005, which, due to privacy concerns and Public Access to Electronic Case Files, suspended the requirement that attorneys provide personal information when filing pleadings and other documents with the Court.*

(edited version)

Civ. RULE 10.1 FORM OF PLEADINGS AND OTHER DOCUMENTS

(a) The initial pleading, motion, or other paper of any party filed in any cause other than criminal actions in this Court shall state in the first paragraph the street and post office address of each named party to the case or, if the party is not a natural person, the address of its principal place of business. If a pleading, motion, or other initial paper submitted for filing in a case does not contain the street and post office address of counsel, their client(s) or unrepresented parties, it may be struck by the Clerk. and returned to the submitting party by the Clerk unless a statement why the client's address cannot be provided at this time is presented. Counsel and/or unrepresented parties must advise the Court of any change in their or their client's address within five days of being apprised of such change by filing a notice of said change with the Clerk. Failure to file a notice of address change may result in the imposition of sanctions by the Court.
(b) All papers to be filed in any cause or proceeding in this Court shall be plainly printed or typewritten, without interlineations or erasures which materially deface them; shall bear the docket number and the name of the Judge assigned to the action or proceeding; and shall have endorsed upon the first page the name, office, post office address, and telephone number of the attorney of record for the filing party. All papers shall be in black lettering on reasonably heavy paper size 8.5 x 11 inches; carbon copies shall not be used.

4. [Civ. Rule 72.1](c) APPEALS FROM JUDGMENTS AND OTHER ORDERS

(1) Appeals from Non-Dispositive Orders

(C) The Clerk shall take no action with respect to a Magistrate Judge's order for transfer of venue or denying a motion to seal under L. Civ. R. 5.3 until 15 days from the filing of such an order. In the event that a notice of appeal from such an order is filed within time allowed in the Rule, ~~such 15-day period~~ the Clerk shall take no action until the appeal is decided by the Judge.

***Explanation**: The proposed amendment is to provide a temporary stay of any Magistrate Judge order denying a motion to seal so that an aggrieved party may appeal to a District Judge without "loss" of confidentiality.*

(edited version)

Civ. RULE 72.1 UNITED STATES MAGISTRATE JUDGES

Each Magistrate Judge is authorized to perform all judicial duties assigned by the Court that are consistent with the Constitution and the laws of the United States which include, but are not limited to, the following:

(a) Duties in Civil Matters

(1) Non-Dispositive Motions

Hearing and determining any pretrial motion or other pretrial matter, other than those motions specified in L.Civ.R. 72.1(a)(2), in accordance with 28 U.S.C. §636(b)(1)(A) and Fed. R. Civ. P. 72. An appeal from a Magistrate Judge's determination of such a non-dispositive motion shall be served and filed in accordance with L.Civ.R. 72.1(c)(1).

(2) Dispositive Motions

Hearing and conducting such evidentiary hearings as are necessary or appropriate and submitting to a Judge proposed findings of fact and recommendations for the disposition of motions for injunctive relief (including temporary restraining orders and preliminary injunctions), for judgment on the pleadings, for summary judgment, to dismiss or permit the maintenance of a class action, to dismiss for failure to state a claim upon which relief may be granted, to involuntarily dismiss an action, for judicial review of administrative determinations, for review of default judgments, and for review of prisoners' petitions challenging conditions of confinement, in accordance with 28 U.S.C. §636(b)(1)(B) and (C) and Fed. R. Civ. P. 72. Any party may object to the Magistrate Judge's proposed findings, recommendations or report issued under this Rule by serving and filing an objection in accordance with L.Civ.R. 72.1(c)(2).

(3) Civil Case Management

(A) Exercising general supervision of the civil calendars of the Court, conducting calendar and status calls, and determining motions to expedite or postpone the trial of cases for the Judges.

(B) Conducting pretrial conferences as set forth in Fed. R. Civ. P. 16 and 26(f), which include but are not limited to scheduling, settlement, discovery, preliminary and final pretrial conferences, and entry of appropriate orders, including scheduling orders in accordance with L.Civ.R. 16.1 and Fed. R. Civ. P. 16.

(C) As part of the Magistrate Judge's general supervision of the civil calendar, the Magistrate Judge shall conduct scheduling conferences and enter scheduling orders in accordance with Fed. R. Civ. P. 16 in all civil cases except the following:

(i) all actions in which one of the parties appears *pro se* and is incarcerated;

(ii) all actions for judicial review of administrative decisions of Government agencies or instrumentalities where the review is conducted on the basis of the administrative record;

(iii) proceedings in bankruptcy, prize proceedings, sales to satisfy liens of the United States, and actions for forfeitures and seizures, for condemnation, or for foreclosure of mortgages;

(iv) proceedings for admission to citizenship or to cancel or revoke citizenship;

(v) proceedings for *habeas corpus* or in the nature thereof, whether addressed to Federal or State custody;

(vi) proceedings to compel arbitration or to confirm or set aside arbitration awards;

(vii) proceedings to compel the giving of testimony or production of documents under a subpoena or summons issued by an officer, agency or instrumentality of the United States not provided with authority to compel compliance;

(viii) proceedings to compel the giving of testimony or production of documents in this District in connection with discovery, or testimony *de bene esse*, or for perpetuation of testimony, for use in a matter pending or contemplated in another court;

(ix) proceedings for the temporary enforcement of orders of the National Labor Relations Board; and

(x) proceedings instituted for prosecution in a summary manner in the Superior Court of New Jersey and removed to this Court on diversity only.

(4) Conducting *voir dire* and selecting petit juries for the Court and, in the absence of the Judge, accepting petit jury verdicts in civil cases.

(5) Issuing subpoenas, writs of *habeas corpus ad testificandum* or *habeas corpus ad prosequendum*, or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings.

(6) Conducting proceedings for the collection of civil penalties of not more than $1000 assessed in accordance with 46 U.S.C. §2302.

(7) Conducting examinations of judgment debtors, in accordance with Fed. R. Civ. P. 69.

(8) Reviewing petitions in civil commitment proceedings under Title III of the Narcotic Addict Rehabilitation Act.

(9) Issuing warrants or entering orders permitting entry into and inspection of premises, and/or seizure of property, in noncriminal proceedings, as authorized by law, when properly requested by the IRS or other governmental agencies.

(10) Serving as a special master in an appropriate civil action, pursuant to 28 U.S.C. §636(b)(2) and Fed. R. Civ. P. 53. The Magistrate Judge may, where the parties consent, serve as a special master in any civil action without regard to the provisions of Fed. R. Civ. P. 53(b) and try the issues of any civil action. The entry of final judgment in the civil action, however, shall be made by a Judge or at the direction of a Judge with the consent of the parties.

(11) Administering oaths and affirmations and taking acknowledgments, affidavits, and depositions.

(12) Supervising proceedings conducted pursuant to 28 U.S.C. §1782 with respect to foreign tribunals and to litigants before such tribunals.

