

LOCAL RULES
OF
PRACTICE AND PROCEDURE

United States District Court
For the Western District of Michigan

Hon. Robert Holmes Bell, Chief Judge
Hon. Richard Alan Enslen, Judge
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Hon. Gordon J. Quist, Judge
Hon. Wendell A. Miles, Senior Judge

Updated: July 15, 2004

**LOCAL RULES OF CIVIL
PRACTICE AND PROCEDURE**

United States District Court
For The Western District of Michigan

**Effective June 1, 1998,
Including Amendments through July 15, 2004**

Preface to the 1998 Edition

On March 12, 1996, the Judicial Conference approved the recommendation of the Committee on Rules of Practice and Procedure to “adopt a numbering system for local rules of court that corresponds with the relevant Federal Rules of Practice and Procedure.” The action of the Judicial Conference implements the December 1, 1995 amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure, which provide that all local rules of court “must conform to any uniform numbering system prescribed by the Judicial Conference.” (See Appellate Rule 47, Bankruptcy Rules 8018 and 9029, Civil Rule 83, and Criminal Rule 57).

In addition to the substantive changes to the local rules found in the 1998 Edition, the Rules have been renumbered to comply with this mandate. The result is that, rather than being consecutively numbered, the rules have been assigned numbers which best correspond to the numbering scheme of the Federal Rules of Civil and Criminal Procedure. The renumbered Local Civil Rules and the renumbered Local Criminal Rules have been compiled as separate sets of Rules. Many of the rules familiar to practitioners under the prior edition remain substantively intact, but have had their provisions redistributed to two or more new rules within the newly-mandated numbering system.

Local Civil Rules which do not correspond to any rule within the Federal Rules of Civil Procedure have been assigned to Rule 83, which, in the Federal Rules of Civil Procedure, governs the rulemaking authority of the courts of the various districts.

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I. SCOPE OF RULES

Local Civil Rule 1. Authority; scope; construction

1.1 Authority - These rules are promulgated pursuant to 28 U.S.C. § 2071 and Rule 83 of the Federal Rules of Civil Procedure. Amendment of these rules is governed by LCivR 83.3(f).

1.2 Short title - These rules may be cited and referred to individually as "W.D. Mich. LCivR _____."

1.3 Effective date - The effective date of these rules is June 1, 1998, including amendments through July 15, 2004.

1.4 Applicability - These rules apply to all civil proceedings in this Court.

1.5 Scope - These rules govern the procedure in the United States District Court for the Western District of Michigan, govern the practice of attorneys before this Court, and supersede all previous rules promulgated by this Court or any judge thereof. Administrative orders and single-judge standing orders shall be maintained by the Clerk and made available upon request. All such orders shall be consistent with these rules and the Federal Rules of Civil Procedure.

1.6 Construction - These rules shall be construed to achieve an orderly administration of the business of this Court and to secure the just, speedy and inexpensive determination of every action. References to statutes, regulations or rules shall be interpreted to include all revisions and amendments thereto. References to the Clerk shall be interpreted to mean the Clerk of this Court or any deputy clerk. Wherever used in these rules, the term "party," whether in the singular or plural, shall include all parties appearing in the action pro se and the attorney or attorneys of record for represented parties, where appropriate.

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

Local Civil Rule 3. Commencement of action; assignment to division and judge

3.1 Fee payment - The fee provided by 28 U.S.C. § 1914 shall be paid to the Clerk. The Clerk may require that any payment be in cash or certified check.

3.2 Assignment of cases to divisions - This district is composed of a Northern Division and a Southern Division. The residence of corporations, partnerships, and unincorporated associations shall be the division where the principal place of business is maintained. The Southern Division comprises the counties of Allegan, Antrim, Barry, Benzie, Berrien, Branch, Calhoun, Cass, Charlevoix, Clinton, Eaton, Emmet, Grand Traverse, Hillsdale, Ingham, Ionia, Kalamazoo, Kalkaska, Kent, Lake, Leelanau, Manistee, Mason, Mecosta, Missaukee, Montcalm, Muskegon, Newago, Oceana, Osceola, Ottawa, Saint Joseph, Van Buren, and Wexford. The Northern Division comprises the counties of Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft. 28 U.S.C. § 102(b). All cases shall be assigned to a division by application of the following order of priorities:

- (a) if an action is removed from state court, the division embracing the county in which the case was pending in state court;
- (b) in bankruptcy appeals, the division in which the bankruptcy matter is pending;
- (c) if the action is local in nature, the division in which the real property is located;
- (d) in prisoner civil rights cases, the division in which the claim arose;
- (e) the division in which all plaintiffs reside;
- (f) the division in which all defendants reside;
- (g) the division in which the claim arose;
- (h) in a case in which a defendant is an officer or employee of the United States or any agency thereof acting in an official capacity, or under color of legal authority, or an agency of the United States, the division in which an office

of a defendant is located; or

- (i) the division in which the case is filed.

3.3 Assignment of cases to judges

- (a) Method - Each case, and each bankruptcy appeal, upon filing, shall be assigned to a judge, who shall continue in the case or matter until its final disposition, except as hereinafter provided.
- (b) Sequence - All initial papers in cases shall be first filed in the office of the Clerk who shall stamp on the complaint, petition, or other initial paper of each case so filed, the number of the case and the name of the judge to whom it is assigned. The numbering and assignment of each case shall be completed before processing of the next case is commenced.
- (c) Procedure - The Clerk shall use automated or manual means to assign new cases to judges at random in accordance with administrative orders issued by the Court from time to time. The Clerk shall mark the name of the assigned judge on the first document of the case and preserve a record of such assignments.
- (d) Exceptions
 - (i) Refilings - If a case is dismissed or remanded to state court and later refiled, either in the same or similar form, upon refiled it shall be assigned or transferred to the judge to whom it was originally assigned.
 - (ii) Subsequent proceedings - Subsequent proceedings in cases (including petitions under 28 U.S.C. § 2255) shall be assigned to the judge assigned to the original case, if that judge is still hearing cases.
 - (iii) Related cases - Cases related to cases already assigned to a judge shall be assigned or transferred as set out below.
 - (A) Definition - Cases are deemed related when a filed case (1) relates to property involved in an earlier numbered pending suit, or (2) arises out of the same transaction or occurrence and involves one or more of the same parties as a pending suit, or (3) involves the validity or infringement of a patent

already in suit in any pending earlier numbered case.

- (B) Determination - When it appears to the Clerk that two or more cases may be related cases, they shall be referred to the magistrate judge assigned to the judge who has the earliest case to determine whether or not the cases are related. If related, the cases will be assigned to the same judge. If cases are found to be related cases after assignment to different judges, they may be reassigned by the Chief Judge to the judge having the related case earliest filed.
- (e) Miscellaneous docket - The miscellaneous docket of the Court shall be assigned in the same manner as the assignment of cases covered in this rule.
- (f) Effect - This rule is intended to provide for an orderly division of the business of the Court and not to grant any right to any litigant.
- (g) Duty of parties - All parties shall notify the Court in writing of all pending related cases and any dismissed or remanded prior cases.
- (h) Reassignment of cases on grounds of convenience - Promptly after all parties have appeared in any civil action, the parties may file a stipulation and motion requesting transfer of the action to a judge located in a different city, on the basis of the convenience of counsel, the parties, or witnesses. Reassignment of the action shall be at the discretion of the Court and shall require the consent of all parties and of both the transferor and transferee judge.

3.4 In forma pauperis proceedings

- (a) Motion and supporting documents - All persons applying to proceed in forma pauperis in this Court or on appeal shall file with their complaint or notice of appeal a motion for leave to proceed in forma pauperis supported by the financial affidavit required under 28 U.S.C. § 1915(a)(1). In addition, any person incarcerated under a state or federal criminal conviction shall submit a certified copy of the prison trust fund account statement for the prisoner for the six-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined. The statement shall disclose (i) the amount then in the trust fund account; (ii) all deposits and withdrawals from the account during the six-month

period immediately preceding the filing of the complaint or notice of appeal as required by 28 U.S.C. § 1915(a)(2).

- (b) Determination of pauper status - A petition for leave to proceed in forma pauperis shall be presented by the Clerk to any available magistrate judge. If the financial affidavit discloses that the person is unable to pay the full filing fee or fees for service of process, the magistrate judge shall grant the petition for pauper status. The magistrate judge shall nevertheless order that a prisoner pay, within a specified period, an initial partial filing fee and make monthly payments thereafter in accordance with 28 U.S.C. § 1915(b). If the person fails to comply with the order for payment of a reduced fee, the complaint may be dismissed by a district judge or the appeal may be dismissed for want of prosecution by the Sixth Circuit Court of Appeals.

Local Civil Rule 4.1. Fee payment to marshal

4.1.1 A deposit in a sum deemed sufficient by the marshal to cover fees for the service to be performed shall be made in every instance in which the marshal is required to perform service. The marshal may require that any payment be in cash or certified check.

Local Civil Rule 5. Service and filing of pleadings and other papers

5.1 Cover sheet - A cover sheet obtained from the Clerk shall be filed with each new case and all required information shall be supplied.

5.2 Proof of service - Proof of service of all pleadings and other papers required or permitted to be served shall be filed promptly after service and may be made by written acknowledgment of service, by affidavit of the person making service or by written certification of counsel. Proof of service shall state the date and manner of service.

5.3 Filing of discovery materials

- (a) Interrogatories, requests for production or inspection, requests for admissions, and responses or objections shall be served upon other parties, but shall not be filed with the Court. Only a proof of service shall be filed with the Court. The party responsible for service of these discovery materials shall retain the original and become the custodian.
- (b) Transcripts of depositions shall not be filed with the Court.
- (c) If discovery materials are to be used at trial, relevant portions of the materials to be used shall be filed with the Clerk at or before trial. If discovery materials are necessary to any motion, relevant portions of the materials shall be filed with the Clerk with the motion or response.

5.4 Place of filing - Pleadings and other papers may be filed with the Clerk at any divisional office. If a hearing is scheduled, it is incumbent upon the party to insure that the judge or magistrate judge receives a copy of such relevant pleadings or other papers sufficiently in advance of the hearing. A locked filing depository is provided for filing documents during business and certain non-business hours. The Clerk will retrieve documents from the filing depositories twice during each business day. Documents are considered filed with the Court on the date and at the time indicated by the time stamp provided at each filing depository. Documents that are not stamped with the time stamp will be considered filed with the Court on the date and at the time they are retrieved by the Clerk's Office.

5.5 Rejection of filings - The Court may order the Clerk to reject any pleading or other paper that does not comply with these rules or the Federal Rules of Civil Procedure unless such noncompliance is expressly approved by the Court. The Clerk shall return any rejected filing to the party tendering it, along with a statement of the reasons for rejection.

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5.6 Pleadings and other papers in particular cases

- (a) Actions by prisoners - Habeas corpus petitions or complaints brought under the Civil Rights Acts by prisoners proceeding pro se shall be in the form specified by the Court. The Clerk shall make such forms available to prisoners desiring to file such actions.
- (b) In pro per petitions - Absent good cause, in all proceedings brought in propria persona or in forma pauperis, the petition or complaint shall not be accepted for filing unless it is accompanied by a copy or copies in number sufficient for service on the respondent(s) or the defendant(s).

5.7 Filing and service by electronic means

- (a) General information; definitions - Pursuant to Rule 5(e) of the Federal Rules of Civil Procedure, the Clerk will accept pleadings and other papers filed and signed by electronic means in accordance with this rule. All papers filed by electronic means must comply with technical standards, if any, now or hereafter established by the Judicial Conference of the United States.

This rule shall apply to all civil actions filed August 1, 2001, and thereafter. The Court will maintain electronic case files for all civil cases filed after that date. All documents, whether filed electronically or on paper, will be placed into the electronic case filing system. Electronic filing and service under this rule will be allowed in such cases on and after October 1, 2001.

As used in this rule, the term

- “ ECF system” means the electronic case filing system maintained by this Court;
- “ registered attorney” means an attorney who is authorized pursuant to Rule 5.7(b) to file documents electronically and to receive service on the ECF system;
- “ initial pleading” means the complaint, petition or other document by which a civil action is initiated;
- “ electronically filed document” means any order, opinion, judgment, pleading, notice, transcript, motion, brief or other paper

(except an initial pleading) submitted electronically to the ECF system;

- “traditionally filed document” means a pleading or other paper submitted to the Clerk in paper form for filing;
- “NEF” means the Notice of Electronic Filing generated by the ECF system;
- “nonelectronic means of service” means one of the methods of service authorized by Rule 5(b) of the Federal Rules of Civil Procedure, except electronic service under Rule 5(b)(2)(D).

(b) Attorney training, registration and withdrawal of registration

- (i) The Clerk’s Office will provide periodic training sessions on use of the ECF system. The Court will also provide on its Website an on-line tutorial demonstrating the use of the ECF system. Law firms are encouraged to have individuals responsible for electronic filing (attorney, paralegal or automation specialist) attend a live training session or the on-line tutorial.

To use the ECF system, an attorney must be admitted to practice in this District, be a member in good standing, and have filed with the Clerk a completed ECF Attorney Registration form. In addition, the attorney or the attorney’s firm must have a Public Access to Court Electronic Records (PACER) account and an e-mail address. Detailed registration information is available on the Court’s Website (www.miwd.uscourts.gov). Upon receipt of the ECF Attorney Registration form, the Court will issue a login name and a user password to qualified attorneys. All registered attorneys have an affirmative duty to inform the Clerk immediately of any change in their e-mail address. A registered attorney may not allow another person to file a document using the attorney’s login name and password, except for members of the attorney’s staff. Use of an attorney’s login name and password by a staff member is deemed to be the act of the attorney. If a login name and/or password should become compromised, the attorney is responsible for notifying the ECF Help Desk immediately.

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- (ii) A registered attorney may withdraw registration by sending a letter with the attorney's original signature to the Clerk of the Court addressed as follows:

Attorney E-Filing Registration
399 Federal Building
110 Michigan St., N.W.
Grand Rapids, MI 49503

Withdrawal of registration is complete when the Clerk removes the attorney's name from the ECF system.

- (c) Initial pleading - The filing of the initial pleading, issuance and service of the summons, and payment of initial filing fees must be accomplished in the traditional manner (not electronically). Attorneys, however, are strongly encouraged to accompany their initial pleading with a diskette or CD-ROM of their papers in portable document format (PDF), so that these documents can be added to the electronic case file.
- (d) Electronic filing
- (i) Filing - Registered attorneys may file pleadings and other papers permitted by the Federal Rules and the Local Rules of this Court (except initial pleadings) electronically in any civil case without leave of court, subject to the exceptions set forth below. All electronically filed documents must be in PDF digital format and must be submitted in accordance with the instructions set forth on the Court's Website in the User's Manual. Attorneys are strongly urged to accompany all *traditionally filed documents* with a diskette or CD ROM of their papers in PDF digital format, to facilitate adding the document to the electronic case file.
- (ii) Papers that may not be filed electronically - The following documents may not be filed electronically, but must be submitted in paper form:
- (A) Documents filed under seal pursuant to W.D. Mich. LCivR 10.6;
- (B) The state-court record and other Rule 5 materials in habeas corpus cases filed under 28 U.S.C. § 2254;

- (C) Administrative records and transcripts in social security cases and transcripts or voluminous exhibits in other administrative review cases;
 - (D) Handwritten papers or pleadings;
 - (E) Any document or attachment thereto exceeding 5MB in size.
- (iii) Documents that may be filed electronically if accompanied by a signed original - The following documents may be filed electronically only if a signed original document is also filed and a copy served on all other parties:
- (A) Affidavits in support of or in opposition to a motion (affidavits of service may be filed electronically without filing a signed original);
 - (B) Declarations under penalty of perjury;
 - (C) Certified copies of judgments or orders of other courts.

The electronically filed version of such documents must contain an “s/ _____” block indicating that the paper document bears an original signature.

- (iv) Deadlines - Filing documents electronically does not in any way alter any filing deadlines. An electronically filed document is deemed filed upon completion of the transmission and issuance by the Court’s system of an NEF. In situations where Rule 5.7(d)(vii) requires that attachments to an electronically filed document be submitted in paper form, the electronic document is deemed filed upon issuance of the NEF, provided that the paper exhibits are filed and served within 72 hours thereof. In situations where Rule 5.7(d)(iii) requires filing of a signed, original document in addition to the electronic document, the document is deemed filed upon issuance of the NEF, provided that the signed original is filed within 72 hours thereof. All electronic transmissions of documents must be completed (i.e., received completely by the Clerk’s Office) prior to midnight, Eastern Time, in order to be considered timely filed that day. Where a specific time of day deadline is set by Court order or stipulation, the electronic filing must be completed by that time.

- (v) Technical failures - The Clerk shall deem the Court' s Website to be subject to a technical failure on a given day if the site is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon (Eastern Time) that day, in which case, filings due that day which were not filed due solely to such technical failures shall become due the next business day. Such delayed filings must be accompanied by a declaration or affidavit attesting to the filer' s failed attempts to file electronically at least two times after 12:00 noon separated by at least one hour on each day of delay because of such technical failure. The initial point of contact for any practitioner experiencing difficulty filing a document electronically shall be the ECF Help Desk, available via phone at (616) 456-2206 or (800) 290-2742, or via e-mail at ecfhelp@miwd.uscourts.gov.
- (vi) Docket - The record of filings and entries created by the ECF system for each case constitutes the docket.
- (vii) Exhibits and attachments - Filers must not attach as an exhibit any pleading or other paper already on file with the Court, but shall merely refer to that document. All exhibits and attachments, whether filed electronically or traditionally, must contain on their face a prominent exhibit number or letter. Exhibits too large to be filed electronically may be submitted traditionally. If one or more attachments or exhibits to an electronically filed document are being submitted traditionally under this rule, the electronically filed document must contain a notice of that fact in its text. For example:

(Exhibits 1, 2 and 3 to this Motion are filed electronically; Exhibits 4 and 5 are filed in paper form pursuant to Local Rule 5.7(d)(vii)).

or

(All exhibits to this brief are filed in paper form pursuant to Local Rule 5.7(d)(vii)).

- (e) Signature
 - (i) Attorneys - An attorney' s use of the login name and password to submit documents over the ECF system serves as the attorney' s signature on all electronic documents filed with the Court, as well as the attorney' s signature for purposes of Fed. R. Civ. P. 11 and

for all other purposes under the Federal Rules of Civil Procedure and the Local Rules of this Court.

- (ii) Multiple signatures - The filer of any electronically filed document requiring multiple signatures (e.g., stipulations, joint status reports) must list thereon all the names of other signatories by means of an “ s/_____” block for each. By submitting such a document, the filer certifies that each of the other signatories has expressly agreed to the form and substance of the document and that the filer has their actual authority to submit the document electronically. The filer must maintain any records evidencing this concurrence for subsequent production to the Court if so ordered or for inspection upon request by a party until one year after the final resolution of the action (including appeal, if any).
- (iii) Court reporters - The electronic filing of a transcript by a court reporter by use of the court reporter’ s login name and password shall be deemed the filing of a signed and certified original document for all purposes.
- (iv) Judges - The electronic filing of an opinion, order, judgment or other document by a judge (or authorized member of the judge’ s staff) by use of the judge’ s login and password shall be deemed the filing of a signed original document for all purposes.
- (v) Clerk of Court or Deputy Clerks - The electronic filing of any document by the Clerk of Court or by a Deputy Clerk by use of that individual’ s login and password shall be deemed the filing of a signed original document for all purposes.
- (f) Proposed pleadings - If the filing of an electronically submitted document requires leave of court, such as an amended complaint or brief in excess of page limits, the proposed document must be attached as an exhibit to the motion seeking leave to file. If the Court grants leave to file the document, the Clerk of Court will electronically file the document without further action by the attorney.

- (g) Proposed orders - Proposed orders may be submitted electronically or in paper form. All proposed orders submitted electronically must be in PDF format and must be: (1) attached as an exhibit to a motion or stipulation; or (2) contained within the body of a stipulation; or (3) submitted separately. If the Judge approves the proposed order, it will be refiled electronically under a separate document number.

- (h) Service of electronically filed documents
 - (i) Summons and initial pleading - Service of the summons and complaint or other initial pleading must be made by one of the methods allowed by Rule 4 of the Federal Rules of Civil Procedure and may not be made electronically.

 - (ii) Service on registered attorneys - By registering under this rule, an attorney automatically consents to electronic service by both the Court and any opposing attorney of any electronically filed document in any civil action in which the registered attorney appears. Consequently, service of an electronically filed document upon a registered attorney is deemed complete upon the transmission of an NEF to that attorney under subsection (h)(iv) of this rule. Traditionally filed documents must be served on registered attorneys by nonelectronic means of service.

 - (iii) Service on unregistered attorneys and *pro se* parties - If an opposing attorney is not registered under this rule, counsel filing any pleading or other paper must serve that attorney by nonelectronic means of service. *Pro se* parties must be served by nonelectronic means of service under Rule 5.

 - (iv) Method of electronic service - At the time a document is filed either electronically or by scanning paper submissions, the Court's system will generate an NEF, which will be transmitted by e-mail to the filer and all registered attorneys who have appeared on that case. The NEF will contain a hyperlink to the filed document. The attorney filing the document should retain a paper or digital copy of the NEF, which serves as the Court's date-stamp and proof of filing. Transmission of the NEF to the registered e-mail address constitutes service of an electronically filed document upon any registered attorney. Only service of the NEF by the Court's system constitutes electronic service; transmission of a document by one party to another by regular e-mail does not constitute service.

- (v) Effect on time computation - Electronic service under this rule is complete upon transmission. The additional three (3) days to do an act or take a proceeding after service of a document applies when service is made electronically, by virtue of Fed. R. Civ. P. 6(e).

- (i) Access to electronically stored documents - The general public, as well as any party to the litigation, may access and download any electronically stored document, with the following exceptions: (1) access to documents filed in social security cases is restricted to the attorneys of record; and (2) the Court may restrict access to other classes of documents by future order in conformity with resolutions of the Judicial Conference of the United States. The provisions of Local Civil Rule 10.7 concerning privacy apply to all electronically stored documents.

- (j) Facsimile transmissions - The Clerk will not accept for filing any pleading or other paper submitted by facsimile transmission.

III. PLEADINGS AND MOTIONS

Local Civil Rule 7. Motion practice

7.1 Motions in general

- (a) Briefs - All motions, except those made during a hearing or trial, shall be accompanied by a supporting brief. Any party opposing a written motion shall do so by filing and serving a brief conforming to these rules. All briefs filed in support of or in opposition to any motion shall contain a concise statement of the reasons in support of the party's position and shall cite all applicable federal rules of procedure, all applicable local rules, and the other authorities upon which the party relies. Briefs shall not be submitted in the form of a letter to the judge.
- (b) Supporting documents - When allegations of facts not appearing of record are relied upon in support of or in opposition to any motion, all affidavits or other documents relied upon to establish such facts shall accompany the motion. All discovery motions shall set forth verbatim, or have attached, the relevant discovery request and answer or objection.
- (c) Modification of limits - In its discretion, the Court may in a particular case shorten or enlarge any time limit or page limit established by these rules, with or without prior notice or motion.
- (d) Attempt to obtain concurrence - With respect to all motions, the moving party shall ascertain whether the motion will be opposed. In addition, in the case of all discovery motions, counsel or pro se parties involved in the discovery dispute shall confer in person or by telephone in a good-faith effort to resolve each specific discovery dispute. All motions shall affirmatively state the efforts of the moving party to comply with the obligation created by this rule.
- (e) Motion for expedited consideration - Where the relief requested by a motion may be rendered moot before the motion is briefed in accordance with the schedules set forth herein, the party shall so indicate by inserting the phrase "EXPEDITED CONSIDERATION REQUESTED," in boldface type, below the case caption, and shall identify in the motion the reason expedited consideration is necessary.