(b) Duties in Proceedings for Post-Conviction Relief

A Magistrate Judge may exercise the powers enumerated in Rules 5, 8, 9 and 10 of the Rules Governing §§2254 and 2255 Proceedings, in accordance with the standards and criteria established in 28 U.S.C. §636(b)(1).

(c) Appeals from Judgments and Other Orders

(1) Appeals from Non-Dispositive Orders

(A) Any party may appeal from a Magistrate Judge's determination of a non-dispositive matter within 10 days after the party has been served with a copy of the Magistrate Judge's order, unless a motion for reargument of the matter pursuant to L.Civ.R. 7.1(g) has been timely filed and served, in which case the time to appeal will begin to run when the parties are served with a copy of the Magistrate Judge's order rendering a determination on the merits of such a motion. Such party shall file with the Clerk and serve on all parties a written notice of appeal which shall specifically designate the order or part thereof appealed from and the basis for objection thereto. The notice of appeal shall be submitted for filing in the form of a notice of motion conforming with the requirements of L.Civ.R. 7.1. The party filing an appeal shall provide to the Court a transcript of that portion of the hearing before the Magistrate Judge wherein findings of fact were made, no later than 10 days before the return date of the motion. Any party opposing the appeal shall file a responsive brief at least 14 days prior to the date originally noticed for argument. A cross-appeal related to the subject matter of the original determination may be filed by the responding party together with that party's opposition and may be noticed for a hearing on the same date as the original appeal, as long as the responding papers are timely filed. A brief in reply to the cross-appeal may be filed at least seven days prior to the date originally noticed for argument. Each of the above periods may be altered by the Magistrate Judge or Judge. A Judge shall consider the appeal and/or cross-appeal and set aside any portion of the Magistrate Judge's order found to be clearly erroneous or contrary to law.

(B) Except as provided in (C) below, the filing of such a motion or cross-motion to appeal does not operate to stay the order pending appeal to a Judge. A stay of a Magistrate Judge's

order pending appeal must be sought in the first instance from the Magistrate Judge whose order had been appealed, upon due notice to all interested parties.

(C) The Clerk shall take no action with respect to a Magistrate Judge's order for transfer of venue or denying a motion to seal under L. Civ. R. 5.3 until 15 days from the filing of such an order. In the event that a notice of appeal from such an order is filed within time allowed in the Rule, the Clerk shall take no action until the appeal is decided by the Judge.

(2) Objections to Magistrate Judge's Proposed Findings, Recommendation or Report

Any party may object to the Magistrate Judge's proposed findings, recommendations or report issued under this Rule within 10 days after being served with a copy thereof. Such party shall file with the Clerk and serve on all parties written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis of such objection. Such party shall file with the Clerk a transcript of the specific portions of any evidentiary proceeding to which objection is made. A Judge shall make a *de novo* determination of those portions to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. The Judge, however, need not normally conduct a new hearing and may consider the record developed before the Magistrate Judge, making his or her own determination on the basis of that record. The Judge may also receive further evidence, recall witnesses or recommit the matter to the Magistrate Judge with instructions.

5. Civ. Rule 81.2 *HABEAS CORPUS* AND MOTIONS UNDER 28 U.S.C. § 2255 IN NON-DEATH PENALTY CASES

(b) If the petition or motion is presented *in forma pauperis* it shall include an affidavit (attached to the back of the form) setting forth information which establishes that the petitioner or movant is unable to pay the fees and costs of the proceedings. Whenever a Federal, State, or local prisoner submits a civil rights complaint, petition for a writ of *habeas corpus*, or motion for relief under 28 U.S.C. §2255 and seeks *in forma pauperis* status, the prisoner shall also submit an affidavit setting forth information which establishes that the prisoner is unable to pay the fees and costs of the proceedings and shall further submit a certification signed by an authorized officer of the institution certifying (1) the amount presently on deposit in the prisoner's prison account and, (2) the greatest amount on deposit in the prisoner's prison account during the six-month period prior to the date of the certification. The affidavit and certification shall be in the forms attached to and made a part of these Rules as Appendix P. ~~The Clerk shall reject any complaint, petition or motion which is not in full compliance with this requirement.~~

***Explanation**: The proposed amendment reflects the Court's Standing Order of July 26, 2005. The last sentence of this provision of the rule was suspended because Rule 3(b) of the Rules Governing Section 2254 cases [Habeas Corpus]* was added to parallel Rule 5(e), Fed. R. Civ. P., which requires the Clerk not to refuse to accept a filing solely for the reason that it fails to comply with Federal and Local Rules.

(edited version)

Civ. RULE 81.2 PETITIONS FOR HABEAS CORPUS AND MOTIONS UNDER 28 U.S.C. § 2255 IN NON-DEATH PENALTY CASES.

(a) Unless prepared by counsel, petitions to this Court for a writ of *habeas corpus* and motions under 28 U.S.C. §2255 shall be in writing (legibly handwritten in ink or typewritten), signed by the petitioner or movant, on forms supplied by the Clerk. When prepared by counsel, the petition or motion shall follow the content of the forms.

(b) If the petition or motion is presented *in forma pauperis* it shall include an affidavit (attached to the back of the form) setting forth information which establishes that the petitioner or movant is unable to pay the fees and costs of the proceedings. Whenever a Federal, State, or local prisoner submits a civil rights complaint, petition for a writ of *habeas corpus*, or motion for relief under 28 U.S.C. §2255 and seeks *in forma pauperis* status, the prisoner shall also submit an affidavit setting forth information which establishes that the prisoner is unable to pay the fees and costs of the proceedings and shall further submit a certification signed by an authorized officer of the institution certifying (1) the amount presently on deposit in the prisoner's prison account and, (2) the greatest amount on deposit in the prisoner's prison account during the six-month period prior to the date of the certification. The affidavit and certification shall be in the forms attached to and made a part of these Rules as Appendix P.

(c) If the prison account of any petitioner or movant exceeds $200, the petitioner or movant shall not be considered eligible to proceed *in forma pauperis*.

(d) The respondent shall file and serve his or her answer to the petition or motion not later than 45 days from the date on which an order directing such response is filed with the Clerk, unless an extension is granted for good cause shown. The answer shall include the respondent's legal argument in opposition to the petition or motion. The respondent shall also file, by the same date, a certified copy of all briefs, appendices, opinions, process, pleadings, transcripts and orders filed in the underlying criminal proceeding or such of these as may be material to the questions presented by the petition or motion.

(e) Upon entry of an appealable order, the Clerk and appellant's counsel will prepare the record for appeal. The record will be transmitted to the Third Circuit Court of Appeals within five days after the filing of a notice of appeal from the entry of an appealable order under 18 U.S.C. §3731, 28 U.S.C. §1291 or 28 U.S.C. §1292(a)(1).