- (f) Unavailability of judge - If it appears that any matter requires immediate attention, and the judge to whom the case has been assigned, or in the usual course would be assigned, is not available, the matter shall be referred to the judge's assigned magistrate judge, who shall decide the matter if it is within the magistrate judge's jurisdiction. If the matter can only be decided by a judge, the magistrate judge shall determine whether the matter can be set for a hearing at a time when the assigned judge is available. If the matter is determined by a magistrate judge to require an immediate hearing before a judge, the case will be referred to the Chief Judge, or in the Chief Judge's absence, the next available judge by seniority for decision or reassignment to an available judicial officer. After disposition of this emergency matter, the case will be returned to the originally assigned judge.

7.2 Dispositive motions

- (a) Definition - Dispositive motions are motions for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, to involuntarily dismiss an action, and other dispositive motions as defined by law. Motions for dismissal as a sanction pursuant to Federal Rules of Civil Procedure 16 or 37 shall be subject to the briefing schedule for nondispositive motions.
- (b) Length of briefs - Any brief filed in support of or in opposition to a dispositive motion shall not exceed twenty-five (25) pages in length, exclusive of cover sheet, tables, and indices.
- (c) Briefing schedule - Any party opposing a dispositive motion shall, within twenty-eight (28) days after service of the motion, file a responsive brief and any supporting materials. The moving party may, within fourteen (14) days after service of the response, file a reply brief not exceeding ten (10) pages. The Court may permit or require further briefing.
- (d) Oral argument - Any party desiring oral argument shall include a request for oral argument in the caption and the heading of the party's brief. In its discretion, the Court may schedule oral argument or may dispose of the motion without argument at the end of the briefing schedule. The time for oral argument on all motions shall be scheduled and noticed by the Court at the earliest convenient date.

Civil Rule 7

7.3 Nondispositive motions

- (a) Definition - Nondispositive motions are all motions not specifically listed in LCivR 7.2.
- (b) Length of briefs - Any brief filed in support of or in opposition to a nondispositive motion shall not exceed ten (10) pages in length, exclusive of cover sheet, tables, and indices.
- (c) Briefing schedule - Any party opposing a nondispositive motion shall, within fourteen (14) days of service of the motion, file a responsive brief and supporting materials. Reply briefs may not be filed without leave of court.
- (d) Oral argument - Any party desiring oral argument shall include a request for oral argument in the caption and the heading of the party's brief. In its discretion, the Court may schedule oral argument or may dispose of the motion without argument at the end of the briefing schedule. The time for oral argument on all motions shall be scheduled and noticed by the Court at the earliest convenient date.

7.4 Motions for reconsideration

- (a) Grounds - Generally, and without restricting the discretion of the Court, motions for reconsideration which merely present the same issues ruled upon by the Court shall not be granted. The movant shall not only demonstrate a palpable defect by which the Court and the parties have been misled, but also show that a different disposition of the case must result from a correction thereof.
- (b) Response to motions for reconsideration - No answer to a motion for reconsideration will be allowed unless requested by the Court, but a motion for reconsideration will ordinarily not be granted in the absence of such request. Any oral argument on a motion for reconsideration is reserved to the discretion of the Court.

Local Civil Rule 8. Complaints in Social Security cases

8.1 Complaints filed pursuant to § 205(g) of the Social Security Act, 42 U.S.C. § 405(g), for benefits under Titles II, XVI and XVII of the Social Security Act shall contain, in addition to what is required under Rule 8(a) of the Federal Rules of Civil Procedure, the following information: (1) the type of benefit claimed, for example, disability, retirement, survivor, health insurance, supplemental security income; (2) in cases involving claims for retirement, survivors, disability, or health insurance, the social security number of the worker (who may or may not be the plaintiff) on whose wage record the application for benefits was filed; and (3) in cases involving claims for supplemental security income benefits, the social security number of the plaintiff.

Local Civil Rule 10. Form of pleadings and other papers; filing requirements

10.1 Paper size and format - All pleadings and other papers shall be double spaced on 8 ½x 11 inch paper with writing on only the face of each sheet. Type must be no smaller than 12 point type and all margins must be at least one inch.

10.2 Binding - All pleadings and other papers that have numerous pages must be bound with a fastener. Originals should be stapled or bound on the top margin with a two-hole fastener. Copies may be bound in the same manner as originals or in a binder. Paper clips and other types of clips shall not be used; fasteners shall pass through the pages.

10.3 Date, address and telephone number - All pleadings and other papers shall contain the date of signing and the address and telephone number of the signing attorney or pro se party.

10.4 Number of copies - All pleadings and other papers shall be filed in duplicate -- the original and one copy. If service of any paper is to be made by the United States Marshal, sufficient additional copies shall be supplied for service upon each other party. If file stamped copies of documents are requested to be returned to the offering party, a suitable self-addressed, postage paid envelope shall be supplied.

10.5 Tendering of orders - A party tendering an order for entry must supply the Clerk with the original for the judge to sign. All orders will be distributed to the parties by the Clerk.

10.6 Filing under seal

- (a) Request to seal - Requests to seal a document must be made by motion and will be granted only upon good cause shown. If the document accompanies the motion, it shall be clearly labeled “ Proposed Sealed Document” and shall include an envelope suitable for sealing the document. The envelope shall have the caption of the case, case number, title of document, and the words “ Contains Sealed Documents” prominently written on the outside. The document shall not be considered sealed until so ordered by the Court.
- (b) Documents submitted pursuant to court order - A document submitted pursuant to a previous order by the Court authorizing the document to be filed under seal shall be clearly labeled “ Sealed Document,” shall be submitted in an envelope suitable for sealing the document, and identify the order or other authority allowing filing under seal. The caption of the case, case number, title of document, and the words “ Contains Sealed Documents” shall be prominently written on the outside of the envelope.

- (c) Expiration of seal - Unless otherwise ordered by the Court, thirty days after the termination of a case or any appeal, whichever is later, sealed documents and cases will be unsealed by the Court.

10.7 Privacy - In compliance with the policy of the Judicial Conference of the United States, and the E-Government Act of 2002, and in order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all pleadings and other papers, including exhibits thereto, maintained electronically on the Court's CM/ECF system, unless otherwise ordered by the Court.

- (i) Social Security numbers - If an individual's social security number must be included in a pleading, only the last four digits of that number should be used.
- (ii) Names of minor children - If the involvement of a minor child must be mentioned, only the initials of that child should be used.
- (iii) Dates of birth - If an individual's date of birth must be included in a pleading, only the year should be used.
- (iv) Financial account numbers - If financial account numbers are relevant, only the last four digits of these numbers should be used.

Redaction of personal identifiers is not required for administrative records and transcripts in social security cases, the state-court record in habeas corpus cases, or for other documents that may not be maintained electronically under Local Civil Rule 5.7(d)(ii).

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may file an unredacted document under seal. This document shall be retained by the court as part of the record. The party is required to file a redacted copy for inclusion in the public file.

The responsibility for redacting these personal identifiers rests solely with counsel and the parties.

10.8 Exhibits - All exhibits or attachments to pleadings, motions, briefs, or other papers must contain on their face a prominent exhibit number or letter.

Local Civil Rule 16. Civil pretrial conferences; Alternative Dispute Resolution

16.1 Early scheduling conference - In accordance with the Civil Justice Reform Act, 28 U.S.C. § 471, et seq., the Court adopted a civil justice expense and delay reduction plan. A copy of the plan as amended is available from the Clerk. The plan implements a system of differentiated case management that provides specifically for judicial management of cases. The Court may order that an early scheduling conference be held before a magistrate judge or Article III judge either in open court, in chambers, or at the discretion of the Court, by telephone. Following this conference, the Court will issue a case management order establishing a timetable for disposition of the case. The timetable may contain deadlines for joinder of parties and amendment of pleadings; discovery disclosures and exchange of witnesses; completion of discovery and dispositive motions; a methodology of ADR; a settlement conference date; a final pretrial conference date; and a trial date. Upon good cause shown or on the Court's own initiative, the Court may modify the case management order in the interest of justice. The following provisions shall apply to all conferences conducted by the Court pursuant to Rule 16 of the Federal Rules of Civil Procedure:

- (a) Recording - At the request of any party or the direction of the Court, the conference may be recorded. For good cause, the Court may direct that portions of the conference be unrecorded or sealed.
- (b) Scope - The conference shall cover the matters specified in Rules 16 and 26 of the Federal Rules of Civil Procedure and any other matters specified by the Court.
- (c) Attendance - The attorney who is to have charge of the actual trial of the case shall attend the conference unless the judge directs otherwise. Pro se parties shall attend on their own behalf.
- (d) Authority - The Court may in its discretion require the actual parties (i. e., a party who is a natural person or a representative--other than counsel--of a party which is not a natural person) to attend the conference and may require that counsel be authorized to discuss final settlement of the case.
- (e) Scheduling - The Court shall set the date, time and place of the conference and shall notify all parties thereof in writing.
- (f) Pretrial order - A proposed order shall be prepared and filed by the parties in accordance with written instructions from the judge to whom the case has been assigned.

- (g) Exemptions from scheduling and planning order - The following categories of actions are exempt from the requirement in Rule 16(b) of the Federal Rules of Civil Procedure that a scheduling and planning order be entered:
- (i) actions brought pursuant to the Freedom of Information Act;
 - (ii) petitions for writ of habeas corpus;
 - (iii) motions filed pursuant to 28 U.S.C. § 2255;
 - (iv) all other petitions brought by prisoners incarcerated in federal or state facilities;
 - (v) appeals from bankruptcy decisions;
 - (vi) all actions brought by the United States to collect student loans and all other debts owed to the United States government;
 - (vii) actions involving the review of Social Security benefit denials;
 - (viii) all applications for attorneys' fees and costs;
 - (ix) multidistrict litigation;
 - (x) condemnation proceedings;
 - (xi) forfeiture actions by the United States;
 - (xii) appeals from a decision by a United States magistrate judge;
 - (xiii) motions to quash or enforce administrative subpoenas; and
 - (xiv) petitions to enforce Internal Revenue Service summonses.

16.2 Alternative dispute resolution

- (a) ADR favored - The judges of this District favor alternative dispute resolution (ADR) methods in those cases where the parties and the Court agree that ADR may help resolve the case. The ADR methods approved by these rules include Voluntary Facilitative Mediation (LCivR 16.3); Early Neutral Evaluation (LCivR 16.4); Case Evaluation (LCivR 16.5); Court-Annexed Arbitration (LCivR 16.6); Summary Jury Trials, Summary

Bench Trials, and Mini-hearings (LCivR 16.7); and Settlement Conferences (LCivR 16.8). In addition, the Court will consider additional ADR methods proposed by the parties.

- (b) Cases eligible for ADR - All cases are eligible for ADR except habeas corpus, prisoner civil rights, bankruptcy appeals, social security cases and motions brought under 28 U.S.C. § 2255, unless otherwise ordered by the Court.
- (c) Selection of ADR method - In advance of the LCivR 16.1 early scheduling conference, the parties shall discuss the possible use of one of the ADR methods approved by these rules. The Court may order the parties to utilize case evaluation or Early Neutral Evaluation for all or part of a civil action:
 - i) following stipulation of the parties;
 - (ii) on motion of a party with notice to opposing counsel; or
 - (iii) on the Court' s own motion with prior notice to all parties.
- (d) Disqualification - No person shall serve as a neutral (i.e., facilitative mediator, early neutral evaluator, mediator or arbitrator) in any action in which any of the circumstances specified in 28 U.S.C. § 455 exist, or where his or her impartiality might reasonably be questioned.
- (e) Confidentiality - Information disclosed during the ADR process shall not be revealed to any one else without consent of the party who disclosed the information. All ADR proceedings are considered to be compromise negotiations within the meaning of Fed. R. of Evid. 408.
- (f) Procedures - Except in arbitration, all ADR sessions shall proceed informally and the rules of evidence shall not apply. There shall be no formal examination or cross examination of witnesses, except in arbitration proceedings.

16.3 Voluntary Facilitative Mediation

- (a) Definition - Voluntary Facilitative Mediation (VFM), as distinguished from case evaluation (LCivR 16.5), is a flexible, nonbinding dispute resolution process in which an impartial third party -- the mediator -- facilitates negotiations among the parties to help them reach settlement.

VFM seeks to expand traditional settlement discussions and broaden resolution options, often by going beyond the issues in controversy. The mediator, who may meet jointly and separately with the parties, serves as a facilitator only and does not decide issues or make findings of fact. Cases will be assigned to VFM only if the district or magistrate judge is satisfied that the selection of VFM is purely voluntary and with full approval of all parties.

(b) Qualification, certification and removal of mediators

- (i) Mediator certification fee - Each mediator is assessed an initial fee of one hundred (\$100.00) dollars for certification, and thereafter, an annual fee of twenty-five (\$25.00) dollars for re-certification. The monies are held by the Court in a separate, interest-bearing fund for training of mediators, court personnel, and judicial staff and for the education of the public and bar.
- (ii) Mediator qualifications - To qualify as a mediator, an applicant must (1) be an attorney with a minimum of ten (10) years of federal practice experience, (2) be a member in good standing of this Court' s bar, and (3) have completed or agree to complete training approved by the Court and such additional training as may be required by the Court from time to time, and (4) agree to pay the Court' s mediator certification and annual re-certification fees.
- (iii) Certification of mediators - The panel is limited to fifty (50) certified mediators, or such other number as the Court may determine is appropriate from time to time to serve the needs of the program and provide sufficient experience for each mediator to maintain an adequate level of expertise. The panel of certified mediators is reviewed and reconstituted annually. Persons serving as mediators at the end of a calendar year retain their certified status unless removed from the panel under the next subparagraph. Before December 31 of each year, the ADR Administrator reviews the applications submitted by prospective mediators during that year and identifies those applicants satisfying the qualifications set forth above. The ADR Administrator selects by lot or other random means qualifying persons sufficient to fill all vacancies in the mediation panel. The panel so constituted by the ADR Administrator is the list of certified mediators for the next year unless modified by the Court.

- (iv) Removal from panel of mediators - The Court periodically establishes a retention criterion, by specifying the minimum number of times that panel members must have been chosen to serve in VFM mediations in this Court during the previous calendar years. During the first week of December of each year, the ADR Administrator reviews the Court's records, identifies those mediators who have not fulfilled the Court's retention criterion, and removes their names from the list of mediators for the next calendar year. A certified mediator is not subject to removal for failure to meet the retention criterion until the mediator has been a member of the panel for three calendar years. A certified mediator who does not meet the retention criterion by reason of illness or other extraordinary cause outside the mediator's control may request in writing a waiver of this requirement. As mediators serve at the pleasure of the Court, the Court may remove a mediator from the certified list at any time for any reason.
- (v) Discretion of the Court - The Court retains discretion to waive or modify the criteria for qualification, certification or removal of any mediator in order to maintain the panel's balance in geography, practice area, or other demographic factor. Additionally, all decisions of the ADR Administrator concerning the qualification, certification or removal of a mediator or applicant are subject to review by the Court upon written application filed with the Chief Judge no later than ten days after receipt of the decision under review. The Court may refer the matter to the Court's standing VFM advisory committee for a recommendation.
- (vi) Pro bono assignments - The Court may reasonably expect a mediator to serve in a pro bono capacity once each calendar year. Any further requests for pro bono appointment may be declined.
- (c) VFM advisory committee - A standing VFM advisory committee is created. The members of the committee are appointed by the Court from the following constituencies: certified mediators, attorney users of the VFM process, judicial officers, and the Court's ADR Administrator. The committee may take into account comments solicited from client-users of the VFM process. The committee periodically reviews the VFM program and its effectiveness and makes recommendation to the Court on such issues as the qualification, certification and removal of mediators, the demographic balance of the panel, optimal size of the panel, mediator training, changes in policy or procedures, and requests for review by

applicants or mediators.

- (d) Mediation assessment - The Court shall assess a fee per referral in accordance with the VFM procedures adopted by the Court. The monies will be deposited into the Voluntary Facilitative Mediation Training Fund. In a pro bono mediation, the assessment is waived.
- (e) Selection and compensation of mediator
 - (i) List of mediators - The ADR Administrator maintains the current list of certified mediators. The list reflects the hourly rate charged by each mediator.
 - (ii) Selection of mediator - Within ten (10) calendar days of the issuance of the case management order, the parties should jointly select one mediator from the list of court certified mediators. The plaintiff is responsible for notifying the ADR Administrator of the name of the selected mediator. Alternatively, the parties may request the ADR Administrator select the mediator for them. The ADR Administrator shall then notify the mediator of his or her selection, and request a check for potential conflicts of interest. If a conflict is found to exist, the mediator shall notify the ADR Administrator, who will either select an alternate mediator or request the parties to make a new selection. Once the selection of a mediator is finalized, the judge assigned to the case shall issue an order of referral for facilitative mediation.
 - (iii) Compensation of mediator - The mediator is paid his or her normal hourly rate. Plaintiff(s) shall be responsible for fifty (50) percent of the mediator's total fee and defendant(s) shall be responsible for the remaining fifty (50) percent, unless otherwise agreed in writing. Parties represented by the same counsel shall be considered to be one party for purposes of compensating the mediator. The mediator is responsible for billing the parties. In the event of noncompliance, the mediator may petition the district or magistrate judge for an order directing payment of his or her fees. In the instance of a pro bono mediation, the mediator's fee is waived.
- (f) The mediation process
 - (i) Timing for initial session - Within 14 days of the issuance of the order of referral, the mediator shall consult with the parties and set

a time and place for the mediation session. The initial session shall be held within 60 days of the order of referral. The mediator shall send a notice of hearing as soon as practicable to all parties and the ADR Administrator.

- (ii) Nature of submissions required before session - Within seven (7) calendar days before the initial mediation session, each party shall provide the mediator with a concise brief, no more than ten (10) double-spaced pages in length, setting forth the party's position concerning the issues to be resolved through mediation, including issues concerning both liability and damages. The mediator may circulate the parties' briefs with the consent of all parties.
- (iii) Format session(s) - The format for the session shall be developed by the parties and the mediator. The developed format may involve one session or as many further sessions as all parties agree upon.
- (iv) Party responsibilities - Parties or representatives of the parties with full settlement authority are required to attend the mediation session(s). Where a corporation or government entity is a party to the litigation, a person other than outside counsel and who has the authority to settle and to enter stipulations on behalf of the party must attend. In cases involving insurance carriers, the insurer representative with full settlement authority must attend; attendance of the insured party is not required. Each party shall be accompanied at the VFM session by the lawyer expected to be primarily responsible for handling the trial of the matter.
- (v) Mediation location and logistics of the session - The mediator shall establish the time and place of the mediation session(s). Mediations may take place at the courthouse, the mediator's office or at any other location to which the parties consent. The mediator shall determine the length and timing of the session(s) and the order in which issues are presented, and shall send a notice of the time and place to all participating parties.
- (g) Status of discovery and motions during the mediation process - Any case referred to VFM shall continue to be subject to management by the judge to whom it is assigned. Parties may file motions and engage in discovery. Any follow-up to a VFM session that is ordered by a mediator may not impose duties or fix schedules that are inconsistent with orders entered by the assigned judge. No party may seek to avoid or postpone any obligation

imposed by the judge on any ground related to the VFM program. Selection of a case for VFM has no effect on the normal progress of the case toward trial.

- (h) Filing of outcome - Within fourteen (14) days following the conclusion of mediation, if settlement is reached, the mediator shall help the parties draft a settlement agreement and a stipulation and proposed order to dismiss, which when executed is then filed with the Court. If settlement is not reached, the parties have seven (7) calendar days to inform the mediator whether they desire to continue with the mediation process. Within ten (10) calendar days of the completion of mediation process, the mediator shall file a brief report with the ADR Administrator, with copies to all parties. The report shall indicate only who participated in the mediation session and whether settlement was reached. The ADR Administrator shall keep the Court informed of the status of the mediation process.
- (i) Court administration of the mediation program
 - (i) Administrative structure - The mediation program is administered by the Clerk's Office. Problems are initially handled by the ADR Administrator.
 - (ii) Evaluation of the program - In an effort to gather information, the Court may develop questionnaires for participants, counsel and mediators, to be completed and returned at the close of the mediation process. Responses will be kept confidential and not divulged to the Court, the attorneys or the parties. Only aggregate information about the program will be reported.

16.4 Early Neutral Evaluation

- (a) Definition - Early Neutral Evaluation (ENE), is a flexible, nonbinding dispute resolution process in which an experienced neutral attorney meets with the parties early in their case to evaluate its strengths and weaknesses and the value that it may have, and also attempts to negotiate a settlement.
- (b) Selection and compensation of evaluator
 - (i) Evaluator qualifications - To be considered as a neutral evaluator, an attorney must have a minimum of five (5) years of practice experience and have general peer recognition for his or her expertise.

(ii) Selection of evaluator - The attorney(s) for plaintiff(s) and the attorney(s) for defendant(s) shall jointly select an evaluator who meets the criteria described in subsection (b)(i). If the attorneys are unable to agree on an evaluator, the judge assigned to the case may select the evaluator. No listing of evaluators is maintained by the Court or the Clerk.

(iii) Compensation of evaluator - The evaluator is paid his or her normal hourly rate. Plaintiff(s) shall be responsible for fifty (50) percent of the evaluator's total fee and defendant(s) shall be responsible for the remaining fifty (50) percent, unless otherwise agreed in writing. Parties represented by the same counsel shall be considered to be one party for purposes of compensating the evaluator. The evaluator is responsible for billing the parties. In the event of noncompliance, the evaluator may petition the district or magistrate judge for an order directing payment of his or her fees.

(c) The early neutral evaluation process

(i) Timing for initial session - Within a time frame fixed by the Court, the ADR Administrator, in consultation with the evaluator, shall fix a specific time, date and place for the evaluation session.