6. Civ. Rule 101.1 ADMISSION OF ATTORNEYS

(c) Appearance *Pro Hac Vice*; Local Counsel

(1) Any member in good standing of the bar of any court of the United States or of the highest court of any state, who is not under suspension or disbarment by any court and is ineligible for admission to the bar of this Court under L.Civ.R. 101.1(b), may in the discretion of the Court, on motion, be permitted to appear and participate in a particular case. The motion shall contain a statement certifying that no disciplinary proceedings are pending against the attorney in any jurisdiction and no discipline has previously been imposed on the attorney in any jurisdiction. If discipline has previously been imposed within the past five years, the certification shall state the date, jurisdiction, nature of the ethics violation and the penalty imposed. If proceedings are pending, the certification shall specify the jurisdiction, the charges and the likely time of their disposition. An attorney admitted *pro hac vice* shall have the continuing obligation during the period of such admission promptly to advise the court of the disposition made of pending charges or of the institution of new disciplinary proceedings.

Explanation: *The proposed amendment would require a motion to admit an attorney pro hac vice to include in a certification a statement that no disciplinary proceedings are pending and to disclose any discipline previously imposed. The amended text to this subsection conforms, in most part, with New Jersey Rule 1:21-2(b)(1)(D).*

(edited text)

Civ. RULE 101.1 ADMISSION OF ATTORNEYS

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(a) Scope of Admission

The bar of this Court shall consist of those persons heretofore admitted to practice in this Court and those who may hereafter be admitted in accordance with these Rules.

(b) New Jersey Attorneys

Any attorney licensed to practice by the Supreme Court of New Jersey may be admitted as an attorney at law on motion of a member of the bar of this Court, made in open court, and upon taking the prescribed oath and signing the roll. Any New Jersey attorney deemed ineligible to practice law by order of the New Jersey Supreme Court entered pursuant to New Jersey Court Rule 1:28-2(a) shall not be eligible to practice law in this Court during the period of such ineligibility. Any attorney licensed to practice by the Supreme Court of New Jersey who has resigned from the New Jersey bar shall be deemed to have resigned from the bar of this Court effective as of the same date as his/her resignation from the New Jersey bar.

(c) Appearance *Pro Hac Vice*; Local Counsel

(1) Any member in good standing of the bar of any court of the United States or of the highest court of any state, who is not under suspension or disbarment by any court and is ineligible for admission to the bar of this Court under L.Civ.R. 101.1(b), may in the discretion of the Court, on motion, be permitted to appear and participate in a particular case. The motion shall contain a statement certifying that no disciplinary proceedings are pending against the attorney in any jurisdiction and no discipline has previously been imposed on the attorney in any jurisdiction. If discipline has previously been imposed within the past five years, the certification shall state the date, jurisdiction, nature of the ethics violation and the penalty imposed. If proceedings are pending, the certification shall specify the jurisdiction, the charges and the likely time of their disposition. An attorney admitted *pro hac vice* shall have the continuing obligation during the period of such admission promptly to advise the court of the disposition made of pending charges or of the institution of new disciplinary proceedings.

(2) The order of the Court granting a motion to appear *pro hac vice* shall require the out-of-state attorney to make a payment to the New Jersey Lawyers' Fund for Client Protection as provided by New Jersey Court Rule 1:28-2(a). This payment shall be made for any year in which the admitted attorney continues to represent a client in a matter pending in this Court. A copy of the order shall be forwarded by the Clerk to the Treasurer of the Fund.

(3) The order of the Court granting a motion to appear pro hac vice shall require the out-of-state attorney to make a payment of $150.00 on each admission payable to the Clerk, USDC.

(4) If it has not been done prior to the granting of such motion, an appearance as counsel of record shall be filed promptly by a member of the bar of this Court upon whom all notices, orders and pleadings may be served, and who shall promptly notify his or her specially admitted associate of their receipt. Only an attorney at law of this Court may file papers, enter appearances for parties, sign stipulations, or sign and receive payments on judgments, decrees or orders. A lawyer admitted *pro hac vice* is deemed to have agreed to take no fee in any tort case in excess of New Jersey Court Rule 1:21-7 governing contingent fees.

(5) A lawyer admitted *pro hac vice* is within the disciplinary jurisdiction of this Court.

(d) Adherence to Schedules; Sanctions

All members of the bar of this Court and those specially permitted to participate in a particular action shall strictly observe the dates fixed for scheduling conferences, motions, pretrial conferences, trials or any other proceedings. Failure of counsel for any party, or of a party appearing *pro se*, to comply with this Rule may result in the imposition of sanctions, including the withdrawal of the permission granted under L.Civ.R. 101.1(c) to participate in the particular action. All applications for adjournment shall be made promptly and directed to the Judge or Magistrate Judge to whom the matter is assigned.

(e) Appearance by Patent Attorneys

Any member in good standing of the bar of any court of the United States or of the highest court of any state who is not eligible for admission to the bar of this Court under L.Civ.R. 101.1(b) may be admitted as an attorney at law, subject to the limitations hereinafter set forth, on motion of a member of the bar of this Court and upon taking the prescribed oath and signing the roll, provided such applicant has filed with the Clerk a verified application for admission as an attorney of this Court establishing that the applicant:

(1) is a member in good standing of the bar of any United States court or the highest court of any state for at least five years;

(2) has been admitted to practice as an attorney before the United States Patent Office and is listed on its Register of attorneys;

(3) has been continuously engaged in the practice of patent law as a principal occupation in an established place of business and office located in the State of New Jersey for at least two years prior to date of application; and

(4) has sufficient qualifications both as to prelegal and legal training to satisfy the Court.

No member admitted under L.Civ.R. 101.1(e) shall designate himself or herself other than as a patent attorney or patent lawyer, and that person's admission to practice before this Court shall be limited to cases solely arising under patent laws of the United States or elsewhere. Failure to continue to maintain an established place of business or office within the State for the practice of patent law shall, upon proof thereof to the Court, justify the striking of such attorney's name from the roll of patent attorneys established under this Rule. In any litigation, any patent attorney admitted under L.Civ.R. 101.1(e) shall be associated of record with a member of the bar of this Court admitted under L.Civ.R. 101.1(b).

Nothing herein contained shall preclude any patent attorney from being admitted under L.Civ.R. 101.1(b) or (c).

(f) Appearance by Attorneys for the United States

An attorney admitted to practice in any United States District Court may practice before this

Court in any proceeding in which he or she is representing the United States or any of its officers or agencies. If such attorney does not have an office in this District he or she shall designate the United States Attorney to receive service of all notices or papers in that action. Service upon the United States Attorney or authorized designee shall constitute service upon a government attorney who does not have an office in this District.

(g) Appearance by Professional Law Corporations

The provisions of this Rule shall extend to duly created professional law corporations, authorized to be formed under the law of the jurisdiction to which the attorney employed by the corporation shall have been admitted to practice, to the same extent as they apply to partnerships and other unincorporated law firms. In every case in which such a professional law corporation participates, all appearances and papers shall be in the full name of the corporation, including such designations as "Chartered," "Professional Association," "P.C.," and the like, and shall be executed on its behalf by an individual attorney qualified under this Rule and employed by it, as "Authorized Attorney." Both the corporate entity and its attorney employee shall be subject to all provisions of these Rules.