(ii) Nature of submissions required before the session

(A) Within ten (10) calendar days prior to the evaluation session, each party shall submit directly to the evaluator a concise statement, and shall submit directly to the ADR Administrator sufficient copies for all parties, and a pre-address, postage prepaid envelope for each opposing counsel. Upon receipt of a party's statement, the ADR Administrator shall send to that party the statement of the opposing party(s) as soon as it is received. A statement shall not exceed 15 pages (excluding exhibits and attachments). While a statement may include any information that would be useful, it must:

- (1) identify the person(s) in addition to counsel, who will attend the session as representative of the party with decision-making authority;
- (2) describe briefly the substance of the action;

- (3) address whether there are legal or factual issues whose early resolution might appreciably reduce the scope of the dispute or contribute significantly to settlement negotiations; and
 - (4) identify the discovery that promises to contribute most to equipping the parties for meaningful settlement negotiations.
- (B) Parties may identify in these statements persons connected to a party opponent (including a representative of a party opponent's insurance carrier) whose presence at the evaluation session would improve substantially the prospects for making the session productive; however, any person so identified may only be compelled to attend the ENE session by order of the Court.
- (C) The parties shall attach to their written evaluation statements copies of documents out of which the action arose (e.g., contracts) or the availability of which would materially advance the purposes of the evaluation session (e.g., medical reports or documents by which special damages might be determined).
- (D) The written evaluations shall not be filed with the Court and shall not be shown to the assigned judge.
- (E) Special provisions for patent, copyright and trademark cases
 - (1) Patent cases - In a case where a party is basing claims on a patent, that party shall attach to its written statement an element-by-element analysis of the relationship between the applicable claims in the patent and the allegedly infringing product. In addition, each party who asserts a claim based on a patent shall describe in its written statement its theory or theories of damages and shall set forth as much information that supports each theory as is then available. Any party who asserts a defense against the patent based on "prior art" shall attach an exhibit that identifies each known example of alleged prior art and that describes the relationship between

each such example of prior art and the claims of the patent. In addition, if such party denies infringement, it shall describe the basis for such denial.

- (2) Copyright cases - A party who bases a claim on copyright shall include as exhibits the copyright registration and exemplars of both the copyrighted work and the allegedly infringing work(s), and shall make a systematic comparison showing points of similarity. Such party also shall present whatever direct or indirect evidence it has of copying, and shall indicate whether it intends to elect statutory or actual damages. Each party in a copyright case who is accused of infringing shall set forth in its written statement the dollar volume of sales of and profits from the allegedly infringing works that it and any entities for which it is legally responsible have made.
 - (3) Trademark cases - A party who bases a claim on trademark or tradedress infringement, or on other unfair competition, shall include as an exhibit its registration, if any, exemplars of both its use of its mark and use of the allegedly infringing mark, both including a description or representation of the goods or services on or in connection with which the marks are used, and any evidence it has of actual confusion. If "secondary meaning" is in issue, such a party also shall describe the nature and extent of the advertising it has done with its mark and the volume of goods it has sold under its mark. Both parties shall describe in their evaluation statements how the consuming public is exposed to their respective marks and goods or services, including, if available, photographic or other demonstrative evidence. Each party in a trademark or unfair competition case who is accused of infringement shall set forth the dollar volume or sales of and profits from goods or services bearing the allegedly infringing mark.
- (iii) Format of session - The format for the session shall be developed by the parties and the evaluator. The developed format may involve

one or more sessions. In each case, the evaluator shall permit each party (through counsel or otherwise) to make an oral presentation of its position; assess the relative strengths and weaknesses of the parties' contentions and evidence; and explain as carefully as possible the reasoning by the evaluator that supports these assessments. In addition, the evaluator shall help the parties, where feasible, identify areas of agreement and enter stipulations; explore the possibility of settling the case, through private caucusing or otherwise; estimate the likelihood of liability and the dollar range of damages; and devise a plan for sharing important information and/or conducting key discovery that will equip them as expeditiously as possible to enter into meaningful settlement discussions or to posture the case for disposition by other means. At the conclusion of the ENE session, the evaluator shall determine whether some form of follow-up to the session would contribute to the case development process or to settlement. Such follow-up could include, but need not be limited to, written or telephonic reports that the parties might make to one another or to the evaluator, the exchange of specified kinds of information, and/or a second evaluation or settlement session. If appropriate, the evaluator may order that written follow-up reports be signed not only by counsel but also by the parties themselves.

- (iv) Party responsibilities - Parties or representatives of the parties with full settlement authority are required to attend the ENE session(s). Where a corporation or government entity is a party to the litigation, a person other than outside counsel and who has the authority to settle and to enter stipulations on behalf of the party must attend. In cases involving insurance carriers, the insurer representative with full settlement authority must attend; attendance of the insured party is not required. Each party shall be accompanied at the ENE session by the lawyer expected to be primarily responsible for handling the trial of the matter.
- (v) Location and logistics of the session(s) - The ADR Administrator, in consultation with the evaluator, shall fix the time, date and place for the evaluation session. The evaluation session shall be held in a suitable neutral setting, e.g., at the office of the evaluator or in the courthouse. The ADR Administrator shall provide notice to the parties. The evaluator shall determine the length and timing of the session(s) and the order in which issues are presented.

- (d) Status of discovery, motions and trial during the ENE process - Any case referred to ENE shall continue to be subject to management by the judge to whom it is assigned. Parties may file motions and engage in discovery. Any follow-up to an ENE session that is ordered by an evaluator may not impose duties or fix schedules that are inconsistent with orders entered by the assigned judge. No party may seek to avoid or postpone any obligation imposed by the judge on any ground related to the ENE program. Selection of a case for ENE has no effect on the normal progress of the case toward trial.
- (e) Filing of outcome - Within fourteen (14) days following the conclusion of ENE, if settlement is reached, the evaluator shall help the parties draft a settlement agreement along with a stipulation and proposed order to dismiss, which when executed is then filed with the Court. If settlement is not reached, the parties have seven (7) calendar days to inform the evaluator whether they desire to continue with the ENE process. Within ten (10) calendar days of the completion of the ENE process, the evaluator shall file a brief report with the ADR Administrator, with copies to all parties. The report shall indicate only who participated in the ENE session and whether issues were narrowed or settlement was reached. The ADR Administrator shall keep the Court informed of the status of the ENE process.

16.5 Case Evaluation

- (a) Definition - Case evaluation is a hybrid process combining elements of mediation, case evaluation and court-annexed arbitration, in which a case assessment is issued by a three-member mediation panel.
- (b) Selection and compensation of case evaluators
 - (i) List of case evaluators - The ADR Administrator shall maintain the current list of court-approved case evaluators for the Southern Division and shall update the list from time to time in order to maintain a minimum of fifty (50) persons at all times. No list is maintained in the Northern Division. In the Northern Division, the case evaluators shall be chosen from the list of attorneys admitted to practice in this Court.
 - (ii) Selection of case evaluators - The attorney(s) for the plaintiff(s) shall select one case evaluator and the attorney(s) for the defendant(s) shall select one case evaluator. The third case

evaluator, who shall serve as chair of the panel, shall be chosen by agreement of the respective attorneys. If the attorneys are unable to agree on the third case evaluator, the third case evaluator shall be selected by the two selected case evaluators. If the two selected case evaluators are unable to agree on the selection of the third case evaluator, they shall notify the ADR Administrator who shall select the third case evaluator. Alternatively, the judge assigned to the case may appoint the third case evaluator, who need not be on the list of case evaluators and may include a magistrate judge of this district.

- (iii) Notification of selection - The attorney(s) for plaintiff(s) shall notify the ADR Administrator in writing of the selection of the case evaluator for the plaintiff(s) and the joint choice of the neutral case evaluator. The attorney(s) for defendant(s) shall notify the ADR Administrator in writing of the selection of the case evaluator for the defendant(s). If a party fails to notify the ADR Administrator in writing of the selection of a case evaluator by the deadline stated in the mediation order, the ADR Administrator will designate that party's case evaluator and provide written notice to the parties.
- (iv) Compensation of case evaluators - Within ten (10) calendar days after the mailing of the notice of case evaluation hearing, each plaintiff and each defendant shall pay each case evaluator the sum of fifty (\$50.00) dollars. In the event of noncompliance, the case evaluator(s) may petition the district or magistrate judge for an order directing payment of fees. If a judge or magistrate judge is a panel member, the total fee shall remain the same; however, each party shall pay the total fee in equal amounts to be divided between the other two case evaluators. The parties shall each send to the ADR Administrator a proof of payment of case evaluation fees.
 - (A) Multiple parties, derivative claims - Multiple parties with derivative claims, e.g., husband/wife or parent/child, shall be treated as one party.
 - (B) Multiple parties, non-derivative claims - Each party shall pay the sum of one hundred fifty (\$150.00) dollars for each award. However, in those cases in which an attorney certifies at the time of paying the case evaluation fee(s) that the attorney represents multiple parties without conflict of interest and that there presently exists a substantial unity of

interest between the parties on all issues, the parties may pay one fee. The evaluation may include one lump sum award or separate awards to these parties, or a combination thereof, in the panel's discretion.

- (C) Multiple claims by members of a single family - When the plaintiffs are members of a single family, they may elect to treat the case as involving one claim, with the payment of one fee and the rendering of one lump sum award to be accepted or rejected. If no such election is made, a separate fee must be paid by each plaintiff, and the panel will then make separate awards for each claim.
- (D) Modification of fee amount - The parties may stipulate to an increase in the amount each party is obligated to pay to the case evaluators.
- (E) Failure to pay fee - Failure to pay the fees within the time designated shall result in additional costs of one hundred and fifty dollars (\$150.00) being assessed, payable in the same manner as provided for in section (c)(iii). If any case evaluator shall waive these costs, they shall be paid to the Clerk of Court as recovery of court costs.

(c) The mediation process

- (i) Time and place for hearing - Upon selection of the case evaluators, the attorney for plaintiff shall schedule the evaluation and notify the ADR Administrator in writing of the agreed upon date, time and place of the evaluation hearing. The ADR Administrator shall send notice of the hearing to the case evaluators and all counsel as soon as practicable upon receipt of the information.
 - (A) Pending dispositive motions - In the event the Court schedules oral argument on a dispositive motion during the acceptance/rejection time period, the moving party shall notify the judge's case manager.
 - (B) Adjournments - The evaluation hearing may be adjourned only for good cause shown upon motion to the Court.

- (C) Settlement prior to evaluation hearing - When cases are settled or otherwise disposed of before the hearing date, it is the duty of counsel promptly to notify the Court, the ADR Administrator and the case evaluators of the disposition of the case.
- (ii) Nature of submissions required before hearing - Within seven (7) calendar days before the hearing, a concise brief, including all documents on questions of liability and damages, shall be submitted to each case evaluator and all opposing counsel. The summary will state the party's factual and legal positions and may include medical reports, bills, records, photographs, and any other documents supporting the party's claim. A proof of service shall be sent to the ADR Administrator.
- (iii) Late submissions - Failure to submit the documents or the proof of service within the time designated, shall result in costs of one hundred and fifty (\$150.00) dollars, payable by separate checks in the amounts of fifty (\$50.00) dollars to each of the attorneys on the evaluation panel. Each late brief shall be accompanied by a check for fifty (\$50.00) dollars payable to each case evaluator. In the event of noncompliance, the case evaluator(s) may petition the district or magistrate judge for an order directing payment of costs. The proof of service shall include a statement that costs of fifty (\$50.00) dollars per case evaluator were delivered to each case evaluator with the brief. The proof of service shall be sent to the ADR Administrator. If a judge or magistrate judge is a panel member, the fee remains the same; however, the checks shall be made payable in the amount of seventy-five (\$75.00) dollars to each of the other two case evaluators only. If any case evaluator shall waive these costs, they shall be paid to the Clerk of Court as recovery of the Court's costs.
- (iv) Format of hearing
- (A) Time limits - Presentation to an evaluation panel shall be limited to thirty (30) minutes a side unless there are multiple parties or unusual circumstances warranting additional time.
- (B) Settlement negotiations and insurance - The case evaluators may request information on the applicable insurance limits and the status of settlement negotiations.

- (v) Party responsibilities - A party may attend the evaluation hearing. When scars, disfigurement or other unusual conditions exist, they may be demonstrated to the evaluation panel by a personal appearance; however, no testimony shall be taken or permitted of any party.
- (d) Status of discovery, motions and trial during the case evaluation process - Any case referred to case evaluation shall continue to be subject to management by the judge to whom it is assigned. Parties may file motions and engage in discovery. No party may seek to avoid or postpone any obligation imposed by the judge on any ground related to the case evaluation program. Selection of a case for case evaluation has no effect on the normal progress of the case toward trial.
- (e) Filing of outcome - An evaluation may be rendered by any two of the three case evaluators. At or within ten (10) calendar days of the hearing, the panel shall notify in writing each counsel of its evaluation and shall forward an original evaluation to the ADR Administrator. The evaluation shall include all fees, costs and interest.
- (f) Acceptance or rejection of evaluation - Each party shall file a written acceptance or rejection of the panel's evaluation with the ADR Administrator within twenty-eight (28) days after service of the panel's evaluation. The ADR Administrator shall not disclose a party's acceptance or rejection until expiration of the twenty-eight (28) days or until all parties have responded with an acceptance or rejection. Upon receipt of responses from all parties, the ADR Administrator shall send a notice indicating each party's acceptance or rejection of the evaluation. The failure of a party to file an acceptance or rejection within twenty-eight (28) days constitutes rejection. The ADR Administrator shall place a copy of the evaluation and the parties' acceptances and rejections in a sealed envelope for filing with the Clerk of the Court. In a nonjury action, the envelope may not be opened and the parties may not reveal the amount of the evaluation until the judge has rendered judgment.
- (g) Effect of acceptance or rejection of evaluation
 - (i) If all the parties accept the panel's evaluation, judgment will be entered in that amount. The judgment shall be deemed to dispose of all claims in the action and includes all fees, costs, and interest

to the date of judgment.

- (ii) In a case involving multiple parties, judgment shall be entered as to those opposing parties who have accepted the portions of the evaluation that apply to them.

(h) Proceedings after rejection

- (i) If all or part of the evaluation of the panel is rejected, the action shall proceed to trial in the normal fashion.
- (ii) If the panel' s evaluation is unanimous and the defendant accepts the evaluation, but the plaintiff rejects it and the matter proceeds to trial, the plaintiff must obtain a verdict in an amount which, when interest on the amount and costs from the date of filing of the complaint to the date of the evaluation are added, is more than ten (10) percent above the evaluation in order to avoid payment of actual costs to the defendant. For the purpose of this rule, if the evaluation was zero, a verdict finding that a defendant is not liable to the plaintiff shall be deemed less than ten (10) percent above the evaluation.
- (iii) If the panel' s evaluation is unanimous and the plaintiff accepts the evaluation, but the defendant rejects it and the matter proceeds to trial, the defendant must obtain a verdict in an amount which, when interest on the amount and costs from the date of filing of the complaint to the date of the evaluation are added, is more than ten (10) percent below the evaluation in order to avoid payment of actual costs to the plaintiff.
- (iv) If the panel' s evaluation is unanimous and both parties reject the evaluation and the amount of the verdict, when interest on the amount and costs from the date of filing of the complaint to the date of the evaluation are added, is not more than ten (10) percent above or below the evaluation, each party is responsible for its own costs from the case evaluation date. If the verdict is in an amount which, when interest on the amount and costs from the date of filing of the complaint to the date of the evaluation are added, is more than ten (10) percent above the evaluation, the defendant shall be taxed actual costs. If the verdict is in an amount which, when interest on the amount and costs from the date of filing of the complaint to the date of the evaluation are added, is more than ten (10) percent

below the evaluation, the plaintiff shall be taxed actual costs.

- (v) For good cause shown, the Court may order relief from payment of any or all costs as set out in this rule.
- (vi) In case evaluations involving multiple parties and/or claims the following rules apply:
 - (A) each party has the option of accepting all of the awards covering the claims by or against that party or of accepting some and rejecting others. However, the party shall either accept or reject the evaluation on any particular claim in its entirety;
 - (B) a party who accepts all of the awards may specifically indicate that the party intends the acceptance to be effective only if all opposing parties accept. If this limitation is not included in the acceptance, an accepting party is deemed to have agreed to entry of judgment on those awards as to which all opposing parties accept, with the action to continue on the claims between the accepting party and those opposing parties who reject; and
 - (C) if a party makes a limited acceptance under this rule and some of the opposing parties accept and others reject, for the purposes of the cost provisions of this rule the party who made limited acceptance is deemed to have rejected as to those opposing parties who accept.
- (vii) Costs shall not be awarded if the panel's evaluation was not unanimous.
- (viii) A request for costs under this rule must be filed and served within twenty-eight (28) days after the entry of the judgment or entry of an order denying a timely motion for a new trial or to set aside the judgment.
- (i) Rejecting party's liability for costs
 - (i) Actual costs - Actual costs include only those costs and fees taxable in any civil action and evaluation fees as provided for by this rule. If all parties so stipulate in writing before the evaluation is

rendered, the Court may also tax reasonable attorneys' fees incurred from the date of rejection. A party against whom actual costs are awarded under this rule forfeits the right to tax costs otherwise collectible by that party.

- (ii) Verdict - For the purpose of this rule “ verdict” includes,
 - (A) a jury verdict;
 - (B) a judgment by the Court after a nonjury trial; or
 - (C) a judgment entered as a result of a ruling on a motion decided after case evaluation.

- (j) Case evaluation in certain diversity cases - Civil actions, in which subject-matter jurisdiction is based solely on diversity of citizenship and for which the rule of decision is supplied by Michigan law and where the parties do not select voluntary facilitative mediation as the means of alternative dispute resolution, shall be ordered to mandatory case evaluation in accordance with this rule.
 - (i) Medical malpractice actions - All actions alleging medical malpractice shall be referred to mandatory case evaluation under the Michigan Medical Malpractice Mediation Act. Mich. Comp. Laws §§ 600.4901-.4923. All provisions of the Act, both procedural and substantive, shall apply to medical malpractice case evaluation in this Court. This Court's ADR Administrator is designated to act as the mediation clerk pursuant to Mich. Comp. Laws § 600.4907. Costs shall be awarded pursuant to Mich. Comp. Laws § 600.4921.
 - (ii) Tort claims - All actions based in whole or part on Michigan tort law, except medical malpractice claims, shall be referred to case evaluation under the Michigan Tort Action Mediation Act, Mich. Comp. Laws §§ 600.4951-.4969. The evaluation shall be conducted in accordance with the provisions of that Act, including the provisions governing the effect of acceptance or rejection of the award and the imposition of attorney's fees as sanctions. The procedures for selecting case evaluators, the compensation of case evaluators, and other procedural matters not addressed in the Act shall be governed by LCivR 16.5. If the action contains both tort and other claims, then a party, on motion brought before the Court within ten (10) days of the case evaluation order, may request that

provisions of the Michigan Tort Action Mediation Act relating to imposition of attorneys' fees as sanctions not apply, if the Court determines that the tort claims do not predominate.

16.6 Court-Annexed Arbitration

(a) Definition - Court-annexed arbitration is an arbitration procedure authorized for certain cases by 28 U.S.C. §§ 651-658.

(b) Actions subject to this rule

(i) Court-annexed arbitration by order - All cases seeking only money damages in an amount not in excess of \$100,000, exclusive of punitive damages, interest, costs, and attorney fees, may be ordered to court-annexed arbitration. In all cases which would be subject to this rule except that they include a claim for non-monetary relief, the judge or magistrate judge assigned to the case may determine whether, for purposes of this rule, the claim for non-monetary relief is insubstantial. The judge or magistrate judge may make this determination immediately after a responsive pleading is filed, and the determination may be made on an ex parte basis, or after consultation with the parties, in the Court's discretion.

(A) In all cases where the amount of damages claimed is either unstated or unliquidated, the Court shall presume the claim to be for \$100,000 or less, exclusive of punitive damages, interest, costs, and attorney fees, unless certified otherwise by counsel. Such certification shall include an itemization of damages.

(B) Notwithstanding the damages alleged in a party's pleadings relating to liquidated claims, or a party's certification relating to unliquidated claims, a district judge or magistrate judge may in any appropriate case at any time disregard such allegation or certification and require arbitration if satisfied that recoverable damages do not likely exceed \$100,000, exclusive of punitive damages, interest, costs and attorney fees.

(ii) Court-annexed arbitration by consent - Any case based in whole or in part on an alleged violation of a right secured by the Constitution of the United States, and any case in which jurisdiction is based in

whole or in part on 28 U.S.C. § 1343 may not be referred to arbitration without the consent of all parties. Except as provided in subsection (b)(i)(B), any case seeking money damages in excess of \$100,000, exclusive of punitive damages, interest, costs, and attorney fees, may not be referred to arbitration without the consent of all parties.

(c) Certification and qualification of arbitrators

- (i) Certification of arbitrators - The Chief Judge shall certify as many arbitrators as necessary under this rule, after consultation with the judges of the Court and the Court's Committee on Alternative Dispute Resolution.
- (ii) Arbitrator qualifications - An individual may be certified to serve as an arbitrator if that person:
 - (A) has been a member of the bar of the State of Michigan for at least five (5) years;
 - (B) is admitted to practice before the U.S. District Court for the Western District of Michigan; and
 - (C) is determined by the judges to be qualified and competent to perform the duties of an arbitrator.
- (iii) Oath or affirmation - Before serving as an arbitrator, each individual certified as an arbitrator shall take the oath or affirmation prescribed by 28 U.S.C. § 453.

(d) Selection and compensation of arbitrators

- (i) List of arbitrators - The ADR Administrator maintains the current list of certified arbitrators, a copy of which is attached to the order of referral to arbitration.
- (ii) Selection of arbitrators - Within ten (10) calendar days from the order of referral to arbitration, the parties should jointly select one arbitrator from the list of court certified arbitrators. Plaintiff is responsible for notifying the ADR Administrator of the name of the selected arbitrator. If the parties are unable to reach agreement, they shall notify the ADR Administrator, who will then select an

arbitrator for them. The ADR Administrator shall then notify the arbitrator of his or her selection, and request a check for potential conflicts of interest. If a conflict is found to exist, the arbitrator shall notify the ADR Administrator, who will either select an alternate arbitrator or request that the parties make a new selection.

- (iii) Compensation and expenses of arbitrators - Arbitrators shall be paid a fee of two hundred fifty (\$250.00) dollars and shall be reimbursed for expenses reasonably incurred. The arbitrator should submit a voucher on the form prescribed by the Clerk for payment by the Administrative Office of the United States Courts of compensation and reasonable expenses necessarily incurred in the performance of the duties under this rule when the arbitrator files a decision. No reimbursement will be made for the cost of office or other space for the hearing. In determining whether actual expenses incurred are reasonable, the arbitrator should be guided by the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing travel regulations. In cases settling within a period of two (2) days prior to a scheduled arbitration hearing, an arbitrator may apply for compensation in the amount of fifty (\$50.00) dollars plus expenses reasonably incurred, upon representation that prior to the settlement the arbitrator had been actively studying the documents submitted by the parties.

(e) The arbitration process

(i) Consent to a final determination

- (A) The parties may consent prior to the hearing that the award of the arbitrator shall be deemed a final determination on the merits and that judgment shall be entered thereon by the Court. In the absence of consent, the effect of the award will be governed by subsections (g) and (h).
- (B) Any consent filed hereunder shall be in writing, signed by all attorneys of record or pro se parties. No judicial officer may threaten or coerce any party to consent, but may suggest the advisability of consent in any case. No party or attorney may be sanctioned or otherwise prejudiced by reason of a failure or refusal to consent.