(h) Appearance by Supervised Law Students

With the Court's approval, an eligible law student may appear under supervision of an attorney on behalf of any person, including the United States Attorney, who has consented in writing.

(1) The attorney who supervises a student shall:

(A) be either a member of the bar of this Court who maintains a bona fide office in this District or an attorney permitted to practice before the courts of the State of New Jersey under N.J.R. 1:21-3(c).

(B) personally assume professional responsibility for the student's work;

(C) assist the student to the extent necessary;

(D) appear with the student in all proceedings before the Court; and
(E) file written consent to supervise the student.

(2) In order to appear, the student shall:

(A) be enrolled in a law school approved by the American Bar Association;

(B) have successfully completed legal studies amounting to at least two-thirds of the credits needed for graduation or the equivalent;

(C) be certified by either the dean or a faculty member of that law school as qualified to provide the legal representation permitted by these Rules (This certification may be withdrawn by the person so certifying at any time by mailing a notice to the Clerk, or upon

termination by the Judge presiding in the case in which the student appears without notice or hearing and without a showing of cause. The loss of certification by action of a Judge shall not be considered a reflection upon the character or ability of the student.);

(D) be introduced to the Court by an attorney admitted to practice in this District;

(E) neither ask for nor receive from the client represented any compensation or remuneration of any kind for services rendered; but this limitation shall not prevent an attorney, legal aid bureau, law school, public defender agency, a State, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making proper charges for its services;

(F) certify in writing that he or she is familiar and will comply with the Disciplinary Rules;

(G) certify in writing that he or she is familiar with the Federal procedural and evidentiary rules relevant to the action in which he or she is appearing.

(3) The law student, supervised in accordance with these Rules, may:

(A) appear as counsel in court or at other proceedings when written consent of the client (or of the United States Attorney when the client is the United States) and the supervising attorney have been filed, and when the Court has approved the student's request to appear in the particular case to the extent that the Judge presiding at the hearing or trial permits;

(B) prepare and sign motions, petitions, answers, briefs, and other documents in connection with any matter in which he or she has met the conditions of L.Civ.R. 101.1(h)(3)(A); each such document shall also be signed by the supervising attorney.

(4) Forms for designating compliance with this Rule are set forth in Appendix A1 and A2, and shall be available in the Clerk's office. Completed forms shall be filed with the Clerk.

(5) Participation by students under this Rule shall not be deemed a violation in connection with the rules for admission to the bar of any jurisdiction concerning practice of law prior to admission to that bar.

(i) Admission Fee

An attorney admitted to the bar of this Court shall pay an admission fee in the amount set by the Court. The Clerk shall collect such funds and maintain them in the manner set forth by the Court in the Plan for Administration and Operation of the Attorney's Admission Fee Account. Such funds are to be used for projects which the Court determines are for the benefit of the bench and bar in the administration of justice within the District.

(j) Appearance of Attorneys in Criminal Cases

This Rule does not govern the appearance of attorneys representing defendants in criminal cases.

7. Civ. RULE 201.1 ARBITRATION

Table of Contents

SUBJECT HEADINGS REFERENCE

(a) Certification of Arbitrators

(1) The Chief Judge shall certify as many arbitrators as determined to be necessary under this Rule. Arbitrators shall be designated for terms of service up to three years, subject to extension at the discretion of the Chief Judge, and all such terms shall be staggered to provide orderly rotation of a portion of the membership of the panel of arbitrators.

(2) An individual may be designated to serve as an arbitrator if he or she: (a) has been for at least five years a member of the bar of the highest court of a State or the District of Columbia, (b) is admitted to practice before this Court, (c) is determined by the Chief Judge to be competent to perform the duties of an arbitrator, and (d) has participated in a training program (or the equivalent thereof) to the satisfaction of the Chief Judge.

(3) Each individual certified as an arbitrator shall take the oath or affirmation prescribed by 28 U.S.C. §453 before serving as an arbitrator.

(4) A list of all persons certified as arbitrators shall be maintained in the office of the Clerk.

(5) Each arbitrator shall, for the purpose of performing his or her duties, be deemed a quasijudicial officer of the Court.

(b) Designation of Compliance Judge

The Board of Judges shall designate a Judge or Magistrate Judge to serve as the compliance judge for arbitration. This compliance judge shall be responsible to the Board of Judges for administration of the arbitration program established by this Rule and shall be responsible for monitoring the arbitration processes; provided, however that the compliance judge shall not be responsible for individual case management.

(c) Compensation and Expenses of Arbitrators

An arbitrator shall be compensated $250 for service in each case assigned for arbitration. In the event that the arbitration hearing is protracted, the Court will entertain a petition for additional compensation. The fees shall be paid by or pursuant to an order of the Director of the Administrative Office of the United States Courts. Arbitrators shall not be reimbursed for actual expenses incurred by them in the performance of their duties under this Rule.

(d) Civil Cases Eligible for Compulsory Arbitration

(1) Compulsory Arbitration. Subject to the exceptions set forth in L.Civ.R. 201.1(d)(2), the Clerk shall designate and process for compulsory arbitration any civil action pending before the Court where the relief sought consists only of money damages not in excess of $150,000 exclusive of interest and costs and any claim for punitive damages.

(2) Exclusion from Compulsory Arbitration. No civil action shall be designated or processed for compulsory arbitration if the claim therein is

(A) based on an alleged violation of a right secured by the Constitution of the United States; or

(B) jurisdictionally based, on whole or in part, on (i) 28 U.S.C. §1346(a)(1) (tax refund actions) or (ii) 42 U.S.C. §405(g) (Social Security actions).

Upon filing its initial pleading a party may request that an otherwise eligible case not be designated or processed for compulsory arbitration if either circumstances encompassed within L.Civ.R. 201.1(e)(6) are present or other specific policy concerns exist which make formal adjudication, rather than arbitration, appropriate.

(3) Presumption of Damages. For the sole purpose of making the determination as to whether the damages are in excess of $150,000 as provided in L.Civ.R. 201.1(d)(1), damages shall be presumed in all cases to be $150,000 or less, exclusive of interest and costs and any claim for punitive damages, unless counsel of record for the plaintiff at the time of filing the complaint or counsel of record for any other party at the time of filing that party's first pleading, or any counsel within 30 days of the filing of a notice of removal, files with the Court a document signed by said counsel which certifies that the damages recoverable exceed the sum of $150,000 exclusive of interest and costs and any claim for punitive damages. The Court may disregard any certification filed under this Rule and require arbitration if satisfied that recoverable damages do not exceed $150,000. No provision of this Rule shall preclude an arbitrator from entering an award exceeding $150,000 based upon the proofs presented at the arbitration hearing; and an arbitrator's award may also include interest, costs, statutory attorneys' fees and punitive damages, if appropriate.

(e) Referral for Arbitration

(1) After an answer is filed in a case determined eligible for arbitration, the Clerk shall send a notice to counsel setting forth the date and time for the arbitration hearing consistent with the scheduling order entered in the case and L.Civ.R. 201.1(e)(3). The notice shall also advise counsel that they may agree to an earlier date for the arbitration hearing provided the Clerk is notified within 30 days of the date of the notice. In the event additional parties have been joined in the action, this notice shall not be sent until an answer has been filed by all such parties who have been served with process and are not in default.

(2) The arbitration hearing shall be held before a single arbitrator. The arbitrator shall be chosen by the Clerk from among the lawyers who have been certified as arbitrators by the Chief Judge. The arbitrator shall be scheduled to hear not more than three cases on a date or dates which shall be scheduled several months in advance.

(3) The Judge to whom the case has been assigned shall, at least 30 days prior to the date scheduled for the arbitration hearing, sign an order setting forth the date and time of the arbitration hearing and the name of the arbitrator designated to hear the case. In the event that a party has filed a motion to dismiss the complaint, for judgment on the pleadings, summary judgment or to join necessary parties, or proceedings are initiated under L.Civ.R. 201.1(e)(6), the Judge shall not sign the order required herein until the Court has ruled on the motion or order to show cause, but the filing of such a motion on or after the date of said order shall not stay arbitration unless the Judge so orders.

(4) ~~Upon entry of the order designating the arbitrator, t~~The ~~Clerk~~ Plaintiff shall, within 10 days upon receipt of the order appointing arbitrator send to the arbitrator ~~a~~ copies of any complaint, amended complaint and answers to counterclaim; counsel for each defendant shall, within 10 days upon receipt of this order, send to the arbitrator any answer, amended answer, counterclaim, cross-claim and answer hereto, and any third-party complaint ~~all the pleadings, including the order designating the arbitrator and the Guidelines for Arbitrators.~~ Upon receipt of these materials, the arbitrator shall forthwith inform all parties, in writing, as to whether the arbitrator, or any firm or member of any firm with which he or she is affiliated has (either as a party or attorney), at any time within the past five years, been involved in litigation with or represented any party to the arbitration, or any agency, division or employee of such a party.

***Explanation*:** *The proposed amendment, by substituting Plaintiff for Clerk, will be consistent with the Order Appointing Arbitrator and Appendix M (Arbitration Guidelines), which is forwarded to the Arbitrator and Parties by the Clerk's Office.*

(5)(A) Statutory Disqualification. Persons selected to be arbitrators shall be disqualified for bias or prejudice as provided in 28 U.S.C. §144, and shall disqualify themselves in any action in which they would be required under 28 U.S.C. §455 to disqualify themselves if they were a justice, judge, or magistrate judge.

(B) Impartiality. An arbitrator shall be impartial and advise all parties of any circumstances bearing on possible bias, prejudice, or impartiality. Impartiality means freedom from favoritism or bias in word, action, and appearance.

(C) Conflicts of Interest and Relationships; Required Disclosures; Prohibitions.

i. An arbitrator must disclose to the parties and to the compliance judge any current, past, or possible future representation or consulting relationship with, or pecuniary interest in, any party or attorney involved in the arbitration.

ii. An arbitrator must disclose to the parties any close personal relationship or other circumstance which might reasonably raise a question as to the arbitrator's impartiality.

iii. The burden of disclosure rests on the arbitrator. All such disclosures shall be made as soon as practical after the arbitrator becomes aware of the interest or relationship. After appropriate disclosure, the arbitrator may serve if all parties so desire. If the arbitrator believes or perceives that there is a clear conflict of interest, the arbitrator shall withdraw irrespective of the expressed desires of the parties.

iv. In no circumstance may an arbitrator represent any party in any matter during the arbitration.

v. An arbitrator shall not use the arbitration process to solicit, encourage, or otherwise incur future professional services with any party.

(6) Either sua sponte, or upon a recommendation received from the arbitrator, or upon the application of a party, the Judge to whom the case is assigned may exempt from arbitration any action that would otherwise

be arbitrable under this Rule if (a) it involves complex or novel legal issues, or (b) the legal issues predominate over the factual issues, or (c) other good cause is shown. When initiating such a review either sua sponte or upon recommendation of the arbitrator, the Judge may proceed pursuant to an order to show cause providing not less than 10 days notice to all parties of the opportunity to be heard. Any application by a party to exempt an action from arbitration shall be by formal motion pursuant to these Rules.

(f) Arbitration Hearing

(1) The arbitration hearing shall take place on the date and at the time set forth in the order of the Court. The arbitrator is authorized to change the date and time of the hearing, provided the hearing is commenced within 30 days of the hearing date set forth in the Court's order. Any continuance beyond this 30-day period must be approved by the Judge to whom the action is assigned. The Clerk must be notified immediately of any continuance.

(2) Counsel for the parties shall report settlement of the action to the Clerk and to the arbitrator assigned to that action.

(3) The arbitration hearing may proceed in the absence of any party who, after notice, fails to be present. In the event that a party fails to participate in the arbitration process in a meaningful manner, the arbitrator shall make that determination and shall support it with specific written findings filed with the Clerk. Thereupon, the Judge to whom the action is assigned shall conduct a hearing upon notice to all counsel and personal notice to any party adversely affected by the arbitrator's determination and may thereupon impose any appropriate sanctions, including, but not limited to, the striking of any demand for a trial de novo filed by that party.

(4) Fed. R. Civ. P. 45 shall apply to subpoenas for attendance of witnesses and the production of documentary evidence at an arbitration hearing under this Rule. Testimony at an arbitration hearing shall be under oath or affirmation.

(5) The Federal Rules of Evidence shall be used as guides to the admissibility of evidence. Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be marked for identification and delivered to adverse parties at least 10 days prior to the hearing and the arbitrator shall receive exhibits into evidence without formal proof unless counsel has been notified at least five days prior to the hearing that the adverse party intends to raise an issue concerning the authenticity of the exhibit. The arbitrator may refuse to receive into evidence any exhibit a copy or photograph of which has not been delivered to the adverse party, as provided herein.

(6) A party desiring to have a recording and/or transcript made of the arbitration hearing shall make all necessary arrangements for same and shall bear all expenses so incurred.

(g) Arbitration Award and Judgment

Within 30 days after the hearing is concluded, the arbitrator shall file under seal with the Clerk a written award, accompanied by a written statement or summary setting forth the basis for the award which shall be received by the Clerk but not filed. Neither the Clerk nor any party or attorney shall disclose to any Judge to whom the action is or may be assigned the contents of the arbitration award except as permitted by 28 U.S.C. § 657(b). The arbitration award shall be entered as the judgment of the Court after the time period for demanding a trial de novo, pursuant to L.Civ.R. 201.1(h), has expired, unless a party demands a trial de novo before the Court. The judgment so entered shall be subject to the same provisions of law, and shall have the same force and effect as a judgment of the Court in a civil action, except that it shall not be the subject of appeal. In a case involving multiple claims and parties, any separable part of an arbitration award may be the subject of a trial de novo if the aggrieved party makes a demand for same pursuant to L.Civ.R. 201.1(h) before the expiration of the applicable time period. If the aggrieved party fails to make a timely demand pursuant to L.Civ.R. 201.1(h), that part of the arbitration award shall become part of the final judgment with the same force and effect as a judgment of the Court in a civil action, except that it shall not be the subject of appeal.