- (ii) Time and place for hearing - The arbitration hearing shall be scheduled for a date no earlier than one hundred forty (140) days and no later than one hundred eighty (180) days after the filing of the last responsive pleading, except as otherwise provided. If any party files a motion to dismiss the complaint, motion for judgment on the pleadings, motion to join necessary parties, or motion for summary judgment, the motion shall be heard by the assigned judge or magistrate judge and further proceedings under this rule will be deferred pending decision on the motion. If the action is not dismissed or otherwise terminated as the result of the decision on the motion, it shall be referred to arbitration thirty (30) days after the filing of the decision. The 180-day and 30-day periods specified herein may be modified by the Court for good cause shown. Hearings shall be held at any location within the Western District of Michigan designated by the arbitrator. In making the selection, the arbitrator shall consider the convenience of the parties and the witnesses. The arbitrator shall notify the ADR Administrator as soon as possible of the date, time and place of hearing. The ADR Administrator shall send notice of the hearing to all parties and the arbitrator.

- (iii) Nature of submissions required before hearing - Within 7 calendar days before the hearing, a concise brief, including all documents on questions of liability and damages, shall be submitted to the arbitrator and all opposing counsel. The summary will state the party's factual and legal positions and may include medical reports, bills, records, photographs, and any other documents supporting the party's claim. A proof of service shall be sent to the ADR Administrator.

- (iv) Late submissions - Failure to submit the documents or the proof of service within the time designated, shall result in costs of one hundred and fifty (\$150.00) dollars, payable to the arbitrator. Each late brief shall be accompanied by a check for one hundred and fifty (\$150.00) dollars payable to the arbitrator. The proof of service shall include a statement that costs of one hundred and fifty (\$150.00) dollars were delivered to the arbitrator with the brief. The proof of service shall be sent to the ADR Administrator. If the arbitrator waives these costs, they shall be paid to the Clerk of Court as recovery of the Court's costs.

- (v) Format of hearing - Each party shall be allowed a maximum of two and one-half hours for the presentation of its case. The conduct of the hearing and the admission of evidence shall be within the discretion of the arbitrator. Presentations will be made in summary fashion. Witnesses may testify in person, but the scope of direct and cross-examination shall be within the discretion of the arbitrator. The arbitrator is authorized to administer oaths and affirmations and all testimony shall be given under oath or affirmation.
- (vi) Transcript - A party may cause a transcript or recording to be made of the proceedings at its expense, but shall, at the request of the opposing party, make a copy available to the party at a reasonable charge, unless the parties have otherwise agreed. In the absence of agreement of the parties, except as provided in subsection (i) relating to impeachment, no transcript of the proceedings shall be admissible in evidence at any subsequent de novo trial of the action.
- (vii) Party responsibilities - Parties or representatives of the parties (other than counsel) with settlement authority are required to attend the arbitration session(s).
- (viii) Authority of arbitrator - The arbitrator may make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing.
- (ix) Ex parte communication - There shall be no ex parte communication between an arbitrator and any counsel or party on any matter touching the action except for purposes of scheduling or continuing the hearing.
- (f) Status of discovery, motions and trial during the arbitration process - For the purposes of arbitration, discovery shall be limited to one hundred twenty (120) days from and after the last responsive pleading. Time taken to dispose of motions set forth in subsection (e)(ii) shall not be charged against the one hundred twenty (120) days allowed for discovery. Motions set forth in subsection (e)(ii) will be handled as defined in that subsection. Selection of a case for arbitration has no effect on the normal progress of the case toward trial.

- (g) Filing of award
- (i) Announcement and submission of award - The arbitrator shall submit the award to the ADR Administrator within ten (10) calendar days following the close of the hearing. The ADR Administrator shall serve copies on the parties and shall make a record of the service on the Court's docket sheet.
 - (ii) Form of award - The award shall state clearly and concisely the name or names of the prevailing party or parties and the party or parties against whom it is rendered, and the precise amount of money and other relief awarded, if any, including prejudgment interest, costs, fees and all attorney's fees. The award shall be in writing and signed by the arbitrator. Unless all parties have consented to arbitration, the amount of the award, exclusive of interest and costs, may not exceed \$100,000.
 - (iii) Entry of judgment on award and time for demand for trial de novo Within thirty (30) days of the submission of the award a party may file and serve a written demand for a trial de novo. If a demand for trial de novo is not timely made, the Clerk shall enter judgment on the award, in accordance with Rule 58 of the Federal Rules of Civil Procedure. The judgment shall have the same effect as any judgment of the Court in a civil action, except that no appeal shall lie from such a judgment.
 - (iv) Sealing of results - The contents of the award shall not be made known to the judge assigned to the case except as allowed by 28 U.S.C. § 654(b). If a trial de novo is demanded, the ADR Administrator shall place all arbitration documents in a sealed envelope before forwarding them to the Clerk of Court for filing.
- (h) Partial demand for trial de novo in multiple party cases - In arbitrations involving multiple parties, the following rules apply:
- (i) Each party may demand a trial de novo for claims by or against that party. However, as to any particular party, a trial de novo may only be demanded as to all claims regarding that party.
 - (ii) A party who does not demand a trial de novo may nevertheless demand a conditional trial de novo. Under a demand for a “conditional trial de novo,” the demand will only be effective if one

or more of the opposing parties also demand a trial de novo. If no other party demands a trial de novo, the conditional trial de novo demand will result in judgment being entered on the award as to all parties.

(iii) If a party makes a demand for a conditional trial de novo under subsection (h)(ii), and some of the other parties make demands for a trial de novo and some do not, for the purpose of the cost provisions of subsection (j)(ii), the party who made the demand for a conditional trial de novo is deemed to have demanded a trial de novo as to those parties who did not make such a demand.

(i) Limitations on evidence in the trial de novo - At a trial de novo no evidence of or concerning the arbitration may be received except as provided in 28 U.S.C. § 655(c) or as stipulated to by the parties.

16.7 Summary jury trials; summary bench trials; mini-hearings

(a) Summary jury trial - The summary jury trial is an abbreviated proceeding during which the parties' attorneys summarize their case before a six-person jury. Unless the parties stipulate otherwise, the verdict is advisory only.

(b) Summary bench trial - A summary bench trial is an abbreviated proceeding during which the parties' attorneys summarize their case before a judge or magistrate judge. Unless the parties stipulate otherwise, the verdict is advisory only.

(c) Mini-hearing - A mini-hearing is an abbreviated proceeding in which attorneys for corporate parties present their positions to the parties' senior officials or to impartial experts to attempt to settle the dispute. The parties may fashion the procedure in any way they feel is appropriate. However, the Court may prescribe certain procedures and time limits.

16.8 Settlement conferences - The Court may call a settlement conference to be held before a district judge or a magistrate judge. All parties may be required to be present. For

parties that are not natural persons, a natural person representing that party who possesses ultimate settlement authority may be required to attend the settlement conference. By way of example, a Chief Executive of a corporate party may be required to attend. In cases where an insured party does not have full settlement authority, an official of the insurer with authority to negotiate a settlement may be required to attend.

VI. TRIALS

Local Civil Rule 39. Trial procedures

39.1 Exhibits during trial - Exhibits shall be premarked in accordance with the order issued by the Court.

39.2 Exhibits after trial

- (a) Unless the Court orders otherwise, exhibits shall not be filed with the Clerk, but shall be retained in the custody of the respective attorneys who produced them in court.
- (b) In case of an appeal, a party, upon written request of any party or by order of the Court, shall make available all the original exhibits in that party's possession, or true copies thereof, to enable such other party to prepare the record on appeal, at which time and place such other party shall also make available all the original exhibits in that party's possession. The parties are encouraged to designate which exhibits are necessary for the determination of the appeal. The parties are to submit to the Clerk of this Court a list of those exhibits so designated indicating in whose custody they remain. The attorney who has custody of the exhibits shall be charged with the responsibility for their safekeeping and transportation to the Court of Appeals. All exhibits which are not designated as necessary for the determination of the appeal shall remain in the custody of the respective attorneys who shall have the responsibility of promptly forwarding same to the Clerk of the Court of Appeals upon request.
- (c) For good cause shown, the Court may order the Clerk to take custody of any or all exhibits on behalf of a party. If the Clerk does take custody of any exhibits, parties are to remove them within thirty (30) days after the mandate of the final reviewing court is filed. Parties failing to comply with this rule shall be notified by the Clerk to remove their exhibits and upon their failure to do so within thirty (30) days, the Clerk may dispose of them as the Clerk may see fit.

Local Civil Rule 40. Trial date

40.1 Scheduling - Cases shall be set for trial in the manner and at the time designated by the judge before whom the cause is pending. Any case may be assigned from one judge to another with the consent of both judges to promote the efficient administration of justice or to comply with the Speedy Trial Act in another case.

40.2 Continuances - A motion for a continuance of a trial or other proceeding shall be made only for good cause and as soon as the need arises.

40.3 Notice of Settlement - Whenever a case is settled or otherwise disposed out of court, counsel for all parties shall assure that immediate notice is given to the Court. Should a failure to provide immediate notice result in having jurors unnecessarily report for service in connection with the case, the Court may, on its own motion, for good cause shown, assess costs incurred in having jurors report for service equally between the parties or against one or more of the parties responsible for failure to notify the Court.

**Local Civil Rule 41. Involuntary dismissal for want of prosecution
or failure to follow rules**

41.1 A judicial officer may issue an order to show cause why a case should not be dismissed for lack of prosecution or for failure to comply with these rules, the Federal Rules of Civil Procedure, or any court order. If good cause is not shown within the time set in the show cause order, a district judge may enter an order of dismissal with or without prejudice, with or without costs. Failure of a plaintiff to keep the Court apprised of a current address shall be grounds for dismissal for want of prosecution.

Local Civil Rule 43. Attorney as witness

43.1 Leave of court to conduct the trial of an action in which the attorney is to be a witness shall be sought in advance of trial when feasible.

Local Civil Rule 45. Service of subpoenas

45.1 All subpoenas delivered to the United States Marshal' s Office for service shall allow a minimum of five (5) working days if within the Western District of Michigan, or ten (10) working days if outside the district, prior to the required appearance.

Local Civil Rule 47. Confidentiality of juror information

47.1 All information obtained from juror questionnaires shall be confidential. Inspection of juror questionnaires shall be permitted only during the business hours of the Clerk' s Office, beginning three (3) business days before trial and continuing through voir dire. Upon request of the Court, juror questionnaire copies will be available from the Clerk' s Office for counsel beginning three (3) business days before trial. Juror questionnaires will not be available via mail or facsimile transmission. All questionnaires must be returned to the jury clerk after the jury has been sworn.

VII. JUDGMENT

Local Civil Rule 54. Bill of costs

54.1 If the parties in a case can agree on costs, it is not necessary to file a cost bill with the Clerk. If the parties cannot agree, a bill of costs shall be filed with the Clerk within thirty (30) days from the entry of judgment. If a bill of costs is filed, any party objecting to the taxation of costs must file a motion to disallow all or part of the claimed costs within ten (10) days of service of the bill of costs on that party. The motion and response thereto shall be governed by LCivR 7.1 and 7.3.

VIII. PROVISIONAL AND FINAL REMEDIES

Local Civil Rule 65. Bonds and sureties

65.1 In all civil actions the Clerk shall accept as surety upon bonds and other undertakings a surety company approved by the United States Department of Treasury, cash or an individual personal surety residing within the district. The Clerk shall maintain a list of approved surety companies. Any personal surety must qualify as the owner of real estate within this district of the full net value of twice the face amount of the bond. Attorneys or other officers of this Court shall not serve as sureties. This rule shall apply to supersedeas bonds and any other bonds required by law.

Local Civil Rule 67. Deposit in court; payment of judgment

67.1 Deposit of funds - Any order requiring the Clerk to make investment of funds in an interest bearing account shall not be effective until such order is personally served on the Clerk.

67.2 Payment of judgment - Except with respect to litigation in which the United States is a party, the Clerk will not, unless authorized by order of the Court, accept payment of judgments. Upon receipt of payment of a judgment, however, the party shall file with the Clerk an acknowledgment of payment.

IX. SPECIAL PROCEEDINGS

Local Civil Rule 71A. Condemnation cases

71A.1 When the United States files separate land condemnation actions and concurrently files a single declaration of taking relating to those separate actions, the Clerk is authorized to establish a master file so designated, in which the declaration of taking shall be filed, and the filing of the declaration of taking therein shall constitute a filing of the same in each of the actions in which it relates.

Local Civil Rule 72. Authority of United States magistrate judges

72.1 The United States magistrate judges of this district are hereby empowered to perform all duties authorized by 28 U.S.C. § 636 and any other duty not inconsistent with the Constitution and laws of the United States, as more fully set forth below.

- (a) Duties under 28 U.S.C. § 636(a) - Each magistrate judge of this Court is empowered to perform all duties prescribed by 28 U.S.C. § 636(a).
- (b) Determination of nondispositive pretrial matters - 28 U.S.C. § 636(b)(1)(A) - A magistrate judge may hear and determine any procedural or discovery motion or other pretrial matter in a case, other than the motions which are specified in subsection (c) of this rule.
- (c) Recommendations regarding case-dispositive motions - 28 U.S.C. § 636(b)(1)(B)
 - (i) A magistrate judge may submit to a judge of the Court a report containing proposed findings of fact and recommendations for disposition by the judge of the following pretrial motions in civil cases:
 - (A) motion for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;
 - (B) motions for judgment on the pleadings;
 - (C) motions for summary judgment;
 - (D) motions to dismiss or permit the maintenance of a class action;
 - (E) motions to dismiss for failure to state a claim upon which relief may be granted;
 - (F) motions to involuntarily dismiss an action; or
 - (G) motions for review of default judgments.

- (ii) A magistrate judge may determine any preliminary matters and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this rule.
- (d) Prisoner cases under 28 U.S.C. §§ 2254 and 2255 - A magistrate judge may perform any or all of the duties imposed upon a judge by the rules governing proceedings in the United States District Courts under §§ 2254 and 2255 of Title 28, United States Code and may review all other applications for relief made under 28 U.S.C. Chapter 153. In so doing, a magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and may submit to a judge a report containing proposed findings of fact and recommendations for disposition of the petition by the judge. Any order disposing of the petition may only be made by a judge.
- (e) Prisoner cases under 42 U.S.C. § 1983 - A magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and may submit to a judge a report containing proposed findings of fact and recommendations for the disposition of petitions filed by prisoners challenging the conditions of their confinement.
- (f) Other duties - A magistrate judge is also authorized to:
 - (i) exercise all authority conferred upon United States magistrate judges by the Federal Rules of Civil Procedure;
 - (ii) conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in cases;
 - (iii) conduct voir dire and select petit juries to the extent allowed by law;
 - (iv) accept petit jury verdicts in cases in the absence of a judge;
 - (v) issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties witnesses or evidence needed for investigations or for court proceedings;
 - (vi) order the exoneration or forfeiture of bonds;
 - (vii) conduct proceedings for the collection of civil penalties of not more than \$200 assessed under the Federal Boat Safety Act of 1971, in

accordance with 46 U.S.C. §§ 4311 (d) and 12309 (c);

- (viii) conduct examinations of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure;
- (ix) conduct proceedings for initial commitment of narcotics addicts under Title III of the Narcotic Addict Rehabilitation Act;
- (x) perform the functions specified in 18 U.S.C. §§ 4107, 4108, and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein;
- (xi) conduct final hearings and decide routine motions for dismissal and continuance in naturalization cases in which petitioners are recommended by the Immigration and Naturalization Service without reservation;
- (xii) issue summons, search warrants, orders or other process authorizing agents and officers of the Internal Revenue Service or other authorized persons to enter premises and to make such search as is necessary in order to levy and seize property pursuant to Section 6331 of the Internal Revenue Code or other applicable provision of law;
- (xiii) conduct proceedings in accordance with 26 U.S.C. §§ 7402(b) and 7604(b) regarding enforcement of Internal Revenue Service summonses; and
- (xiv) perform any additional duty not inconsistent with the Constitution and laws of the United States.

72.2 Assignment of matters to magistrate judges - Unless otherwise ordered by the judge to whom a case is assigned, the magistrate judge assigned to any case may hear and determine any nondispositive pretrial matters in that case without any further order of reference.

- (a) General cases - The method for assignment and reassignment of duties to a magistrate judge and for the allocation of duties among the several magistrate judges of the Court shall be made in accordance with orders of the Court or by special designation of a judge.

- (b) Social Security, habeas corpus and prisoner civil rights cases - At the time of filing any social security, habeas corpus or prisoner civil rights case, the Clerk shall assign the case to a judge and to a magistrate judge in accordance with procedures established by these rules and the implementing orders of the Court. The assigned magistrate judge may enter such orders and conduct such proceedings in that case as are authorized by statute or rule, without any further order of reference. An order disposing of the case may only be entered by a judge.

72.3 Review and appeal of magistrate judges' decisions

- (a) Appeal of nondispositive matters - 28 U.S.C. § 636(b)(1)(A) - Any party may appeal from a magistrate judge's order determining any motion or matter within ten (10) days after service of the magistrate judge's order, unless a longer time is prescribed by the magistrate judge or a judge. Such party shall file and serve a written statement of appeal which shall specifically designate the order, or part thereof, appealed from and the basis for any objection thereto. In any case in which the decision of the magistrate judge is reflected only in an oral opinion on the record, the appealing party shall provide the district judge with a transcript of the oral opinion, unless excused by the district judge. Any party may respond to another party's objections within fourteen (14) days of service. Objections and responses shall conform to the page limits for briefs set forth in LCivR 7.3(b). A judge of the Court shall consider the appeal and shall set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law.
- (b) Review of case-dispositive motions and prisoner litigation - 28 U.S.C. § 636(b)(1)(B) - Any party may object to a magistrate judge's proposed findings, recommendations or report within ten (10) days after being served with a copy thereof unless a longer time is prescribed by the magistrate judge or a judge. Such party shall file and serve written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objections are made and the basis for such objections. Any party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. Objections and responses shall conform to the page limits for briefs set forth in LCivR 7.2(b). A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the

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magistrate judge. The judge, however, need conduct a new hearing only where required by law, and may consider the record developed before the magistrate judge, making a de novo 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.

- (c) Special master reports - 28 U.S.C. § 636(b)(2) - Any party may seek review of, or action on, a special master report filed by a magistrate judge in accordance with the provisions of Rule 53(e) of the Federal Rules of Civil Procedure.
- (d) Appeals from other orders of a magistrate judge - Appeals from any other decisions and orders of a magistrate judge not provided for in this rule should be taken as provided by governing statute, rule, or decisional law.

Local Civil Rule 73. Consent jurisdiction of magistrate judges

73.1 Conduct of trials and disposition of cases upon consent of the parties -28 U.S.C. § 636(c) - Upon the consent of all parties, a magistrate judge may conduct any or all proceedings in any case, including the conduct of a jury or non-jury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c). In the course of conducting such proceedings, a magistrate judge may hear and determine any and all pretrial and post-trial motions, including case-dispositive motions.

73.2 Notice - The Clerk shall notify the parties in cases of their option to consent to have a magistrate judge conduct any or all proceedings as provided by law.

73.3 Execution of consent - The Clerk shall not accept a consent form unless it has been signed by all the parties in a case. No consent form will be made available, nor will its contents be made known, to any judge or magistrate judge, unless all parties have consented to the reference to a magistrate judge. No magistrate judge or other court official may attempt to persuade or induce any party to consent to the reference of any matter to a magistrate judge. This rule, however, shall not preclude a judge or magistrate judge from informing the parties that they have the option of referring a case to a magistrate judge.

73.4 Reference - After the consent form has been executed and filed, the Clerk shall transmit it to the judge to whom the case has been assigned for approval and referral of the case to a magistrate judge. Once the case has been assigned to a magistrate judge, the magistrate judge shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the Clerk of Court to enter a final judgment in the same manner as if a judge had presided.

73.5 Suspension of rule - This rule may be suspended in those instances when the Court determines that the other duties of the magistrate judges preclude their availability for this purpose.

X. DISTRICT COURTS AND CLERKS

Local Civil Rule 77. District courts and clerks; issuance of process

77.1 Time and place of holding court - The Court shall be deemed to be in continuous session for transacting judicial business on all business days throughout the year. Proceedings may be held at such times and places within the district as the judge to whom the case is assigned shall designate.

77.2 Clerk's Office - The Court maintains Southern Division offices in Grand Rapids, Kalamazoo and Lansing, and a Northern Division office in Marquette.

77.3 Issuance of process - Any party requesting the issuance of any process or who initiates any proceeding in which the issuance of process is required by statute, rule or order, shall prepare all required forms, including the following: (a) Summons; (b) Warrants of Seizure and Monition; (c) Subpoenas to Witnesses; (d) Certificates of Judgment; (e) Writs of Execution; (f) Orders of Sale; (g) All process in garnishment or other aid in execution; and (h) Civil cover sheet. The party where necessary shall present the process to the Clerk for signature and sealing. The Clerk shall, upon request, and subject to current availability, make reasonable supplies of all blank official forms of process available to attorneys admitted to practice in this Court, or their agents or employees.

77.4 Notice of state interests - In every case brought against the State of Michigan, or an official thereof, or against any of the state's departments, agencies, boards or commissions, or a person designated as the head or one of the members thereof, the Clerk shall immediately send to the Attorney General of the State a copy of the complaint, petition, application or other paper initially filed to institute the claim, showing the date on which it was filed. Noncompliance with this rule shall not provide any defense to any part of the action.

Local Civil Rule 79. Books and records kept by the Clerk

79.1 Custody of files - Files in Southern Division cases shall be maintained in the divisional office where the judge or magistrate judge assigned to the case sits. All Northern Division files shall be maintained in Marquette.

79.2 Removal of files, exhibits and papers - No files, pleadings, exhibits or papers shall be removed from the offices of the Clerk except upon order of the Court. Whenever files, pleadings, exhibits or papers are removed from an office of the Clerk, the person receiving them shall sign and deliver to the Clerk a receipt therefor.

79.3 Duplication of papers - The Clerk shall make reasonable arrangements for the duplication of unrestricted papers in any court file.

XI. GENERAL PROVISIONS

Local Civil Rule 83. Attorneys; bankruptcy; miscellaneous

83.1 Attorneys

- (a) Definitions - As used in Local Rules 83.1(a) through 83.1(q), these terms are defined below.
- (i) “Discipline” means an order entered against an attorney by the Michigan Attorney Discipline Board, a similar disciplinary authority of another state, or a state or federal court, revoking or suspending an attorney’s license or admission before a court to practice law, placing an attorney on probation or inactive status, requiring restitution, or a transfer to inactive status in lieu of discipline.
 - (ii) “Chief Judge” means the Chief Judge or another district judge designated to perform the Chief Judge’s functions under these rules.
 - (iii) “Practice in this Court,” means, in connection with an action or proceeding pending in this Court, to appear in, commence, conduct, prosecute, or defend the action or proceeding; appear in open court; sign a paper; participate in a pretrial conference; represent a client at a deposition; counsel a client in the action or proceeding for compensation; or otherwise practice in this Court or before an officer of this Court.
 - (iv) “State” means a state, territory, commonwealth, or possession of the United States, and the District of Columbia.
 - (v) “Serious crime” means:
 - (A) a felony; or
 - (B) a crime, a necessary element of which, as determined by the statutory or common law definition of the crime in the jurisdiction of the conviction, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, willful

failure to pay income tax, deceit, bribery, extortion,

misappropriation, theft, or an attempt, conspiracy, or solicitation of another to commit a serious crime.

- (b) Roll of attorneys - The bar of this Court consists of those currently admitted to practice in this Court. The Clerk shall maintain the roll of admitted attorneys.
- (c) Eligibility for admission
 - (i) Eligibility - A person who is duly admitted to practice in a court of record of a state, and who is in active status and in good standing, may apply for admission to the bar of this Court, except as provided in (ii) below.
 - (ii) Effect of prior discipline - If the applicant has been held in contempt, disciplined, or convicted of a crime, the Chief Judge shall make an independent determination as to whether the applicant is qualified to be entrusted with professional matters and to aid in the administration of justice as an attorney and officer of the Court. An applicant dissatisfied with the decision of the Chief Judge may within thirty (30) days file a petition for a hearing before a three judge panel as described in LCivR 83.1(m)(iii).
 - (iii) Pro hac vice admissions - This Court disfavors pro hac vice admission and prefers that all lawyers appearing before it become full members of the bar of the Court. Pro hac vice admission may nevertheless be allowed on a temporary basis pending full admission, or in unusual circumstances.
- (d) Procedure for admission
 - (i) An applicant for admission to the bar of this Court shall pay the fee established by the Court and complete the application provided by the Clerk. The following information must be included in the application:
 - (A) office address and telephone number;
 - (B) the date of admission and each jurisdiction where the applicant has been admitted to practice; and

- (C) whether the applicant has ever been held in contempt, subjected to discipline as defined by these rules or convicted of a crime. If so, the applicant shall state the facts and the final disposition of each such instance.
- (ii) A sponsor must sign a declaration supporting the application for admission. A sponsor may be a member of the bar of this Court or, for applicants residing in another state, a judge of a court of record of that state, or a federal judge. The Chief Judge may waive the sponsorship requirement for newly admitted members of the State Bar of Michigan.
- (iii) The application for admission shall be accompanied by a current certificate of active status and good standing issued by a state court or other state licensing authority.
- (iv) If the Court grants the application, the applicant shall take or sign the oath of office. The Clerk shall issue a certificate of admission.
- (e) Limited pre-admission practice - An attorney may appear on record and file papers in a case or proceeding before actual admission to practice in this Court if:
 - (i) the attorney pays the fee established by the Court;
 - (ii) the attorney files the application required by this rule with the Clerk; and
 - (iii) the attorney is admitted before a personal appearance in court.
- (f) Local counsel - The Court may, in its discretion, require any attorney whose office is a great distance from the courthouse to retain local counsel. Local counsel shall enter an appearance in the case and shall have both the authority and responsibility for the conduct of the case should lead counsel be unavailable for any appearance, hearing or trial.
- (g) Government attorneys - An attorney representing the United States, or an agency of the United States may practice in this Court in official capacity without applying for admission. If the attorney does not have an office in the district, he or she shall designate the United States Attorney or an Assistant United States Attorney for this district to receive service of all

notices and papers. Service of notice on the United States Attorney or designated assistant shall constitute service on the nonresident government attorney.

(h) Law student practice

(i) Admission - Upon a satisfactory showing of eligibility and taking of the prescribed oath, a law student in an approved program may appear before the Court under the supervision of an attorney who has been duly certified. The supervising attorney may be an attorney in the U.S. Attorney's Office, an attorney in private practice admitted to practice before this Court, or a faculty member of an ABA-approved law school teaching in an eligible law school clinical program as defined in (iii) below.

(ii) Eligibility of law student - To be eligible to practice, a law student must:

- (A) be enrolled in, or have graduated from, a law school approved by the American Bar Association;
- (B) have completed at least two-thirds of the credit hours necessary for graduation from that law school;
- (C) be certified by the dean of the law school as being of good character and of sufficient legal ability and training to perform as a legal intern;
- (D) have a working knowledge of the Federal Rules of Civil and Criminal Procedure, Evidence, and Code of Professional Responsibility;
- (E) have been certified by the Court pursuant to this rule;
- (G) if the student qualifies as a legal intern under a supervising law school faculty member, be registered for credit in a law school clinical program which has been certified by the Court; and
- (H) have been appropriately introduced to the Court by a member of the bar of this Court or by the supervising faculty member.

(iii) Eligibility of program

(A) An eligible law school clinical program:

- (1) must be offered for credit at a law school approved by the American Bar Association;
- (2) must be supervised by a full-time or adjunct law school faculty member who is admitted to practice before this Court;
- (3) must include academic and practical advocacy training within the program;
- (4) must be certified by this Court;
- (5) must provide malpractice insurance for its activities, supervisors and student participants in the legal representation of any clients;
- (6) must designate an official within the Western District to whom all notices may be sent in connection with this rule or any legal representation provided pursuant to this rule; and
- (7) may arrange for a supervisor to accept compensation other than from a client, such as compensation under the Criminal Justice Act.

(B) An eligible non-law school clinical program:

- (1) must be supervised by a member of a bar who is admitted to practice before this Court;
- (2) must be developed to provide practical advocacy training within the program;
- (3) must provide direct supervision by the supervising attorney;
- (4) must be for a period of no less than fourteen (14) weeks;

- (5) must be certified by the Court;
- (6) must provide malpractice insurance for its activities, supervisors and student participants in the legal representation of any client under this program;
- (7) may be, but need not be, under the direction of a full-time or adjunct faculty member of a law school; and
- (8) must identify the supervising attorney to whom all notices may be sent.

(iv) Requirements for supervisor - A supervisor must:

- (A) if a full-time or adjunct member of a law school faculty, be certified by the dean of the law school as being of good character, and as having sufficient legal ability and adequate litigation experience to fulfill the responsibilities as the supervisor. If the supervisor is not a member of a law school faculty, the certification may be provided by a practicing member of the bar;
- (B) be admitted to practice in this Court;
- (C) be present with the student in court and at other proceedings in which testimony is taken and as required under subsection (e) of this rule;
- (D) cosign all pleadings or other documents filed with the Court;
- (E) assume full personal and professional responsibility for a student's guidance in any work undertaken and for the quality of a student's work, and be available for consultation with represented clients;
- (F) assist and counsel the student in activities pursuant to this rule and review all such activities with the student to the extent required for the proper practical training of the student and protection of the client; and

- (G) be responsible for supplemental oral or written work for the student as is necessary to ensure proper representation of the client.
- (v) Approved activities - A certified student under the personal supervision of a supervisor may participate in activities as set out below.
 - (A) A student may represent any client, including federal, state or local government bodies, if the client on whose behalf the student is appearing has indicated in writing consent to that appearance and the supervising attorney has also indicated in writing approval of that appearance.
 - (B) A student may represent a client in any criminal, civil or administrative matter on behalf of any person or governmental body. However, any judge or magistrate judge of this Court retains the authority to limit a student's participation in any individual case before that judge or magistrate judge.
 - (C) Representation shall include holding of consultations, preparation of documents for filing or submission to the Court, participation in discovery proceedings and the participation in trials and other court proceedings.
 - (D) The supervising attorney must be present with the student for all court appearances or for the taking of oral depositions except that a legal intern under a law school clinical program may appear in court without the supervising attorney unless the Court directs the presence of the supervisor. The Court shall be advised in advance whenever a legal intern is scheduled to appear in court without a supervising attorney.
 - (E) A student may make no binding commitments on behalf of an absent client prior to client and supervisor approval. Documents or papers filed with the Court must be read, approved and cosigned by the supervising attorney. The Court retains the authority to establish exceptions to such activities.

- (F) A judge of this Court may terminate the admission of the legal intern at any time without prior notice or hearing or showing of cause.
- (vi) Compensation - An eligible law student may neither solicit nor accept compensation or remuneration of any kind for services performed pursuant to this rule from the person on whose behalf services are rendered; but this rule will not prevent an attorney, legal aid bureau, law school or state or federal agency from paying compensation to an eligible law student, or making such charges for services as may be proper.
- (vii) Certification of student - Certification of a student by the law school dean or designee, if such certification is approved by the Court, shall be filed with the Clerk and unless it is sooner withdrawn, shall remain in effect until the expiration of twelve (12) months. Certification will automatically terminate if the student does not take the first bar examination following graduation, or if the student fails to achieve a passing grade in the bar examination, or if the student is admitted to full practice before this Court. Certification of a student to appear in a particular case may be withdrawn by the Court at any time, in the discretion of the Court and without any showing of cause.
- (viii) Certification of program - Certification of a program by the Court shall be filed with the Clerk and shall remain in effect indefinitely unless withdrawn by the Court. Certification of a program may be withdrawn by the Court at any time, in the discretion of the Court and without any showing of cause.
- (ix) Certification of supervisor - Certification of a supervisor by the law school dean or member of the bar, if such certification is approved by the Court, shall be filed with the Clerk and shall remain in effect indefinitely unless withdrawn by the Court. Certification of a supervisor may be withdrawn by the Court at any time, in the discretion of the Court and without any showing of cause. Any judge or magistrate judge of this Court retains the authority to withdraw or limit a supervisor's participation in any individual case before that judge or magistrate judge. Certification of a supervisor may be withdrawn by the dean or attorney who originally certified the supervisor by mailing the notices of withdrawal to the Clerk.

(i) Unauthorized practice

- (i) A person must be a member in good standing of the bar of this Court to practice in this Court or to hold himself or herself out as being authorized to practice in this Court, except that:
- (A) a party may proceed in pro per;
 - (B) government attorneys may practice under LCivR 83.1(g); and
 - (C) law students may practice under LCivR 83.1(h).
 - (D) A licensed attorney who is not under suspension or disbarment in this or another federal or state court may:
 - (1) cosign papers or participate in pretrial conferences in conjunction with a member of the bar of this Court;
 - (2) represent a client in a deposition; and
 - (3) counsel a client in an action or proceeding pending in this Court.

- (j) Consent to standards of conduct and disciplinary authority - An attorney admitted to the bar of this Court or who practices in this Court as permitted by this Rule is subject to the Rules of Professional Conduct adopted by the Michigan Supreme Court, except those rules a majority of the judges of this Court exclude by administrative order, and consents to the jurisdiction of this Court and the Michigan Attorney Grievance Commission and Michigan Attorney Discipline Board for purposes of disciplinary proceedings. Any person practicing or purporting to practice in this Court shall be presumed to know the Local Rules of this Court, including those provisions relating to sanctions for violations of these Rules.

(k) Attorney discipline

- (i) Discipline other than suspension or disbarment - In accordance with the provisions of this Rule, a district judge may impose discipline, except suspension or disbarment from this Court, on any attorney who engages in conduct violating the Rules of Professional Conduct; willfully violates these rules, the Federal Rules of Civil

Procedure, or orders of the Court; or engages in other conduct unbecoming of a member of the bar of this Court. Prior to the imposition of discipline, the attorney shall be afforded an opportunity to show good cause, within such time as the Court shall prescribe, why the discipline should not be imposed. Upon the attorney's response to show cause, and after hearing, if requested and allowed by the district judge, or upon expiration of the time prescribed for a response if no response is made, the Court shall enter an appropriate order.

(ii) Suspension or disbarment

- (A) Initiation of proceedings - Formal disciplinary proceedings leading up to possible suspension or disbarment shall be initiated by the issuance of an order to show cause, signed by the Chief Judge. Such order may be issued by the Court, on its own initiative or in response to allegations brought to the attention of the Court in a written complaint, if the Court determines further investigation is warranted. The Chief Judge may dismiss a complaint and refuse to issue an order to show cause if the complaint is found to be frivolous. The order to show cause issued by the Court shall include the specific facts that give rise to the proposed discipline, including the date, place and nature of the alleged misconduct, and the names of all persons involved. A copy of the order and any supporting documents shall be mailed to the attorney who is the subject of investigation. The attorney shall have twenty (20) days from the entry of the order in which to respond. The response shall contain a specific admission or denial of each of the factual allegations contained in the order and, in addition, a specific statement of facts on which the respondent relies, including all other material dates, places, persons and conduct, and all documents or other supporting evidence not previously filed with the order that are relevant to the charges of misconduct alleged. The response shall contain a specific request for a hearing, if so desired by the respondent.
- (B) Hearing - A disciplinary hearing shall be held only when the attorney under investigation has requested such a hearing in a timely response.

- (1) Procedures - If it is determined that a hearing is necessary, the Chief Judge shall provide the attorney with written notice of the hearing a minimum of twenty (20) days before its scheduled date. The notice shall contain the date and location of the hearing and a statement that the attorney is entitled to be represented by counsel, to present witnesses and other evidence, and to confront and cross examine adverse witnesses.
- (2) Conduct of the hearing - The hearing shall be conducted by a panel of three judicial officers appointed by the Chief Judge, consisting of at least one active district judge. The other members of the panel may include senior judges and magistrate judges. Any judge who initiated the request for discipline or before whom the allegation giving rise to the request took place shall not be appointed to the panel. The presiding judicial officer shall have the authority to resolve all disputes on matters of procedure and evidence which arise during the course of the proceeding. The presiding judicial officer may appoint an attorney to assist in the preparation and presentation of the evidence supporting the allegations giving rise to the request for discipline. All witnesses shall testify under penalty of perjury. Such hearings shall be confidential and be recorded. A decision of a majority of the three judge panel shall be final and binding. A written order shall be prepared which shall include the findings of the panel and disposition of the disciplinary charges. The order shall be a matter of public record and be sent to the respondent and complainant.
- (3) Burden of proof - The conduct giving rise to the request for discipline shall be proven by a preponderance of the evidence.
- (4) Failure to appear - The failure of the respondent to appear at the hearing shall itself be grounds for discipline.

(iii) Reinstatement after expiration of court-imposed discipline - After expiration of a period of suspension imposed by this Court, an attorney may apply for reinstatement by filing an affidavit under LCivR 83.1(m)(iii). The application for reinstatement will be decided in accordance with the process set forth in that rule. Unless and until reinstated, a suspended attorney must not practice before this Court.

(l) Attorneys convicted of crimes

(i) Serious crimes

(A) When an attorney admitted to practice before this Court is convicted of a serious crime, the attorney is automatically suspended from practice in this Court without further action of the Court, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal. On receipt of written notice of conviction of a serious crime of an attorney admitted to practice before this Court, the Chief Judge shall enter an order suspending the attorney. The suspension shall continue until after final disposition of an appeal of the conviction, proceedings on remand after an appeal, and any disciplinary investigation and proceeding based on the conduct that resulted in the conviction. The Court shall serve a copy of the order on the attorney by certified mail.

(B) On application, the Chief Judge shall reinstate the attorney on a showing that:

(1) there is a jurisdictional deficiency that establishes that the suspension may not properly be ordered; such as that the crime did not constitute a serious crime or that the attorney is not the individual convicted; or

(2) the conviction has been reversed and there is no likelihood of further criminal prosecution or disciplinary action related to the conduct that resulted in the conviction. A reinstatement will not

terminate any disciplinary investigation or proceeding based on the conduct that resulted in the conviction.

- (ii) Other crimes - If the Court receives written notice of conviction of an attorney admitted to practice before this Court of a crime not constituting a serious crime, the matter shall be referred to the Chief Judge who may initiate proceedings under subsection (k)(i) or (ii) of this rule.
 - (iii) Obligations to report conviction - An attorney admitted to practice before this Court shall, on being convicted of any crime, immediately inform the Clerk. If the conviction was in this Court, the attorney shall also provide to the Clerk a list of all other jurisdictions in which the attorney is admitted to practice. An attorney knowingly violating this provision may, on notice and after hearing, be charged with criminal contempt.
- (m) Discipline by other jurisdictions
- (i) Reciprocal discipline
 - (A) On receipt of written notice that another jurisdiction entered an order of discipline against an attorney admitted to practice in this Court, the Chief Judge shall enter an order imposing the same discipline, effective as of the date that the discipline was effective in the other jurisdiction. If the discipline imposed in the other jurisdiction has been stayed there, the Court shall defer reciprocal discipline until the stay expires.
 - (B) When this Court enters an order of discipline against an attorney, the attorney shall provide to the Clerk a list of all other jurisdictions in which the attorney is admitted to practice.
 - (ii) Application to modify reciprocal discipline
 - (A) Within thirty (30) days after the effective date of the order of discipline in this Court, the attorney may apply to the Chief Judge for modification or vacation of the discipline.

- (B) The Chief Judge shall modify or vacate the discipline if, on the record supporting the order of discipline in the other jurisdiction, the attorney demonstrates or the Chief Judge finds that it clearly appears that:
- (1) the procedure in the other jurisdiction constituted a deprivation of due process;
 - (2) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not accept as final the conclusion on that subject;
 - (3) imposing the same discipline in this Court would result in grave injustice; or
 - (4) the misconduct warrants substantially different discipline.

If the Chief Judge determines that any of these grounds exist, the Chief Judge shall order other appropriate discipline or no discipline.

(iii) Reinstatement after expiration of discipline

- (A) An attorney may apply for reinstatement by filing an affidavit of reinstatement stating that the jurisdiction that entered the underlying order of discipline has reinstated the attorney. The Chief Judge shall assign such applications to a panel of three judicial officers consisting of at least one active district judge. The other members of the panel may include senior judges and magistrate judges. Any judge who initiated the request for discipline or before whom the allegation giving rise to request for discipline took place shall not be appointed to the panel. A decision of the majority of the three judge panel shall be final and binding.
- (B) The judicial officers assigned to the matter shall within 30 days after assignment schedule a hearing at which the attorney shall have the burden of demonstrating by clear and convincing evidence that:

- (1) the attorney has complied with the orders of discipline of this Court and all other disciplinary authorities;
- (2) the attorney has not practiced in this Court during the period of disbarment or suspension and has not practiced law contrary to any other order of discipline;
- (3) the attorney has not engaged in any other professional misconduct since disbarment or suspension;
- (4) the attorney has the moral qualifications, competency and learning in the law required for admission to practice law before this Court; and
- (5) the attorney's resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

The Court may condition reinstatement on payment of all or part of the costs of the proceedings in this Court and may impose any of the conditions of reinstatement imposed in the other jurisdiction, or such other conditions as are warranted.

- (C) An attorney shall not file an application for reinstatement under this Rule within one year following denial of such an application.

(iv) Obligation to report discipline

- (A) An attorney admitted to practice before this Court appearing or participating in a pending matter shall, on being subjected to an order of discipline, immediately inform the Clerk of the order of discipline.
- (B) An attorney admitted to practice before this Court shall, before appearing or participating in a matter in the Court after being subjected to an order of discipline that has not previously been reported to the Court, immediately inform the Clerk of the order of discipline.

(C) An attorney knowingly violating this provision may be charged with criminal contempt.

(n) Resignation in other jurisdictions

(i) If an attorney resigns from the bar of another court of the United States while an investigation into allegations of misconduct is pending:

(A) the attorney shall immediately and automatically be disbarred from this Court; and

(B) the attorney shall promptly inform the Clerk of the resignation. An attorney knowingly violating this notification provision may be charged with criminal contempt.

(ii) On receipt of written notice that an attorney has resigned from the bar of another court of the United States or the bar of a state while an investigation into allegations of misconduct was pending, the Chief Judge shall enter an order disbaring the attorney, effective as of the date of resignation in the other jurisdiction.

(iii) An attorney disbarred under this subsection may apply to the Chief Judge for modification or vacation of the disbarment pursuant to LCivR 83.1(m)(ii).

(iv) An attorney disbarred under this subsection may be reinstated if the attorney is readmitted in the jurisdiction from which the attorney resigned and there has been a final disposition of the investigation into allegations of misconduct without an order of discipline.

(o) Service of papers - Service of papers on an attorney under this Rule may be by mail to the address of the attorney shown on the Court's roll of attorneys or the address in the most recent paper the attorney filed in a proceeding in this Court.

(p) Duties of the Clerk

(i) On being informed that an attorney admitted to practice before this Court has been convicted of a crime, the Clerk shall determine whether the Court in which the conviction occurred sent a certificate of the conviction to this Court. If not, the Clerk shall promptly obtain a certificate and file it with the Court.

- (ii) On being informed that another court or a state has entered an order of discipline against an attorney admitted to practice before this Court, the Clerk shall determine whether a certified copy of the order has been filed with this Court. If not, the Clerk shall promptly obtain a certified copy of the order and file it with the Court.
- (iii) When this Court convicts an attorney of a crime or enters an order of discipline against an attorney, the Clerk shall promptly notify the National Discipline Data Bank operated by the American Bar Association and any other authority that licensed or authorized the attorney to practice.
- (q) Other authority - Nothing in this Rule abridges the Court's power to control proceedings before it, including the power to initiate proceedings for contempt under Fed. R. Crim. P. 42 or sanction or disqualify an attorney in a particular case.

83.2 Bankruptcy

- (a) Referral of cases under Title 11 to bankruptcy judges - Pursuant to the powers granted by 28 U.S.C. § 157(a) any or all cases under Title 11 and any or all proceedings arising under Title 11 or arising in or related to a case under Title 11 previously filed or hereafter filed shall be referred to the bankruptcy judges of this district.
- (b) Bankruptcy court jurisdiction in core and noncore related proceedings - The bankruptcy judge shall determine whether proceedings are core, or noncore related, and shall enter appropriate orders and judgments subject to those appeal rights afforded by 28 U.S.C. § 158 and Fed. R. Bankr. P. 8001-8009. In those noncore related proceedings in which the parties timely object to the entry of a final judgment or order by the bankruptcy judge, the bankruptcy court shall file and serve proposed findings of fact and conclusions of law on all dispositive matters. Objections shall be filed in accordance with Fed. R. Bankr. P. 9033. Upon submission by the bankruptcy court clerk to the district court clerk of the proposed findings of fact and conclusions of law and all objections timely filed thereto, the matter will be randomly assigned to a district judge who will conduct all further proceedings and enter a dispositive order.
- (c) Jury trials - Pursuant to 28 U.S.C. §§ 157(e) and 1411(e), the bankruptcy judges in this district are specially designated to conduct jury trials with the express consent of all parties, if the right to jury trial applies in any

proceeding that may be heard by a bankruptcy judge. All bankruptcy judges shall adhere to the Jury Selection and Service Act, 18 U.S.C. §§1861-1878, and this Court's jury selection plan. Upon request, the district court clerk shall supply a sufficient number of jurors for jury trials in the bankruptcy court. Procedure in jury cases, including time and form of jury demand, waiver, advisory juries and trial by consent shall be governed by local rule of the bankruptcy court.

- (d) Local bankruptcy rules - Pursuant to Rule 83 of the Federal Rules of Civil Procedure and the rules governing bankruptcy practice, a majority of the bankruptcy judges of this district are authorized to make rules of practice and procedure consistent with the Bankruptcy Rules.