Explanation: 28 U.S.C. § 657(b) requires sealing of arbitration award.

(h) Trial De Novo

(1) Any party may demand a trial de novo in the District Court by filing with the Clerk a written demand, containing a short and plain statement of each ground in support thereof, and serving a copy upon all counsel of record or other parties. Such a demand must be filed and served within 30 days after the arbitration award is filed and service is accomplished by a party pursuant to 28 U.S.C. §657(a), or by the Clerk (whichever occurs first), except that in any action in which the United States or any employee or agency thereof is a party the time period within which any party therein may file and serve such a demand shall be 60 days. ~~Withdrawal of a demand for a trial de novo shall reinstate the arbitrator's award.~~

(2) Upon the filing of a demand for a trial de novo ~~and the payment to the Clerk as required by L.Civ.R. 201.1.(h)(3)~~, the action shall be placed on the calendar of the Court and treated for all purposes as if it had not been referred to arbitration, except that no additional pretrial discovery shall be permitted without leave of Court, for good cause shown. Any right of trial by jury that a party would otherwise have shall be preserved inviolate.

~~(3) Upon the filing of a demand for a trial de novo, the moving party shall, unless permitted to proceed in forma pauperis or as otherwise provided by law, deposit with the Clerk the sum of $150. The sum so deposited shall be returned to the party demanding a trial de novo in the event that party obtains a final judgment more favorable than the arbitration award, exclusive of interest and costs, or upon the Court's determination (pursuant to a timely motion prosecuted under L.Civ.R. 7.1) that the demand for the trial de novo was made for good cause. In the event the party demanding a trial de novo fails either to obtain a more favorable judgment or make a showing of good cause as set forth above, the sum so deposited shall be paid by the Clerk to the Treasury of the United States, and (except for any award pursuant to 28 U.S.C. §655(e)) no other sum shall be assessed against any party~~

~~for demanding a trial de novo.~~

Explanation: *The proposed amendment reflects the Court Order of June 30, 2004, which suspended provisions: (h)(1); (2); and (3). See D'Iorio v. Majestic Lanes, Inc., 370 F.3d 354 (3d Cir. 2004) (permitting a party to withdraw de novo request and reinstating arbitration award is inconsistent with the Alternate Dispute Resolution Act of 1998, 28 U.S.C. § 651, et seq.)*

(~~4~~)(3) The Magistrate Judge shall conduct a pretrial conference within 60 days of filing of a demand for a trial de novo.

(i) Guidelines for Arbitration

The Court, the Clerk, the parties, attorneys and arbitrators are hereby referred to the Guidelines for Arbitration (Appendix M to these Rules) for their information and guidance in civil actions arbitrated pursuant to this Rule.

(edited version)

7. Civ. RULE 201.1 ARBITRATION

Table of Contents

SUBJECT HEADINGS REFERENCE

(a) Certification of Arbitrators

(1) The Chief Judge shall certify as many arbitrators as determined to be necessary under this Rule. Arbitrators shall be designated for terms of service up to three years, subject to extension at the discretion of the Chief Judge, and all such terms shall be staggered to provide orderly rotation of a portion of the membership of the panel of arbitrators.

(2) An individual may be designated to serve as an arbitrator if he or she: (a) has been for at least five years a member of the bar of the highest court of a State or the District of

Columbia, (b) is admitted to practice before this Court, (c) is determined by the Chief Judge to be competent to perform the duties of an arbitrator, and (d) has participated in a training program (or the equivalent thereof) to the satisfaction of the Chief Judge.

(3) Each individual certified as an arbitrator shall take the oath or affirmation prescribed by 28 U.S.C. §453 before serving as an arbitrator.

(4) A list of all persons certified as arbitrators shall be maintained in the office of the Clerk.

(5) Each arbitrator shall, for the purpose of performing his or her duties, be deemed a quasijudicial officer of the Court.

(b) Designation of Compliance Judge

The Board of Judges shall designate a Judge or Magistrate Judge to serve as the compliance judge for arbitration. This compliance judge shall be responsible to the Board of Judges for administration of the arbitration program established by this Rule and shall be responsible for monitoring the arbitration processes; provided, however that the compliance judge shall not be responsible for individual case management.

(c) Compensation and Expenses of Arbitrators

An arbitrator shall be compensated $250 for service in each case assigned for arbitration. In the event that the arbitration hearing is protracted, the Court will entertain a petition for additional compensation. The fees shall be paid by or pursuant to an order of the Director of the Administrative Office of the United States Courts. Arbitrators shall not be reimbursed for actual expenses incurred by them in the performance of their duties under this Rule.

(d) Civil Cases Eligible for Compulsory Arbitration

(1) Compulsory Arbitration. Subject to the exceptions set forth in L.Civ.R. 201.1(d)(2), the Clerk shall designate and process for compulsory arbitration any civil action pending before the Court where the relief sought consists only of money damages not in excess of $150,000 exclusive of interest and costs and any claim for punitive damages.

(2) Exclusion from Compulsory Arbitration. No civil action shall be designated or processed for compulsory arbitration if the claim therein is

(A) based on an alleged violation of a right secured by the Constitution of the United States; or

(B) jurisdictionally based, on whole or in part, on (i) 28 U.S.C. §1346(a)(1) (tax refund actions) or (ii) 42 U.S.C. §405(g) (Social Security actions).

Upon filing its initial pleading a party may request that an otherwise eligible case not be designated or processed for compulsory arbitration if either circumstances encompassed within L.Civ.R. 201.1(e)(6) are present or other specific policy concerns exist which make formal adjudication, rather than arbitration, appropriate.

(3) Presumption of Damages. For the sole purpose of making the determination as to whether the damages are in excess of $150,000 as provided in L.Civ.R. 201.1(d)(1),

damages shall be presumed in all cases to be $150,000 or less, exclusive of interest and costs and any claim for punitive damages, unless counsel of record for the plaintiff at the time of filing the complaint or counsel of record for any other party at the time of filing that party's first pleading, or any counsel within 30 days of the filing of a notice of removal, files with the Court a document signed by said counsel which certifies that the damages recoverable exceed the sum of $150,000 exclusive of interest and costs and any claim for punitive damages. The Court may disregard any certification filed under this Rule and require arbitration if satisfied that recoverable damages do not exceed $150,000. No provision of this Rule shall preclude an arbitrator from entering an award exceeding $150,000 based upon the proofs presented at the arbitration hearing; and an arbitrator's award may also include interest, costs, statutory attorneys' fees and punitive damages, if appropriate.