83.3. Miscellaneous

(a) Courthouse conduct

- (i) Solicitation - Solicitation of business relating to bail bonds or to employment as counsel is prohibited in the courthouse.
- (ii) Loitering - Loitering in or about the rooms or corridors of the courthouse is prohibited. Any behavior, group or individual, which impedes or disrupts the orderly conduct of the business of the Court is prohibited.
- (iii) Signs - Cards, signs, placards, or banners shall not be brought into any of the courtrooms or hallways leading to courtrooms or on any floor in which courtrooms are located.
- (iv) Enforcement - The United States Marshal, deputy marshals, and the authorized employees of the courthouse shall enforce this rule by ejecting violators from the courthouse or by causing them to appear before one of the judges of this Court for a hearing and for imposition of such punishment as the Court may deem proper.
- (v) Photography and recording - The taking of photographs in any office, courtroom or its environs in connection with any judicial proceedings, the broadcast of judicial proceedings by radio, television or other means, or the audio recording of judicial proceedings are prohibited, except that the judicial officer in whose courtroom the proceedings occur may authorize: (1) the use of electronic or photographic means for the preservation or

presentation of evidence; and (2) the broadcasting, televising, recording or photographing of investitive, ceremonial or naturalization proceedings.

- (b) Civil Justice Reform Act information - Congress has designated this district to participate in a demonstration program to experiment with systems of differentiated case management under the Civil Justice Reform Act. Public Law 101-650, § 104(b). In addition, the Judicial Conference of the United States has designated this Court as an early implementation district court. Public Law 101-650, § 103(c). In these capacities, this Court and the Civil Justice Advisory Group are required to monitor the performance of the Court's civil justice expense and delay reduction plan to make periodic reports to the Judicial Conference, the Judicial Center, and the Administrative Office of the United States Courts. In order to fulfill this obligation, the Civil Justice Advisory Group and its staff are hereby authorized to collect from litigants, attorneys, court personnel, and others, such data, cost information, survey responses, interview responses, and other quantitative information as they may deem necessary for the sole purpose of evaluating the Court and its procedures and making reports under the Civil Justice Reform Act. All quantitative information so gathered shall be confidential and shall not be subject to disclosure or be discoverable or admissible as evidence in any civil or criminal proceeding. The files maintained by the Civil Justice Advisory Group and its staff shall not be the files, papers, or records of this Court. Summaries of information, not identifying persons or entities that have submitted it for review, shall not be confidential.
- (c) Certification of issues to state courts - Upon motion or after a hearing ordered by the judge sua sponte, the Court may certify an issue for decision to the highest court of the state whose law governs any issue, claim or defense in the case. An order of certification shall be accompanied by written findings that: (a) the issue certified is an unsettled issue of state law; (b) the issue certified will likely affect the outcome of the federal suit; and (c) certification of the issue will not cause undue delay or prejudice. The order shall also include citation to authority authorizing the state court involved to resolve certified questions. In all such cases, the order of certification shall stay federal proceedings for a fixed time, which shall be subsequently enlarged only upon a showing that such additional time is required to obtain a state court decision. In cases certified to the Michigan Supreme Court, in addition to the findings required by this rule, the Court must approve a statement of facts to be transmitted to the Michigan Supreme Court by the parties as an appendix to briefs filed therein.

- (d) Suppression orders - For good cause shown, any party may obtain a protective order for the suppression of any action or of any pleading or other paper. Upon the entry of a suppression order, the Clerk shall prevent all persons, except those designated by the Court, from having access to the suppressed material.
- (e) Appearance - An attorney appears by filing any pleading or other paper or by acknowledging in court that the attorney acts in the proceeding on behalf of a party. The appearance of an attorney is deemed to be the appearance of the law firm. Any attorney in the firm may be required by the Court to conduct a court-ordered conference or trial. Withdrawal of appearance may be accomplished only by leave of court.
- (f) Amendment - These rules may be amended by a majority vote of the judges of this district in conformity with Rule 83 of the Federal Rules of Civil Procedure.
- (g) Payment to court reporters - All parties ordering a transcript must pay in advance by cash or certified check unless the court reporter agrees to other arrangements.

**LOCAL RULES OF CRIMINAL
PRACTICE AND PROCEDURE**

United States District Court
For The Western District of Michigan

**Effective June 1, 1998
Including Amendments through July 15, 2004**

Preface to the 1998 Edition

On March 12, 1996, the Judicial Conference approved the recommendation of the Committee on Rules of Practice and Procedure to “adopt a numbering system for local rules of court that corresponds with the relevant Federal Rules of Practice and Procedure.” The action of the Judicial Conference implements the December 1, 1995 amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure, which provide that all local rules of court “must conform to any uniform numbering system prescribed by the Judicial Conference.” (See Appellate Rule 47, Bankruptcy Rules 8018 and 9029, Civil Rule 83, and Criminal Rule 57).

In addition to the substantive changes to the local rules found in the 1998 Edition, the Rules have been renumbered to comply with this mandate. The result is that, rather than being consecutively numbered, the rules have been assigned numbers which best correspond to the numbering scheme of the Federal Rules of Civil and Criminal Procedure. The renumbered Local Civil Rules and the renumbered Local Criminal Rules have been compiled as separate sets of Rules. Many of the rules familiar to practitioners under the prior edition remain substantively intact, but have had their provisions redistributed to two or more new rules within the newly-mandated numbering system.

Local Criminal Rules which do not correspond to any rule within the Federal Rules of Criminal Procedure have been assigned to Rule 57, which, in the Federal Rules of Criminal Procedure, governs the rulemaking authority of the Courts of the various districts.

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I. SCOPE, PURPOSE AND CONSTRUCTION

Local Criminal Rule 1. Authority; scope; construction

1.1 Authority - These rules are promulgated pursuant to 28 U.S.C. § 2071 and Rule 57 of the Federal Rules of Criminal Procedure. Amendment of these rules is governed by LCrR 57.3(a).

1.2 Short title - These rules may be cited and referred to individually as "W.D. Mich. LCrR _____."

1.3 Effective date - The effective date of these rules is June 1, 1998, including amendments through July 15, 2004.

1.4 Applicability - These rules apply to all criminal proceedings in this Court.

1.5 Scope - These rules govern the procedure in the United States District Court for the Western District of Michigan, govern the practice of attorneys before this Court, and supersede all previous rules promulgated by this Court or any judge thereof. Administrative orders and single-judge standing orders shall be maintained by the Clerk and made available upon request. All such orders shall be consistent with these rules and the Federal Rules of Criminal Procedure.

1.6 Construction - These rules shall be construed to achieve an orderly administration of the business of this Court and to secure the just, speedy and inexpensive determination of every action. References to statutes, regulations or rules shall be interpreted to include all revisions and amendments thereto. References to the Clerk shall be interpreted to mean the Clerk of this Court or any deputy clerk. Wherever used in these rules, the term "party," whether in the singular or plural, shall include all parties appearing in the action pro se and the attorney or attorneys of record for represented parties, where appropriate.

III. INDICTMENT AND INFORMATION

Local Criminal Rule 6. Grand juries

6.1 All grand juries are under the direct supervision of the Court. They shall convene at such times and dates as ordered by the Chief Judge.

Local Criminal Rule 9. Warrants and summonses

9.1 The original of all warrants (except search warrants) or summons issued in this District will be delivered to the U.S. Marshal's Office. If another agency desires a copy of a warrant, it may be provided by the U.S. Marshal's Office, and must be clearly marked, "copy." Each original warrant or summons is to be accompanied by a certified copy of the Indictment, Information, Complaint, Petition for Revocation of Probation, or Violation Notice, pursuant to which the warrant or summons was issued.

IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

Local Criminal Rule 10. Arraignment

10.1 Whenever the U.S. Attorney wishes to have a defendant appear for arraignment or change of plea, a date should be obtained from the office of the responsible judge or magistrate judge. When a defendant has previously appeared before a judicial officer in this district, the date of an arraignment should not be more than seven (7) business days after the date of indictment. Thereafter, the U.S. Attorney's Office is responsible for notifying all necessary parties of the date and time for the proceeding. This includes the marshal, the person responsible for issuing a writ, if needed, the probation office, the defendant and/or defendant's attorney.

Local Criminal Rule 11. Guilty pleas

11.1 Guilty pleas in felony prosecutions - With the consent of the district judge to whom the case is assigned, a magistrate judge may preside over the taking of guilty pleas in felony matters pursuant to Fed. R. Crim. P. 11 in the circumstances below.

- (a) The magistrate judge shall carefully explain to the defendant that he or she has the right to have all proceedings, including the plea hearing, conducted by a district judge. The magistrate judge shall not proceed unless after such explanation, the defendant, defendant's attorney, and the attorney for the government all consent in writing and on the record to allow the magistrate judge to preside over the guilty-plea proceedings.
- (b) If the magistrate judge finds on the record that defendant's consent is knowingly and voluntarily given, the magistrate judge shall conduct guilty-plea proceedings, following the procedures set forth in Rule 11 of the Federal Rules of Criminal Procedure. The magistrate judge shall set forth on the record findings concerning the knowing and voluntary nature of the guilty plea, the adequacy of the factual basis for the plea, and any other relevant matter. If satisfied that all requirements of law have been met, the magistrate judge shall accept the plea and order the preparation of a presentence investigation report. The magistrate judge shall inquire concerning the existence of a plea agreement but shall not accept or reject any such agreement, but shall specifically reserve acceptance of the plea agreement for the district judge at the time of sentencing.
- (c) A magistrate judge shall not have authority to accept a conditional guilty plea or a plea of nolo contendere in a felony case.
- (d) A transcript shall be prepared of the proceeding and filed with the Clerk. Upon application of a party or sua sponte, the district judge shall conduct a de novo review of the magistrate judge's findings. In conducting such review, the district judge may reconduct all or any part of the guilty-plea hearing and may affirm, set aside, or cure any finding or proceeding before the magistrate judge. Any application for review made by a party must be in writing, must specify the portions of the findings or proceedings objected to, and must be filed and served no later than 10 days after the plea hearing, unless the time is extended by the district judge.

Local Criminal Rule 12. Motion practice

12.1 Briefs - All motions, except those made during a hearing or trial, shall be accompanied by a supporting brief. Any party opposing a written motion shall do so by filing and serving a brief conforming to these rules. All briefs filed in support of or in opposition to any motion shall contain a concise statement of the reasons in support of the party's position and shall cite all applicable federal rules of procedure, all applicable local rules, and the other authorities upon which the party relies. Briefs shall not be submitted in the form of a letter to the judge.

12.2 Supporting documents - When allegations of facts not appearing of record are relied upon in support of or in opposition to any motion, all affidavits or other documents relied upon to establish such facts shall accompany the motion. All discovery motions shall set forth verbatim, or have attached, the relevant discovery request and answer or objection.

12.3 Modification of limits - In its discretion, the Court may in a particular case shorten or enlarge any time limit or page limit established by these rules, with or without prior notice or motion.

12.4 Attempt to obtain concurrence - With respect to all motions, the moving party shall ascertain whether the motion will be opposed. In addition, in the case of all discovery motions, counsel or pro se parties involved in the discovery dispute shall confer in person or by telephone in a good-faith effort to resolve each specific discovery dispute. All motions shall affirmatively state the efforts of the moving party to comply with the obligation created by this rule.

12.5 Motion for expedited consideration - Where the relief requested by a motion may be rendered moot before the motion is briefed in accordance with the schedules set forth herein, the party shall so indicate by inserting the phrase "EXPEDITED CONSIDERATION REQUESTED," in boldface type, below the case caption, and shall identify in the motion the reason expedited consideration is necessary.

12.6 Unavailability of judge - If it appears that any matter requires immediate attention, and the judge to whom the case has been assigned, or in the usual course would be assigned, is not available, the matter shall be referred to the judge's assigned magistrate judge, who shall decide the matter if it is within the magistrate judge's jurisdiction. If the matter can only be decided by a judge, the magistrate judge shall determine whether the matter can be set for a hearing at a time when the assigned judge is available. If the matter is determined by a magistrate judge to require an immediate hearing before a judge, the case will be referred to the Chief Judge, or in the Chief Judge's absence, the next available judge by seniority for decision or reassignment to an available judicial officer. After disposition of this emergency matter, the case will be returned to the originally assigned judge.

12.7 Privacy - In compliance with the policy of the Judicial Conference of the United States, and the E-Government Act of 2002, and in order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all pleadings and other papers, including exhibits thereto, maintained electronically on the Court's CM/ECF system, unless otherwise ordered by the Court.

- (a) Social Security numbers - If an individual's social security number must be included in a pleading, only the last four digits of that number should be used.
- (b) Names of minor children - If the involvement of a minor child must be mentioned, only the initials of that child should be used.
- (c) Dates of birth - If an individual's date of birth must be included in a pleading, only the year should be used.
- (d) Financial account numbers - If financial account numbers are relevant, only the last four digits of these numbers should be used.

Redaction of personal identifiers is not required for administrative records and transcripts in social security cases, the state-court record in habeas corpus cases, or for other documents that may not be maintained electronically under Local Civil Rule 5.7(d)(ii).

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may file an unredacted document under seal. This document shall be retained by the court as part of the record. The party is required to file a redacted copy for inclusion in the public file.

The responsibility for redacting these personal identifiers rests solely with counsel and the parties.

Local Criminal Rule 17. Service of subpoenas

17.1 All subpoenas delivered to the United States Marshal's Office for service shall allow a minimum of five (5) working days if within the Western District of Michigan, or ten (10) working days if outside the district, prior to the required appearance. A deposit in a sum deemed sufficient by the marshal to cover fees for the service to be performed shall be made in every instance in which the marshal is required to perform service. The marshal may require that any payment be in cash or certified check.

V. VENUE

Local Criminal Rule 18. Assignment of cases

18.1 All cases shall be assigned to the division in which the offense is alleged to have been committed.

VI. TRIAL

Local Criminal Rule 23. Trial date

23.1 Scheduling - Cases shall be set for trial in the manner and at the time designated by the judge before whom the cause is pending. Any case may be assigned from one judge to another with the consent of both judges to promote the efficient administration of justice or to comply with the Speedy Trial Act in another case.

23.2 Continuances - A motion for a continuance of a criminal matter shall be made only for good cause and in conjunction with the Speedy Trial Act.

23.3 Notice of Settlement - Whenever a case is settled or otherwise disposed out of Court, counsel for all parties shall assure that immediate notice is given to the Court. Should a failure to provide immediate notice result in having jurors unnecessarily report for service in connection with the case, the Court may, on its own motion, for good cause shown, assess costs incurred in having jurors report for service equally between the parties or against one or more of the parties responsible for failure to notify the Court.

Local Criminal Rule 24. Confidentiality of juror information

24.1 All information obtained from juror questionnaires shall be confidential. Inspection of juror questionnaires shall be permitted only during the business hours of the Clerk' s Office, beginning three (3) business days before trial and continuing through voir dire. Upon request of the Court, juror questionnaire copies will be available from the Clerk' s Office for counsel beginning three (3) business days before trial. Juror questionnaires will not be available via mail or facsimile transmission. All questionnaires must be returned to the jury clerk after the jury has been sworn.

Local Criminal Rule 26. Attorney as witness

26.1 Leave of court to conduct the trial of an action in which the attorney is to be a witness shall be sought in advance of trial when feasible.

VII. JUDGMENT

Local Criminal Rule 32. Sentencing

32.1 Notice - The office of the responsible judge or magistrate judge setting the sentence shall notify all necessary parties of the date of sentencing. This includes the marshal, the person responsible for issuing a writ, if needed, the probation office, the U.S. Attorney, the defendant and/or defendant's attorney. This date may be set at the time of taking a plea or a verdict of guilty.

32.2 Presentence report - Unless waived pursuant to Fed. R. Crim. P. 32(c), a presentence report shall be prepared in every felony case and may be prepared in misdemeanor cases in the Court's discretion.

- (a) Initial interview - The initial interview with the defendant, defendant's counsel, and the probation officer shall be conducted within five (5) working days of the date of the order setting sentencing date. Counsel for the government shall make available the offense conduct information, including all relevant conduct, within five (5) working days of the date of such order.
- (b) Disclosure of presentence report - At least thirty-five (35) calendar days before the date scheduled for sentencing, the probation officer shall provide a copy of the presentence report (except the sentencing rationale) to (1) counsel for the government, and (2) counsel for the defendant or, where the defendant is pro se, to the defendant. Disclosure of the presentence investigation report (and any subsequent revisions and addenda thereto) to a defense counsel shall be deemed to be disclosure to the defendant and it shall be the obligation of the defense counsel to provide a copy of the report to the defendant forthwith.
- (c) Time of disclosure - The presentence report shall be deemed to have been disclosed to a recipient when a copy of the report is physically delivered or three (3) days after a copy of the report has been mailed. The presentence report shall contain the date sent.
- (d) Objections to presentence report - Within fourteen (14) calendar days after disclosure of the presentence report, each counsel or pro se defendant shall file a written response to the probation office which shall acknowledge disclosure, and which shall contain all objections, and the reasons therefor, to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the report, or

which shall contain a statement that there is no objection to the report. The response filed on behalf of the defendant shall contain the defendant's signature in addition to that of counsel. Each written response shall contain a certificate indicating that all other recipients of the presentence report and the probation officer have been served with a copy of the response.

- (e) Notification for scheduling purposes - Upon expiration of the time permitted for the filing of objections, the probation officer shall submit the presentence report to counsel for the government, counsel for the defendant, or where the defendant is pro se, to the defendant, and to the sentencing judge if no objections have been received. If objections have been received, the probation officer shall so notify the judge.
- (f) Non-judicial resolution of objections - After receiving a timely objection, the probation officer shall promptly conduct any further investigation and make any revisions to the presentence report that may be necessary. The probation officer may require each counsel and pro se defendant to meet with the officer to discuss unresolved factual and legal issues, and may request that such persons meet with each other for the same purpose.
- (g) Submission of presentence report to the Court - Not less than seven (7) working days before the date set for sentencing, the probation officer shall submit the final presentence report to the sentencing judge. The report shall be accompanied by an addendum setting forth any unresolved objections that counsel or the pro se defendant may have, together with the officer's comments thereon. The probation officer shall certify that the contents of the report, including any revisions and the addendum, have been disclosed to counsel and any pro se defendant, and that the addendum fairly states any remaining objections.
- (h) Motions for departure; sentencing memoranda - Not less than five (5) working days before the date set for sentencing, any party seeking an upward or downward departure must file and serve its motion for such relief. All sentencing memoranda shall be filed by the same date. A copy of all motions and sentencing memoranda, if any, shall be served on the probation officer.
- (i) Judicial resolution of objections - Upon receipt of the final report and attachments, the sentencing judge shall determine the extent of any further proceedings necessary in light of the nature of any unresolved objections. The judge may hold all objections for resolution at the time of sentencing. In the alternative, the judge may resolve any objections prior to sentencing and may afford the parties a reasonable opportunity for the submission of

further written objections before the imposition of sentence. Any objections shall be made in the same manner as provided for in this rule. Where the Court determines that a hearing is necessary to resolve the disputed sentencing matters, a hearing may be held for that purpose, either on the date of sentencing or at an earlier time.

- (j) Standard for resolution of objections - Except with regard to any unresolved objections, the report of the presentence investigation may be accepted by the Court as accurate. In resolving disputed issues of fact, the Court may consider any reliable information presented by the probation officer, the defendant, or the government.
- (k) Late objections - Upon a showing of good cause, the Court may allow a new objection to be raised at any time prior to the imposition of sentence.
- (l) Time period - The time periods set forth in this rule may be modified by the Court for good cause shown, or upon its own motion, except that in no event shall sentence be imposed less than ten (10) days following disclosure of the presentence report without the consent of the defendant. In computing the time periods, no exception shall be made for weekends or holidays.
- (m) Limitations on disclosure - Nothing in this rule requires the disclosure of any portions of the presentence report that are not disclosable under the Federal Rules of Criminal Procedure.
- (n) Relationship to Fed. R. Crim. P. 32 - This rule shall not be construed to limit any sentencing procedure modifications permitted by Rule 32 of the Federal Rules of Criminal Procedure.
- (o) Release of presentence report to other officers - The Chief Probation Officer may, in his or her discretion, disclose a presentence report to a federal or state probation or parole officer in connection with that officer's conduct of official duties regarding a person previously sentenced by this Court.

32.3 Judgments and commitments - The case manager of the judge presiding over a criminal matter shall provide a copy of the Judgment and Commitment to the United States Marshal within forty-eight (48) hours after the defendant has been sentenced to ensure expeditious transfer of the prisoner to the appropriate institution.

Local Criminal Rule 32.1. Actions against persons on probation or supervised release

32.1.1 Whenever the probation office requests action against a probationer or person on supervised release, the probation office shall secure a date from the office of the judge or magistrate judge conducting the preliminary, revocation, or modification hearing and notify all necessary parties. This includes the marshal, the person responsible for issuing a writ, if needed, the U.S. Attorney, and the defendant and/or defendant's attorney.

X. GENERAL PROVISIONS

Local Criminal Rule 44. Motion for appointment

44.1 If trial counsel was appointed under the Criminal Justice Act and intends to prosecute the appeal, counsel should file a motion with the Clerk of the Court of Appeals for appointment on appeal. Whether on such a motion or otherwise, no further proof of the defendant's indigency need be submitted unless specifically required by the Court of Appeals.

Local Criminal Rule 47. Motions

47.1 Dispositive motions

- (a) Definition - Dispositive motions are motions to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a case, to involuntarily dismiss an action, and other dispositive motions as defined by law.
- (b) Length of briefs - Any brief filed in support of or in opposition to a dispositive motion shall not exceed twenty-five (25) pages in length, exclusive of cover sheet, tables, and indices.
- (c) Briefing schedule - Any party opposing a dispositive motion shall, within twenty-eight (28) days after service of the motion, file a responsive brief and any supporting materials. The Court may permit or require further briefing.
- (d) Oral argument - Any party desiring oral argument shall include a request for oral argument in the caption and the heading of the party's brief. In its discretion, the Court may schedule oral argument or may dispose of the motion without argument at the end of the briefing schedule. The time for oral argument on all motions shall be scheduled and noticed by the Court at the earliest convenient date.

47.2 Nondispositive motions

- (a) Definition - Nondispositive motions are all motions not specifically listed in LCrR 47.1.
- (b) Length of briefs - Any brief filed in support of or in opposition to a nondispositive motion shall not exceed ten (10) pages in length, exclusive of cover sheet, tables, and indices.
- (c) Briefing schedule - Any party opposing a nondispositive motion shall, within fourteen (14) days of service of the motion, file a responsive brief and supporting materials. The Court may permit or require further briefing. Reply briefs may not be filed without leave of court.

- (d) Oral argument - Any party desiring oral argument shall include a request for oral argument in the caption and the heading of the party's brief. In its discretion, the Court may schedule oral argument or may dispose of the motion without argument at the end of the briefing schedule. The time for oral argument on all motions shall be scheduled and noticed by the Court at the earliest convenient date.