(e) Referral for Arbitration

(1) After an answer is filed in a case determined eligible for arbitration, the Clerk shall send a notice to counsel setting forth the date and time for the arbitration hearing consistent with the scheduling order entered in the case and L.Civ.R. 201.1(e)(3). The notice shall also advise counsel that they may agree to an earlier date for the arbitration hearing provided the Clerk is notified within 30 days of the date of the notice. In the event additional parties have been joined in the action, this notice shall not be sent until an answer has been filed by all such parties who have been served with process and are not in default.

(2) The arbitration hearing shall be held before a single arbitrator. The arbitrator shall be chosen by the Clerk from among the lawyers who have been certified as arbitrators by the Chief Judge. The arbitrator shall be scheduled to hear not more than three cases on a date or dates which shall be scheduled several months in advance.

(3) The Judge to whom the case has been assigned shall, at least 30 days prior to the date scheduled for the arbitration hearing, sign an order setting forth the date and time of the arbitration hearing and the name of the arbitrator designated to hear the case. In the event that a party has filed a motion to dismiss the complaint, for judgment on the pleadings, summary judgment or to join necessary parties, or proceedings are initiated under L.Civ.R. 201.1(e)(6), the Judge shall not sign the order required herein until the Court has ruled on the motion or order to show cause, but the filing of such a motion on or after the date of said order shall not stay arbitration unless the Judge so orders.

(4) The Plaintiff shall, within 10 days upon receipt of the order appointing arbitrator, send to the arbitrator copies of any complaint, amended complaint and answers to counterclaim; counsel for each defendant shall, within 10 days upon receipt of this order, send to the arbitrator any answer, amended answer, counterclaim, cross-claim and answer hereto, and any third-party complaint. Upon receipt of these materials, the arbitrator shall forthwith inform all parties, in writing, as to whether the arbitrator, or any firm or member of any firm with which he or she is affiliated has (either as a party or attorney), at any time within the past five years, been involved in litigation with or represented any party to the arbitration, or any agency, division or employee of such a party.

(5)(A) Statutory Disqualification. Persons selected to be arbitrators shall be disqualified for bias or prejudice as provided in 28 U.S.C. §144, and shall disqualify themselves in any action in which they would be required under 28 U.S.C. §455 to disqualify themselves if they

were a justice, judge, or magistrate judge.

(B) Impartiality. An arbitrator shall be impartial and advise all parties of any circumstances bearing on possible bias, prejudice, or impartiality. Impartiality means freedom from favoritism or bias in word, action, and appearance.

(C) Conflicts of Interest and Relationships; Required Disclosures; Prohibitions.

i. An arbitrator must disclose to the parties and to the compliance judge any current, past, or possible future representation or consulting relationship with, or pecuniary interest in, any party or attorney involved in the arbitration.

ii. An arbitrator must disclose to the parties any close personal relationship or other circumstance which might reasonably raise a question as to the arbitrator's impartiality.

iii. The burden of disclosure rests on the arbitrator. All such disclosures shall be made as soon as practical after the arbitrator becomes aware of the interest or relationship. After appropriate disclosure, the arbitrator may serve if all parties so desire. If the arbitrator believes or perceives that there is a clear conflict of interest, the arbitrator shall withdraw irrespective of the expressed desires of the parties.

iv. In no circumstance may an arbitrator represent any party in any matter during the arbitration.

v. An arbitrator shall not use the arbitration process to solicit, encourage, or otherwise incur future professional services with any party.

(6) Either sua sponte, or upon a recommendation received from the arbitrator, or upon the application of a party, the Judge to whom the case is assigned may exempt from arbitration any action that would otherwise

be arbitrable under this Rule if (a) it involves complex or novel legal issues, or (b) the legal issues predominate over the factual issues, or (c) other good cause is shown. When initiating such a review either sua sponte or upon recommendation of the arbitrator, the Judge may proceed pursuant to an order to show cause providing not less than 10 days notice to all parties of the opportunity to be heard. Any application by a party to exempt an action from arbitration shall be by formal motion pursuant to these Rules.

(f) Arbitration Hearing

(1) The arbitration hearing shall take place on the date and at the time set forth in the order of the Court. The arbitrator is authorized to change the date and time of the hearing, provided the hearing is commenced within 30 days of the hearing date set forth in the Court's order. Any continuance beyond this 30-day period must be approved by the Judge to whom the action is assigned. The Clerk must be notified immediately of any continuance.

(2) Counsel for the parties shall report settlement of the action to the Clerk and to the arbitrator assigned to that action.

(3) The arbitration hearing may proceed in the absence of any party who, after notice, fails to be present. In the event that a party fails to participate in the arbitration process in a meaningful manner, the arbitrator shall make that determination and shall support it with specific written findings filed with the Clerk. Thereupon, the Judge to whom the action is assigned shall conduct a hearing upon notice to all counsel and personal notice to any party

adversely affected by the arbitrator's determination and may thereupon impose any appropriate sanctions, including, but not limited to, the striking of any demand for a trial de novo filed by that party.

(4) Fed. R. Civ. P. 45 shall apply to subpoenas for attendance of witnesses and the production of documentary evidence at an arbitration hearing under this Rule. Testimony at an arbitration hearing shall be under oath or affirmation.

(5) The Federal Rules of Evidence shall be used as guides to the admissibility of evidence. Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be marked for identification and delivered to adverse parties at least 10 days prior to the hearing and the arbitrator shall receive exhibits into evidence without formal proof unless counsel has been notified at least five days prior to the hearing that the adverse party intends to raise an issue concerning the authenticity of the exhibit. The arbitrator may refuse to receive into evidence any exhibit a copy or photograph of which has not been delivered to the adverse party, as provided herein.

(6) A party desiring to have a recording and/or transcript made of the arbitration hearing shall make all necessary arrangements for same and shall bear all expenses so incurred.

(g) Arbitration Award and Judgment

Within 30 days after the hearing is concluded, the arbitrator shall file under seal with the Clerk a written award, accompanied by a written statement or summary setting forth the basis for the award which shall be received by the Clerk but not filed. Neither the Clerk nor any party or attorney shall disclose to any Judge to whom the action is or may be assigned the contents of the arbitration award except as permitted by 28 U.S.C. § 657(b). The arbitration award shall be entered as the judgment of the Court after the time period for demanding a trial de novo, pursuant to L.Civ.R. 201.1(h), has expired, unless a party demands a trial de novo before the Court. The judgment so entered shall be subject to the same provisions of law, and shall have the same force and effect as a judgment of the Court in a civil action, except that it shall not be the subject of appeal. In a case involving multiple claims and parties, any separable part of an arbitration award may be the subject of a trial de novo if the aggrieved party makes a demand for same pursuant to L.Civ.R. 201.1(h) before the expiration of the applicable time period. If the aggrieved party fails to make a timely demand pursuant to L.Civ.R. 201.1(h), that part of the arbitration award shall become part of the final judgment with the same force and effect as a judgment of the Court in a civil action, except that it shall not be the subject of appeal. (Emphasis added to original text.)