47.3 Motions for reconsideration

- (a) Grounds - Generally, and without restricting the discretion of the Court, motions for reconsideration which merely present the same issues ruled upon by the Court shall not be granted. The movant shall not only demonstrate a palpable defect by which the Court and the parties have been misled, but also show that a different disposition of the case must result from a correction thereof.
- (b) Response to motions for reconsideration - No answer to a motion for reconsideration will be allowed unless requested by the Court, but a motion for reconsideration will ordinarily not be granted in the absence of such request. Any oral argument on a motion for reconsideration is reserved to the discretion of the Court.

Local Criminal Rule 49. Form of pleadings and other papers; filing requirements

49.1 Place of filing - Pleadings and other papers may be filed with the Clerk at any divisional office. If a hearing is scheduled, it is incumbent upon the party to insure that the judge or magistrate judge receives a copy of such relevant pleadings or other papers sufficiently in advance of the hearing. A locked filing depository is provided for filing documents during business and certain non-business hours. The Clerk will retrieve documents from the filing depositories twice during each business day. Documents are considered filed with the Court on the date and at the time indicated by the time stamp provided at each filing depository. Documents that are not stamped with the time stamp will be considered filed with the Court on the date and at the time they are retrieved by the Clerk's Office.

49.2 Paper size and format - All pleadings and other papers shall be double spaced on 8½x 11 inch paper with writing on only the face of each sheet. Type must be no smaller than 12 point type and all margins must be at least one inch.

49.3 Binding - All pleadings and other papers that have numerous pages must be bound with a fastener. Originals should be stapled or bound on the top margin with a two-hole fastener. Copies may be bound in the same manner as originals or in a binder. Paper clips and other types of clips shall not be used; fasteners shall pass through the pages.

49.4 Date, address and telephone number - All pleadings and other papers shall contain the date of signing and the address and telephone number of the signing attorney or pro se party.

49.5 Number of copies - All pleadings and other papers shall be filed in duplicate -- the original and one copy. If service of any paper is to be made by the United States Marshal, sufficient additional copies shall be supplied for service upon each other party. If file stamped copies of documents are requested to be returned to the offering party, a suitable self-addressed, postage paid envelope shall be supplied.

49.6 Proof of service - Proof of service of all pleadings and other papers required or permitted to be served shall be filed promptly after service and may be made by written acknowledgment of service, by affidavit of the person making service or by written certification of counsel. Proof of service shall state the date and manner of service.

49.7 Tendering of orders - A party tendering an order for entry must supply the Clerk with the original for the judge. All orders will be distributed to the parties by the Clerk.

49.8 Filing under seal

- (a) Request to seal - Requests to seal a document must be made by motion and will be granted only upon good cause shown. If the document accompanies the motion, it shall be clearly labeled “ Proposed Sealed Document” and shall include an envelope suitable for sealing the document. The envelope shall have the caption of the case, case number, title of document, and the words “ Contains Sealed Documents” prominently written on the outside. The document shall not be considered sealed until so ordered by the Court.
- (b) Documents submitted pursuant to court order - A document submitted pursuant to a previous order by the Court authorizing the document to be filed under seal shall be clearly labeled “ Sealed Document,” shall be submitted in an envelope suitable for sealing the document, and identify the order or other authority allowing filing under seal. The caption of the case, case number, title of document, and the words “ Contains Sealed Documents” shall be prominently written on the outside of the envelope.

49.9 Rejection of filings - The Court may order the Clerk to reject any pleading or other paper that does not comply with these rules or the Federal Rules of Criminal Procedure unless such noncompliance is expressly approved by the Court. The Clerk shall return any rejected filing to the party tendering it, along with a statement of the reasons for rejection.

49.10 Filing and service by electronic means

- (a) General information; definitions - Pursuant to Rule 49(d) of the Federal Rules of Criminal Procedure, the Clerk will accept pleadings and other papers filed and signed by electronic means in accordance with this rule. All papers filed by electronic means must comply with technical standards, if any, now or hereafter established by the Judicial Conference of the United States.

This rule shall apply to all criminal actions filed November 3, 2003, and thereafter. The Court will maintain electronic case files for all criminal cases filed on and after that date. All documents, whether filed electronically or on paper, will be placed into the electronic case filing system. Electronic filing and service under this rule will be allowed in such cases on and after March 1, 2004.

As used in this rule, the term

- “ ECF system” means the electronic case filing system maintained by this Court;
- “ registered attorney” means an attorney who is authorized pursuant to Rule 49.10(b) to file documents electronically and to receive service on the ECF system;
- “ charging document” means the complaint, indictment, information (or any superseding information or indictment) or other document by which charges are brought in a criminal case;
- “ electronically filed document” means any order, opinion, judgment, pleading, notice, transcript, motion, brief or other paper (except a charging document) submitted electronically to the ECF system;
- “ traditionally filed document” means a pleading or other paper submitted to the Clerk in paper form for filing;
- “ NEF” means the Notice of Electronic Filing generated by the ECF system;
- “ nonelectronic means of service” means one of the methods of service authorized by Rule 49(b) of the Federal Rules of Criminal Procedure and Rule 5(b) of the Federal Rules of Civil Procedure, except electronic service under FED. R. CIV. P. 5(b)(2)(D).

(b) Attorney training, registration and withdrawal of registration

- (i) The Clerk’ s Office will provide periodic training sessions on use of the ECF system. The Court will also provide on its Website an on-line tutorial demonstrating the use of the ECF system. Law firms are encouraged to have individuals responsible for electronic filing (attorney, paralegal or automation specialist) attend a live training session or use the on-line tutorial.

To use the ECF system, an attorney must be admitted to practice in this District, be a member in good standing, and have filed with the Clerk a completed ECF Attorney Registration form. In addition, the attorney or the attorney’ s firm must have a Public Access to Court Electronic Records (PACER) account and an e-mail address.

Detailed registration information is available on the Court's Website (www.miwd.uscourts.gov). Upon receipt of the ECF Attorney Registration form, the Court will issue a login name and a user password to qualified attorneys. All registered attorneys have an affirmative duty to inform the Clerk immediately of any change in their e-mail address. A registered attorney may not knowingly cause or allow another person to file a document using the attorney's login name and password, except for members of the attorney's staff. Authorized use of an attorney's login name and password by a staff member is deemed to be the act of the attorney. However, a registered attorney must not allow an unregistered attorney, even a member of the same firm, to use his or her login name and password. If a login name and/or password should become compromised, the attorney is responsible for notifying the ECF Help Desk immediately.

- (ii) A registered attorney may withdraw registration by sending a letter with the attorney's original signature to the Clerk of the Court addressed as follows:

Attorney E-Filing Registration
399 Federal Building
110 Michigan St., N.W.
Grand Rapids, MI 49503

Withdrawal of registration is complete when the Clerk removes the attorney's name from the ECF system.

- (c) Charging documents - The filing of charging documents must be accomplished in the traditional manner (not electronically). The United States Attorney, however, is strongly encouraged to accompany charging documents with a diskette or CD-ROM containing charging documents (bearing an image of any signature required by law) in portable document format (PDF), so that these documents can be added to the electronic case file. The Court may issue a summons or warrant electronically, but such process may be served only in accordance with Rule 4(c) of the Federal Rules of Criminal Procedure.

(d) Electronic filing

- (i) Filing - Registered attorneys may file pleadings and other papers permitted by the Federal Rules and the Local Rules of this Court (except charging documents) electronically in any criminal case without leave of Court, subject to the exceptions set forth below. All electronically filed documents must be in PDF digital format and must be submitted in accordance with the instructions set forth on the Court' s Website in the User' s Manual. Attorneys are strongly urged to accompany all traditionally filed documents with a diskette or CD ROM of their papers in PDF digital format, to facilitate adding the document to the electronic case file.
- (ii) Papers that may not be filed electronically - The following documents may not be filed electronically, but must be submitted in paper form:
 - (A) Documents filed under seal;
 - (B) Documents containing the signature of a defendant;
 - (C) Any document or attachment thereto exceeding 5MB in size.
- (iii) Documents that may be filed electronically if accompanied by a signed original - The following documents may be filed electronically only if a signed original document is also filed and a copy served on all other parties:
 - (A) Affidavits in support of or in opposition to a motion (affidavits of service may be filed electronically without filing a signed original);
 - (B) Declarations under penalty of perjury;
 - (C) Certified copies of judgments or orders of other Courts.

The electronically filed version of such documents must contain an “ s/_____ ” block indicating that the paper document bears an original signature.

- (iv) Deadlines - Filing documents electronically does not in any way alter any filing deadlines. An electronically filed document is deemed filed upon completion of the transmission and issuance by the Court's system of an NEF. In situations where attachments to an electronically filed document are submitted in paper form, the electronic document is deemed filed upon issuance of the NEF, provided that the paper exhibits are filed and served within 72 hours thereof. In situations where Rule 49.10(d)(iii) requires filing of a signed, original document in addition to the electronic document, the document is deemed filed upon issuance of the NEF, provided that the signed original is filed within 72 hours thereof. All electronic transmissions of documents must be completed (i.e., received completely by the Clerk's Office) prior to midnight, Eastern Time, in order to be considered timely filed that day. Where a specific time of day deadline is set by Court order or stipulation, the electronic filing must be completed by that time.
- (v) Technical failures - The Clerk shall deem the Court's Website to be subject to a technical failure on a given day if the site is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon (Eastern Time) that day, in which case, filings due that day which were not filed due solely to such technical failures shall become due the next business day. Such delayed filings must be accompanied by a declaration or affidavit attesting to the filer's failed attempts to file electronically at least two times after 12:00 noon separated by at least one hour on each day of delay because of such technical failure. The initial point of contact for any practitioner experiencing difficulty filing a document electronically shall be the ECF Help Desk, available via phone at (616) 456-2206 or (800) 290-2742, or via e-mail at ecfhelp@miwd.uscourts.gov.
- (vi) Official record; discarding of traditionally filed documents - For purposes of Rule 55 of the Federal Rules of Criminal Procedure, the official record of all proceedings filed on and after November 3, 2003, is the electronic file maintained on the Court's ECF system. After a case is closed and all appeals of right are completed, the Clerk's Office will discard all traditionally filed documents, except those papers that may not be filed electronically pursuant to subsection (d)(ii) of this rule.

- (vii) Exhibits and attachments - Filers must not attach as an exhibit any pleading or other paper already on file with the Court, but shall merely refer to that document. All exhibits and attachments, whether filed electronically or traditionally, must contain on their face a prominent exhibit number or letter. Exhibits too large to be filed electronically may be submitted traditionally. If one or more attachments or exhibits to an electronically filed document are being submitted traditionally under this rule, the electronically filed document must contain a notice of that fact in its text. For example:

(Exhibits 1, 2 and 3 to this Motion are filed electronically;
Exhibits 4 and 5 are filed in paper form pursuant to Local
Criminal Rule 49.10(d)(vii)).

or

(All exhibits to this brief are filed in paper form pursuant to
Local Criminal Rule 49.10(d)(vii)).

(e) Signature

- (i) Attorneys - A registered attorney's use of the assigned login name and password to submit an electronically filed document serves as the registered attorney's signature on that document, for purposes of Fed. R. Civ. P. 11 and for all other purposes under the Federal Rules of Criminal and Civil Procedure and the Local Rules of this Court. The identity of the registered attorney submitting the electronically filed document must be reflected at the end of the document by means of an "s/ _____" block showing the attorney's name, followed by the attorney's business address, telephone number, and e-mail address.
- (ii) Multiple signatures - The filer of any electronically filed document requiring multiple signatures (e.g., stipulations, joint motions) must list thereon all the names of other signatories by means of an "s/ _____" block for each. By submitting such a document, the filer certifies that each of the other signatories has expressly agreed to the form and substance of the document and that the filer has their actual authority to submit the document electronically. The filer must maintain any records evidencing this concurrence for subsequent production to the Court if so ordered or for inspection upon request by a party until one year after the final resolution of the action (including appeal, if any).

A non-filing signatory or party who disputes the authenticity of a signature on an electronically filed document must file an objection to the document within ten days after service of that document.

- (iii) Court reporters - The electronic filing of a transcript by a court reporter by use of the court reporter's login name and password shall be deemed the filing of a signed and certified original document for all purposes.
 - (iv) Judges - The electronic filing of an opinion, order, warrant, judgment or other document by a judge (or authorized member of the judge's staff) by use of the judge's login and password shall be deemed the filing of a signed original document for all purposes.
 - (v) Clerk of Court or Deputy Clerks - The electronic filing of any document by the Clerk of Court or by a Deputy Clerk by use of that individual's login and password shall be deemed the filing of a signed original document for all purposes.
 - (vi) Probation Office and Office of the U.S. Marshal - The Probation Office and Office of the United States Marshal for this district are authorized to file and serve documents electronically. The electronic filing of any document by the Probation Office and Office of the United States Marshal by use of the assigned login and password shall be deemed the filing of a signed original document for all purposes.
 - (vii) Signature of defendant - Documents containing the original signature of the defendant may not be filed electronically. They must be submitted either in paper form or as a scanned PDF document containing the image of defendant's manuscript signature.
- (f) Proposed pleadings - If the filing of an electronically submitted document requires leave of Court, such as a brief in excess of page limits, the proposed document must be attached as an exhibit to the motion seeking leave to file. If the Court grants leave to file the document, the Clerk of Court will electronically file the document without further action by the attorney.
 - (g) Proposed orders - Proposed orders may be submitted electronically or in paper form. All proposed orders submitted electronically must be in PDF

format and must be: (1) attached as an exhibit to a motion or stipulation; or (2) contained within the body of a stipulation; or (3) submitted separately. If the Judge approves the proposed order, it will be refiled electronically under a separate document number.

(h) Service of electronically filed documents

- (i) Summons and warrants - Service of warrants and summons must be made in accordance with FED. R. CRIM. P. 4(c) and may not be made electronically.
- (ii) Service on registered attorneys - By registering under this rule, an attorney automatically consents to electronic service by both the Court and any opposing attorney of any electronically filed document in any case in which the registered attorney appears. Consequently, service of an electronically filed document upon a registered attorney is deemed complete upon the transmission of an NEF to that attorney under subsection (h)(iv) of this rule. Traditionally filed documents must be served on registered attorneys by nonelectronic means of service, and a proof of service filed.
- (iii) Service on unregistered attorneys and *pro se* parties - Counsel filing any pleading or other paper must serve attorneys not registered under this rule and *pro se* parties by nonelectronic means of service, and a proof of service filed.
- (iv) Method of electronic service - At the time a document is filed either electronically or by scanning paper submissions, the Court's system will generate an NEF, which will be transmitted by e-mail to the filer and all registered attorneys who have appeared on that case. The NEF will contain a hyperlink to the filed document. The attorney filing the document should retain a paper or digital copy of the NEF, which serves as the Court's date-stamp and proof of filing. Transmission of the NEF to the registered e-mail address constitutes service of an electronically filed document upon any registered attorney. Only service of the NEF by the Court's system constitutes electronic service; transmission of a document by one party to another by regular e-mail does not constitute service.

- (v) Effect on time computation - Electronic service under this rule is complete upon transmission. The additional three (3) days to do an act or take a proceeding after service of a document applies when service is made electronically, by virtue of FED. R. CRIM. P. 45(c).

- (i) Court orders and judgments - Judgments and orders may be filed electronically by the Court or authorized Court personnel. Any order or other Court-issued document filed electronically without the image of the manuscript signature of the judge or clerk has the same force and effect as a document bearing an original signature. Upon entry of an order or judgment in a criminal proceeding, the clerk will transmit an NEF to all registered attorneys. Such transmission constitutes the notice to registered attorneys required by FED. R. CRIM. P. 49(c). The clerk will provide notice to attorneys not registered under this rule and *pro se* parties by nonelectronic means of service.

- (j) Access to electronically stored documents - Any person may review at the Clerk' s Office filings in a criminal case that have not been sealed by the Court. Any person may retrieve a docket sheet in a criminal case through the PACER system, but only registered attorneys who are counsel of record may access the text of documents stored electronically in a criminal case. In no event may any person (except the Court and its personnel) access electronically the text of transcripts or sealed documents. The Court may modify or restrict electronic access to documents by future order in conformity with resolutions of the Judicial Conference of the United States. The provisions of Local Civil Rule 10.7 concerning privacy apply to all electronically stored documents.

- (k) Facsimile transmissions - The Clerk will not accept for filing any pleading or other paper submitted by facsimile transmission.

Local Criminal Rule 50. Prompt disposition of criminal cases

50.1 Pursuant to statutory requirements, the judges of the United States District Court for the Western District of Michigan have adopted a plan to minimize undue delay and further the prompt disposition of cases. Copies of the plan are available in the Clerk' s Office.

Local Criminal Rule 56. District courts and clerks; issuance of process

56.1 Time and place of holding court - The Court shall be deemed to be in continuous session for transacting judicial business on all business days throughout the year. Proceedings may be held at such times and places within the district as the judge to whom the case is assigned shall designate.

56.2 Clerk's Office - The Court maintains Southern Division offices in Grand Rapids, Kalamazoo and Lansing and a Northern Division office in Marquette. The Southern Division comprises the counties of Allegan, Antrim, Barry, Benzie, Berrien, Branch, Calhoun, Cass, Charlevoix, Clinton, Eaton, Emmet, Grand Traverse, Hillsdale, Ingham, Ionia, Kalamazoo, Kalkaska, Kent, Lake, Leelanau, Manistee, Mason, Mecosta, Missaukee, Montcalm, Muskegon, Newago, Oceana, Osceola, Ottawa, Saint Joseph, Van Buren, and Wexford. The Northern Division comprises the counties of Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft. 28 U.S.C. § 102(b).

56.3 Issuance of process - Any party requesting the issuance of any process or who initiates any proceeding in which the issuance of process is required by statute, rule or order, shall prepare all required forms. The party shall present the process to the Clerk for signature and sealing when required. The Clerk shall, upon request, and subject to current availability, make reasonable supplies of all blank official forms of process available to attorneys admitted to practice in this Court, or their agents or employees.

56.4 Books and records kept by the Clerk

- (a) Custody of files - Files in Southern Division cases shall be maintained in the divisional office where the judge or magistrate judge assigned to the case sits. All Northern Division files shall be maintained in Marquette.
- (b) Removal of files, exhibits and papers - No files, pleadings, exhibits or papers shall be removed from the offices of the Clerk except upon order of the Court. Whenever files, pleadings, exhibits or papers are removed from an office of the Clerk, the person receiving them shall sign and deliver to the Clerk a receipt therefor.
- (c) Duplication of papers - The Clerk shall make reasonable arrangements for the duplication of unrestricted papers in any court file.

56.5 Assignment of cases to judges

- (a) Method - Each case upon filing shall be assigned to a judge who shall continue in the case or matter until its final disposition, except as hereinafter provided.
- (b) Sequence - All initial papers shall be first filed in the office of the Clerk who shall stamp on the indictment, information, complaint, petition, or other initial paper of each case so filed, the number of the case and the name of the judge to whom it is assigned. The numbering and assignment of each case shall be completed before processing the next case.
- (c) Procedure - The Clerk shall use automated or manual means to assign new cases to judges at random in accordance with administrative orders issued by the Court from time to time. The Clerk shall mark the name of the assigned judge on the first document of the case and preserve a record of such assignments.
- (d) Exceptions - related cases
 - (i) Refilings - If a case is dismissed and later refiled, either in the same or similar form, upon refiled it shall be assigned or transferred to the judge to whom it was originally assigned.
 - (ii) Definition - Cases are deemed related when (1) a superseding indictment or information has been filed; or (2) any other indictment or information is pending against the same defendant(s); or (3) an indictment is returned against a defendant who is then on probation or supervised release to a judge, provided the new case involves only the same defendant.
 - (iii) Determination - When it appears to the Clerk that two or more cases may be related cases, they shall be referred to the magistrate judge assigned to the judge who has the earliest case to determine whether or not the cases are related. If related, the cases will be assigned to the same judge. If cases are found to be related cases after assignment to different judges, they may be reassigned by the Chief Judge to the judge having the related case earliest filed.

- (e) Miscellaneous docket - The miscellaneous docket of the Court shall be conducted in the same manner as the assignment of cases covered in this rule and it shall include all grand jury matters.
- (f) Effect - This rule is intended to provide for an orderly division of the business of the Court and not to grant any right to any litigant.
- (g) Duty of parties - All parties shall notify the Court in writing of all pending related cases and any dismissed or remanded prior cases.

Local Criminal Rule 57. Attorneys; magistrate judges; miscellaneous

57.1 Attorneys

- (a) Definitions - As used in Local Rules 57.1(a) through 57.1(q), these terms are defined below.
- (i) “Discipline” means an order entered against an attorney by the Michigan Attorney Discipline Board, a similar disciplinary authority of another state, or a state or federal court revoking or suspending an attorney’s license or admission before a court to practice law, placing an attorney on probation or inactive status, requiring restitution, or a transfer to inactive status in lieu of discipline.
 - (ii) “Chief Judge” means the Chief Judge or another district judge designated to perform the Chief Judge’s functions under these rules.
 - (iii) “Practice in this Court,” means, in connection with an action or proceeding pending in this Court, to appear in, commence, conduct, prosecute, or defend the action or proceeding; appear in open court; sign a paper; participate in a pretrial conference; represent a client at a deposition; counsel a client in the action or proceeding for compensation; or otherwise practice in this Court or before an officer of this Court.
 - (iv) “State” means a state, territory, commonwealth, or possession of the United States, and the District of Columbia.
 - (v) “Serious crime” means:
 - (A) a felony; or
 - (B) a crime, a necessary element of which, as determined by the statutory or common law definition of the crime in the jurisdiction of the conviction, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, willful failure to pay income tax, deceit, bribery, extortion,

misappropriation, theft, or an attempt, conspiracy, or solicitation of another to commit a serious crime.