(h) Trial De Novo

(1) Any party may demand a trial de novo in the District Court by filing with the Clerk a written demand, containing a short and plain statement of each ground in support thereof, and serving a copy upon all counsel of record or other parties. Such a demand must be filed and served within 30 days after the arbitration award is filed and service is accomplished by a party pursuant to 28 U.S.C. §657(a), or by the Clerk (whichever occurs first), except that in any action in which the United States or any employee or agency thereof is a party the time period within which any party therein may file and serve such a demand shall be 60

days.

(2) Upon the filing of a demand for a trial de novo, the action shall be placed on the calendar of the Court and treated for all purposes as if it had not been referred to arbitration, except that no additional pretrial discovery shall be permitted without leave of Court, for good cause shown. Any right of trial by jury that a party would otherwise have shall be preserved inviolate.

(3) The Magistrate Judge shall conduct a pretrial conference within 60 days of filing of a demand for a trial de novo.

(i) Guidelines for Arbitration

The Court, the Clerk, the parties, attorneys and arbitrators are hereby referred to the Guidelines for Arbitration (Appendix M to these Rules) for their information and guidance in civil actions arbitrated pursuant to this Rule.

8. RULE 501.1 POSSESSION AND USE OF ELECTRONIC EQUIPMENT

~~(a) No person may bring into any courthouse, courtroom, or any other location where proceedings of the Court are being conducted, any electronic equipment, including, but not limited to, cellular telephones, "laptops" or similar computers, dictation equipment and calculators except as set forth hereafter:~~

~~(i) An attorney-at-law of this Court or a member of the bar of the highest court of a State or the District of Columbia may, upon presentation of bona fide, current identification of that status, at the entrance of such premises, bring into such premises and into any room where judicial proceedings are taking place, such electronic equipment.~~

~~(ii) All other persons may neither bring into nor possess upon such premises any such equipment without the express, advance, written permission of the Judge or Magistrate Judge before whom he or she will be appearing. When such a person will be appearing before a court-appointed arbitrator, mediator, receiver, special master or other designee, such written permission must be obtained from either the Judge or Magistrate Judge to whom the matter is assigned.~~

~~(b) No such electronic equipment shall be used in a courtroom, hearing room or other place where proceedings of the Court are being conducted without the express, written permissions of the person presiding over such proceedings.~~

~~(c) This rule shall apply to all proceedings of the Court, wherever conducted, taking place before a Judge, Magistrate Judge or any designee of the Court described in paragraph (a) (ii) hereof.~~

***Explanation**: The entire text of the rule was suspended to ensure compliance with the*

Model Circuit Electronic Device Policy, which the Court adopted in September 2004, and in accordance with the Court's Standing Order dated July 26, 2005.

(edited version)

RULE 501.1 POSSESSION AND USE OF ELECTRONIC EQUIPMENT

(a) Objective

This policy establishes that "Electronic Devices," as defined herein may be brought into courthouses subject to all appropriate security screening and that such Electronic Devices must be rendered inoperable in courtrooms and judicial chambers, unless use is authorized in such areas by the presiding judicial officer. A significant goal of this policy is to create circuit-wide consistency for the benefit of the public, attorneys and employees.

(b) Scope

This policy identifies authorized devices, establishes the classes of individuals who may possess authorized devices, sets out the basis for exceptions to the policy, and specifies guidelines for security screening and establishing areas where use of electronic devices may be prohibited. **The *use* of electronic devices in courthouses and courtrooms is subject to existing judiciary court policies regarding inappropriate and unauthorized activity**, including U.S. Judicial Conference prohibition against "broadcasting, televising, recording or taking photographs in the courtroom and areas immediately adjacent thereto. . . ."

(c) Exception

Nothing in this policy prevents a judge, on an individual case basis, and with adequate notification, from temporarily establishing a ban on all Electronic Devices to be carried into a courtroom.

(d) Explanation of Terms

Electronic Devices refers to those devices (both currently available as well as future technology) that have as their primary function wireless communication, the storage and retrieval of digitized data, and computer applications.

The list of covered devices includes, but is not limited to, electronic devices that serve as cell phones, pagers, Palm Pilots/digital assistants, pocket computers, laptop computers, notebook computers, Blackberries, wireless network cards, and Internet cards or devices. Devices that serve only as cameras, audio recorders or video recorders are not covered by this policy, and remain subject to regulation by local court rules and orders.

(e) Authorization

Electronic Devices may be brought into the courthouse, whether in the possession of attorneys, jurors, court employees, public, or press. Unless specifically authorized by the presiding judicial officers, all Electronic Devices must be rendered inoperable before entering any courtroom or judicial chambers. Use of Electronic Devices shall remain subject to Judicial Conference and local court policies **regarding inappropriate *use* and unauthorized activity**.

Permission to carry these devices, with all of the sensitive data they may contain, into the courthouse, is intended as a convenience to those possessing such devices and to ease the burden on court security staff at building entrances. **This policy is not to be construed as granting permission to *use* any of these devices**.

(f) Enforcement

(1) Physical Security

Current policies regarding physical security will remain in effect. Security officers at courthouse entrances will screen all Electronic Devices for explosives, weapons, etc. Nothing in this policy is intended to limit the authority of the security officers to determine the appropriate means of screening Electronic Devices and to bar the possession of any Electronic Device determined to pose a security threat.

(2) Prohibited Uses

Unless authorized by the presiding judicial officer, all Electronic Devices shall be rendered inoperable prior to entering any courtroom or judicial chambers. Courts may, by local rule or order, further restrict the use of any Electronic Devices inside the courthouse.

(A) Notification

Policies proscribing ***use*** of Electronic Devices, with appropriate penalties, will be prominently displayed in the courthouse, on the court's web site, and in mailings to potential jurors and grand jurors.

The court's employee handbook will clearly state the use policy pertaining to employees of the judiciary, including law clerks.

(B) Courtrooms

Unauthorized use of Electronic Devices in courtrooms will be addressed by courtroom security or court staff pursuant to local regulations.

(C) Jurors

Jurors in possession of Electronic Devices will surrender these devices to

court staff prior to entering the jury room to commence deliberations.

(D) Grand Jurors

Grand jurors in possession of electronic devices will surrender these devices to court staff prior to entering the Grand Jury room.

(3) Case-by-Case Exceptions

In the event a judge temporarily establishes a complete ban of any Electronic Device for the duration of a trial, screening for possession of Electronic Devices will occur, if practicable, in close proximity to the relevant courtroom, with a portable screening station/magnetometer, or other appropriate device. Additional security staff should be requested for this function.

(4) Court Security Officers

(A) Physical Security

Court Security Officers (CSOs) will be responsible for physical screening of devices at courthouse entrances in accordance with policies established by the United States Marshal, and will be responsible for barring any Electronic Device determined to pose a security threat.

(B) Custodial Duties

CSOs will not have any custodial duties regarding the checking and storing of Electronic Devices except as may be required on a case-by-case temporary basis as outlined in § VI.(C) above.

(g) Implementation of This Policy

This policy will be implemented as a Standing Order of the Court with limited or unlimited duration as the court determines.

January 29, 2007