- (b) Roll of attorneys - The bar of this Court consists of those currently admitted to practice in this Court. The Clerk shall maintain the roll of admitted attorneys.
- (c) Eligibility for admission
 - (i) Eligibility - A person who is duly admitted to practice in a court of record of a state, and who is in active status and in good standing, may apply for admission to the bar of this Court, except as provided in (ii) below.
 - (ii) Effect of prior discipline - If the applicant has been held in contempt, disciplined, or convicted of a crime, the Chief Judge shall make an independent determination as to whether the applicant is qualified to be entrusted with professional matters and to aid in the administration of justice as an attorney and officer of the Court. An applicant dissatisfied with the decision of the Chief Judge may within thirty (30) days file a petition for a hearing before a three judge panel as described in LCivR 57.1(m)(iii).
 - (iii) Pro hac vice admissions - This Court disfavors pro hac vice admission and prefers that all lawyers appearing before it become full members of the bar of the Court. Pro hac vice admission may nevertheless be allowed on a temporary basis pending full admission, or in unusual circumstances.
- (d) Procedure for admission
 - (i) An applicant for admission to the bar of this Court shall pay the fee established by the Court and complete the application provided by the Clerk. The following information must be included in the application:
 - (A) office address and telephone number;
 - (B) the date of admission and each jurisdiction where the applicant has been admitted to practice; and

- (C) whether the applicant has ever been held in contempt, subjected to discipline as defined by these rules or convicted of a crime. If so, the applicant shall state the facts and the final disposition of each such instance.
- (ii) A sponsor must sign a declaration supporting the application for admission. A sponsor may be a member of the bar of this Court or, for applicants residing in another state, a judge of a court of record of that state, or a federal judge. The Chief Judge may waive the sponsorship requirement for newly admitted members of the State Bar of Michigan.
- (iii) The application for admission shall be accompanied by a current certificate of active status and good standing issued by a state court or other state licensing authority.
- (iv) If the Court grants the application, the applicant shall take or sign the oath of office. The Clerk shall issue a certificate of admission.
- (e) Limited pre-admission practice - An attorney may appear of record and file papers in a case or proceeding before actual admission to practice in this Court if:
 - (i) the attorney pays the fee established by the Court;
 - (ii) the attorney files the application required by this rule with the Clerk; and
 - (iii) the attorney is admitted before a personal appearance in court.
- (f) Local counsel - The Court may, in its discretion, require any attorney whose office is a great distance from the courthouse to retain local counsel. Local counsel shall enter an appearance in the case and shall have both the authority and responsibility for the conduct of the case should lead counsel be unavailable for any appearance, hearing or trial.
- (g) Government attorneys - An attorney representing the United States, or an agency of the United States may practice in this Court in official capacity without applying for admission. If the attorney does not have an office in the district, he or she shall designate the United States Attorney or an Assistant United States Attorney for this district to receive service of all

notices and papers. Service of notice on the United States Attorney or designated assistant shall constitute service on the nonresident government attorney.

(h) Law student practice

(i) Admission - Upon a satisfactory showing of eligibility and taking of the prescribed oath, a law student in an approved program may appear before the Court under the supervision of an attorney who has been duly certified. The supervising attorney may be an attorney in the U.S. Attorney's Office, an attorney in private practice admitted to practice before this Court, or a faculty member of an ABA-approved law school teaching in an eligible law school clinical program as defined in (iii) below.

(ii) Eligibility of law student - To be eligible to practice, a law student must:

- (A) be enrolled in, or have graduated from, a law school approved by the American Bar Association;
- (B) have completed at least two-thirds of the credit hours necessary for graduation from that law school;
- (C) be certified by the dean of the law school as being of good character and of sufficient legal ability and training to perform as a legal intern;
- (D) have a working knowledge of the Federal Rules of Civil and Criminal Procedure, Evidence, and Code of Professional Responsibility;
- (E) have been certified by the Court pursuant to this rule;
- (F) if the student qualifies as a legal intern under a supervising law school faculty member, be registered for credit in a law school clinical program which has been certified by the Court; and

- (G) have been appropriately introduced to the Court by a member of the bar of this Court or by the supervising faculty member.

(iii) Eligibility of program

(A) An eligible law school clinical program:

- (1) must be offered for credit at a law school approved by the American Bar Association;
- (2) must be supervised by a full-time or adjunct law school faculty member who is admitted to practice before this Court;
- (3) must include academic and practical advocacy training within the program;
- (4) must be certified by this Court;
- (5) must provide malpractice insurance for its activities, supervisors and student participants in the legal representation of any clients;
- (6) must designate an official within the Western District to whom all notices may be sent in connection with this rule or any legal representation provided pursuant to this rule; and
- (7) may arrange for a supervisor to accept compensation other than from a client, such as compensation under the Criminal Justice Act.

(B) An eligible non-law school clinical program:

- (1) must be supervised by a member of a bar who is admitted to practice before this Court;
- (2) must be developed to provide practical advocacy training within the program;

- (3) must provide direct supervision by the supervising attorney;
- (4) must be for a period of no less than fourteen (14) weeks;
- (5) must be certified by the Court;
- (6) must provide malpractice insurance for its activities, supervisors and student participants in the legal representation of any client under this program;
- (7) may be, but need not be, under the direction of a full-time or adjunct faculty member of a law school; and
- (8) must identify the supervising attorney to whom all notices may be sent.

(iv) Requirements for supervisor - A supervisor must:

- (A) if a full-time or adjunct member of a law school faculty, be certified by the dean of the law school as being of good character, and as having sufficient legal ability and adequate litigation experience to fulfill the responsibilities as the supervisor. If the supervisor is not a member of a law school faculty, the certification may be provided by a practicing member of the bar;
- (B) be admitted to practice in this Court;
- (C) be present with the student in court and at other proceedings in which testimony is taken and as required under subsection (v) of this rule;
- (D) cosign all pleadings or other documents filed with the Court;
- (E) assume full personal and professional responsibility for a student's guidance in any work undertaken and for the quality of a student's work, and be available for consultation with represented clients;

- (F) assist and counsel the student in activities pursuant to this rule and review all such activities with the student to the extent required for the proper practical training of the student and protection of the client; and
 - (G) be responsible for supplemental oral or written work for the student as is necessary to ensure proper representation of the client.
- (v) Approved activities - A certified student under the personal supervision of a supervisor may participate in activities as set out below.
- (A) A student may represent any client, including federal, state or local government bodies, if the client on whose behalf the student is appearing has indicated in writing consent to that appearance and the supervising attorney has also indicated in writing approval of that appearance.
 - (B) A student may represent a client in any criminal, civil or administrative matter on behalf of any person or governmental body. However, any judge or magistrate judge of this Court retains the authority to limit a student's participation in any individual case before that judge or magistrate judge.
 - (C) Representation shall include holding of consultations, preparation of documents for filing or submission to the Court, participation in discovery proceedings and the participation in trials and other court proceedings.
 - (D) The supervising attorney must be present with the student for all court appearances or for the taking of oral depositions except that a legal intern under a law school clinical program may appear in court without the supervising attorney unless the Court directs the presence of the supervisor. The Court shall be advised in advance whenever a legal intern is scheduled to appear in court without a supervising attorney.
 - (E) A student may make no binding commitments on behalf of an absent client prior to client and supervisor approval. Documents or papers filed with the Court must be read,

approved and cosigned by the supervising attorney. The Court retains the authority to establish exceptions to such activities.

- (F) A judge of this Court may terminate the admission of the legal intern at any time without prior notice or hearing or showing of cause.
- (vi) Compensation - An eligible law student may neither solicit nor accept compensation or remuneration of any kind for services performed pursuant to this rule from the person on whose behalf services are rendered; but this rule will not prevent an attorney, legal aid bureau, law school or state or federal agency from paying compensation to an eligible law student, or making such charges for services as may be proper.
- (vii) Certification of student - Certification of a student by the law school dean or designee, if such certification is approved by the Court, shall be filed with the Clerk and unless it is sooner withdrawn, shall remain in effect until the expiration of twelve (12) months. Certification will automatically terminate if the student does not take the first bar examination following graduation, or if the student fails to achieve a passing grade in the bar examination, or if the student is admitted to full practice before this Court. Certification of a student to appear in a particular case may be withdrawn by the Court at any time, in the discretion of the Court and without any showing of cause.
- (viii) Certification of program - Certification of a program by the Court shall be filed with the Clerk and shall remain in effect indefinitely unless withdrawn by the Court. Certification of a program may be withdrawn by the Court at any time, in the discretion of the Court and without any showing of cause.
- (ix) Certification of supervisor - Certification of a supervisor by the law school dean or member of the bar, if such certification is approved by the Court, shall be filed with the Clerk and shall remain in effect indefinitely unless withdrawn by the Court. Certification of a supervisor may be withdrawn by the Court at any time, in the discretion of the Court and without any showing of cause. Any judge or magistrate judge of this Court retains the authority to withdraw or limit a supervisor's participation in any individual case before that judge or magistrate judge. Certification of a supervisor

may be withdrawn by the dean or attorney who originally certified the supervisor by mailing the notices of withdrawal to the Clerk.

- (i) Unauthorized practice - A person must be a member in good standing of the bar of this Court to practice in this Court or to hold himself or herself out as being authorized to practice in this Court, except that:
 - (A) a party may proceed in pro per;
 - (B) government attorneys may practice under LCivR 57.1(g); and
 - (C) law students may practice under LCivR 57.1(h).
 - (D) A licensed attorney who is not under suspension or disbarment in this or another federal or state court may:
 - (1) cosign papers or participate in pretrial conferences in conjunction with a member of the bar of this Court;
 - (2) represent a client in a deposition; and
 - (3) counsel a client in an action or proceeding pending in this Court.
- (j) Consent to standards of conduct and disciplinary authority - An attorney admitted to the bar of this Court or who practices in this Court as permitted by this Rule is subject to the Rules of Professional Conduct adopted by the Michigan Supreme Court, except those rules a majority of the judges of this Court exclude by administrative order, and consents to the jurisdiction of this Court and the Michigan Attorney Grievance Commission and Michigan Attorney Discipline Board for purposes of disciplinary proceedings. Any person practicing or purporting to practice in this Court shall be presumed to know the Local Rules of this Court, including those provisions relating to sanctions for violations of these Rules.
- (k) Attorney discipline
 - (i) Discipline other than suspension or disbarment - In accordance with the provisions of this Rule, a district judge may impose discipline, except suspension or disbarment from this Court, on any attorney who engages in conduct violating the Rules of Professional Conduct; willfully violates these rules, the Federal Rules of

Criminal Procedure, or orders of the Court; or engages in other conduct unbecoming of a member of the bar of this Court. Prior to the imposition of discipline, the attorney shall be afforded an opportunity to show good cause, within such time as the Court shall prescribe, why the discipline should not be imposed. Upon the attorney's response to show cause, and after hearing, if requested and allowed by the district judge, or upon expiration of the time prescribed for a response if no response is made, the Court shall enter an appropriate order.

(ii) Suspension or disbarment

(A) Initiation of proceedings - Formal disciplinary proceedings leading up to possible suspension or disbarment shall be initiated by the issuance of an order to show cause, signed by the Chief Judge. Such order may be issued by the Court, on its own initiative or in response to allegations brought to the attention of the Court in a written complaint, if the Court determines further investigation is warranted. The Chief Judge may dismiss a complaint and refuse to issue an order to show cause if the complaint is found to be frivolous. The order to show cause issued by the Court shall include the specific facts that give rise to the proposed discipline, including the date, place and nature of the alleged misconduct, and the names of all persons involved. A copy of the order and any supporting documents shall be mailed to the attorney who is the subject of investigation. The attorney shall have twenty (20) days from the entry of the order in which to respond. The response shall contain a specific admission or denial of each of the factual allegations contained in the order and, in addition, a specific statement of facts on which the respondent relies, including all other material dates, places, persons and conduct, and all documents or other supporting evidence not previously filed with the order that are relevant to the charges of misconduct alleged. The response shall contain a specific request for a hearing, if so desired by the respondent.

(B) Hearing - A disciplinary hearing shall be held only when the attorney under investigation has requested such a hearing in a timely response.

- (1) Procedures - If it is determined that a hearing is necessary, the Chief Judge shall provide the attorney with written notice of the hearing a minimum of twenty (20) days before its scheduled date. The notice shall contain the date and location of the hearing and a statement that the attorney is entitled to be represented by counsel, to present witnesses and other evidence, and to confront and cross examine adverse witnesses.
- (2) Conduct of the hearing - The hearing shall be conducted by a panel of three judicial officers appointed by the Chief Judge, consisting of at least one active district judge. The other members of the panel may include senior judges and magistrate judges. Any judge who initiated the request for discipline or before whom the allegation giving rise to the request took place shall not be appointed to the panel. The presiding judicial officer shall have the authority to resolve all disputes on matters of procedure and evidence which arise during the course of the proceeding. The presiding judicial officer may appoint an attorney to assist in the preparation and presentation of the evidence supporting the allegations giving rise to the request for discipline. All witnesses shall testify under penalty of perjury. Such hearings shall be confidential and be recorded. A decision of a majority of the three judge panel shall be final and binding. A written order shall be prepared which shall include the findings of the panel and disposition of the disciplinary charges. The order shall be a matter of public record and be sent to the respondent and complainant.
- (3) Burden of proof - The conduct giving rise to the request for discipline shall be proven by a preponderance of the evidence.
- (4) Failure to appear - The failure of the respondent to appear at the hearing shall itself be grounds for discipline.

(iii) Reinstatement after expiration of court-imposed discipline - After expiration of a period of suspension imposed by this Court, an attorney may apply for reinstatement by filing an affidavit under LCrR 57.1(m)(iii). The application for reinstatement will be decided in accordance with the process set forth in that rule. Unless and until reinstated, a suspended attorney must not practice before this Court.

(l) Attorneys convicted of crimes

(i) Serious crimes

(A) When an attorney admitted to practice before this Court is convicted of a serious crime, the attorney is automatically suspended from practice in this Court without further action of the Court, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal. On receipt of written notice of conviction of a serious crime of an attorney admitted to practice before this Court, the Chief Judge shall enter an order suspending the attorney. The suspension shall continue until after final disposition of an appeal of the conviction, proceedings on remand after an appeal, and any disciplinary investigation and proceeding based on the conduct that resulted in the conviction. The Court shall serve a copy of the order on the attorney by certified mail.

(B) On application, the Chief Judge shall reinstate the attorney on a showing that:

(1) there is a jurisdictional deficiency that establishes that the suspension may not properly be ordered; such as that the crime did not constitute a serious crime or that the attorney is not the individual convicted; or

(2) the conviction has been reversed and there is no likelihood of further criminal prosecution or disciplinary action related to the conduct that resulted in the conviction. A reinstatement will not terminate any disciplinary investigation or proceeding based on the conduct that resulted in the conviction.

- (ii) Other crimes - If the Court receives written notice of conviction of an attorney admitted to practice before this Court of a crime not constituting a serious crime, the matter shall be referred to the Chief Judge who may initiate proceedings under subsection (k)(i) or (ii) of this rule.
 - (iii) Obligations to report conviction - An attorney admitted to practice before this Court shall, on being convicted of any crime, immediately inform the Clerk. If the conviction was in this Court, the attorney shall also provide to the Clerk a list of all other jurisdictions in which the attorney is admitted to practice. An attorney knowingly violating this provision may, on notice and after hearing, be charged with criminal contempt.
- (m) Discipline by other jurisdictions
- (i) Reciprocal discipline
 - (A) On receipt of written notice that another jurisdiction entered an order of discipline against an attorney admitted to practice in this Court, the Chief Judge shall enter an order imposing the same discipline, effective as of the date that the discipline was effective in the other jurisdiction. If the discipline imposed in the other jurisdiction has been stayed there, the Court shall defer reciprocal discipline until the stay expires.
 - (B) When this Court enters an order of discipline against an attorney, the attorney shall provide to the Clerk a list of all other jurisdictions in which the attorney is admitted to practice.
 - (ii) Application to modify reciprocal discipline
 - (A) Within 30 days after the effective date of the order of discipline in this Court, the attorney may apply to the Chief Judge for modification or vacation of the discipline.
 - (B) The Chief Judge shall modify or vacate the discipline if, on the record supporting the order of discipline in the other jurisdiction, the attorney demonstrates or the Chief Judge finds that it clearly appears that:

- (1) the procedure in the other jurisdiction constituted a deprivation of due process;
- (2) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not accept as final the conclusion on that subject;
- (3) imposing the same discipline in this Court would result in grave injustice; or
- (4) the misconduct warrants substantially different discipline.

If the Chief Judge determines that any of these grounds exist, the Chief Judge shall order other appropriate discipline or no discipline.

(iii) Reinstatement after expiration of discipline

- (A) An attorney may apply for reinstatement by filing an affidavit of reinstatement stating that the jurisdiction that entered the underlying order of discipline has reinstated the attorney. The Chief Judge shall assign such applications to a panel of three judicial officers consisting of at least one active district judge. The other members of the panel may include senior judges and magistrate judges. Any judge who initiated the request for discipline or before whom the allegation giving rise to request for discipline took place shall not be appointed to the panel. A decision of the majority of the three judge panel shall be final and binding.
- (B) The judicial officers assigned to the matter shall within 30 days after assignment schedule a hearing at which the attorney shall have the burden of demonstrating by clear and convincing evidence that:
 - (1) the attorney has complied with the orders of discipline of this Court and all other disciplinary authorities;
 - (2) the attorney has not practiced in this Court during the period of disbarment or suspension and has not practiced law contrary to any other order of discipline;

- (3) the attorney has not engaged in any other professional misconduct since disbarment or suspension;
- (4) the attorney has the moral qualifications, competency and learning in the law required for admission to practice law before this Court; and
- (5) the attorney's resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

The Court may condition reinstatement on payment of all or part of the costs of the proceedings in this Court and may impose any of the conditions of reinstatement imposed in the other jurisdiction, or such other conditions as are warranted.

- (C) An attorney shall not file an application for reinstatement under this Rule within one year following denial of such an application.

(iv) Obligation to report discipline

- (A) An attorney admitted to practice before this Court appearing or participating in a pending matter shall, on being subjected to an order of discipline, immediately inform the Clerk of the order of discipline.
- (B) An attorney admitted to practice before this Court shall, before appearing or participating in a matter in the Court after being subjected to an order of discipline that has not previously been reported to the Court, immediately inform the Clerk of the order of discipline.
- (C) An attorney knowingly violating this provision may be charged with criminal contempt.

(n) Resignation in other jurisdictions

- (i) If an attorney resigns from the bar of another court of the United States while an investigation into allegations of misconduct is pending:

- (A) the attorney shall immediately and automatically be disbarred from this Court; and
 - (B) the attorney shall promptly inform the Clerk of the resignation. An attorney knowingly violating this notification provision may be charged with criminal contempt.
- (ii) On receipt of written notice that an attorney has resigned from the bar of another court of the United States or the bar of a state while an investigation into allegations of misconduct was pending, the Chief Judge shall enter an order disbaring the attorney, effective as of the date of resignation in the other jurisdiction.
 - (iii) An attorney disbarred under this subsection may apply to the Chief Judge for modification or vacation of the disbarment pursuant to LCivR 83.1(m)(ii).
 - (iv) An attorney disbarred under this subsection may be reinstated if the attorney is readmitted in the jurisdiction from which the attorney resigned and there has been a final disposition of the investigation into allegations of misconduct without an order of discipline.
- (o) Service of papers - Service of papers on an attorney under this Rule may be by mail to the address of the attorney shown on the Court's roll of attorneys or the address in the most recent paper the attorney filed in a proceeding in this Court.
 - (p) Duties of the Clerk
 - (i) On being informed that an attorney admitted to practice before this Court has been convicted of a crime, the Clerk shall determine whether the Court in which the conviction occurred sent a certificate of the conviction to this Court. If not, the Clerk shall promptly obtain a certificate and file it with the Court.
 - (ii) On being informed that another court or a state has entered an order of discipline against an attorney admitted to practice before this Court, the Clerk shall determine whether a certified copy of the order has been filed with this Court. If not, the Clerk shall promptly obtain a certified copy of the order and file it with the Court.
 - (iii) When this Court convicts an attorney of a crime or enters an order

of discipline against an attorney, the Clerk shall promptly notify the National Discipline Data Bank operated by the American Bar Association and any other authority that licensed or authorized the attorney to practice.

- (q) Other authority - Nothing in this Rule abridges the Court' s power to control proceedings before it, including the power to initiate proceedings for contempt under Fed. R. Crim. P. 42 or sanction or disqualify an attorney in a particular case.

57.2 Magistrate judges

- (a) Determination of nondispositive pretrial matters - 28 U.S.C. § 636(b)(1)(A) - A magistrate judge may hear and determine any procedural or discovery motion or other pretrial matters, other than motions to dismiss or quash an indictment or information made by a defendant and motions to suppress evidence.
- (b) Recommendations regarding case-dispositive motions - 28 U.S.C. § 636(b)(1)(B) - A magistrate judge may submit to a judge of the Court a report containing proposed findings of fact and recommendations for disposition by the judge of motions to dismiss or quash an indictment or information made against a defendant or motions to suppress evidence. A magistrate judge may determine any preliminary matters and conduct evidentiary hearing or other proceeding in connection with such recommendations.
- (c) Other duties - A magistrate judge is also authorized to:
 - (i) exercise all authority conferred upon United States magistrate judges by the Federal Rules of Criminal Procedure;
 - (ii) conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in cases;
 - (iii) conduct all nondispositive proceedings in cases not triable to the magistrate judge, including initial appearances, bond hearings, detention hearings, hearings on motion to revoke bond, arraignments, the taking of not-guilty pleas and the entering of not-guilty pleas for defendants standing mute;

- (iv) impanel grand juries, and receive grand jury returns in accordance with Rule 6(f) of the Federal Rules of Criminal Procedure;
- (v) accept waivers of indictment and waivers of counsel;
- (vi) conduct voir dire and select petit juries to the extent allowed by law;
- (vii) accept petit jury verdicts in cases in the absence of a judge;
- (viii) conduct necessary proceedings leading to the potential revocation of probation;
- (ix) issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties witnesses or evidence needed for investigations or for court proceedings;
- (x) order the exoneration or forfeiture of bonds;
- (xi) perform the functions specified in 18 U.S.C. §§ 4107, 4108, and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein;
- (xii) issue summons, search warrants, orders or other process authorizing agents and officers of the Internal Revenue Service or other authorized persons to enter premises and to make such search as is necessary in order to levy and seize property pursuant to Section 6331 of the Internal Revenue Code or other applicable provision of law;
- (xiii) conduct proceedings in accordance with 26 U.S.C. §§ 7402(b) and 7604(b) regarding enforcement of Internal Revenue Service summonses;
- (xiv) conduct extradition proceedings in accordance with 18 U.S.C. § 3184;
- (xv) preside over the acceptance of guilty pleas in felony prosecutions in the circumstances allowed by LCrR 11; and

- (xvi) perform any additional duty not inconsistent with the Constitution and laws of the United States.
- (d) Appeal from judgments in misdemeanor cases - 18 U.S.C. § 3402 - A defendant may appeal a judgment of conviction by a magistrate judge in a misdemeanor case by filing a notice of appeal within ten (10) days after entry of the judgment, and by serving a copy of the notice upon the United States Attorney. If the case was previously assigned to a district judge, that judge shall hear any appeal from the decision of the magistrate judge; otherwise, the appeal shall be assigned to a district judge at random. The scope of appeal shall be the same as on an appeal from a judgment of the District Court to the Court of Appeals.
- (e) Appeals from other orders of a magistrate judge - Appeals from any other decisions and orders of a magistrate judge not provided for in this rule should be taken as provided by governing statute, rule, or decisional law. Such appeals shall be taken in accordance with the procedures set forth in LCivR 72.3.

57.3 Miscellaneous

- (a) Amendment - These rules may be amended by a majority vote of the judges of this district in conformity with Rule 57 of the Federal Rules of Criminal Procedure.
- (b) Probation office - No employee of the U.S. Probation Office shall, except as required by law, disclose to any person or organization any information obtained or maintained pursuant to official duties. Any order, subpoena or other demand for the testimony of a probation officer or the official records of the Probation Office must be made in accordance with the procedures set forth in the applicable Regulations of the Judicial Conference of the United States. Whenever a probation officer of this Court is served with an order, subpoena or other demand for testimony or the production of confidential presentence or probation records, the probation officer must not provide testimony or access to official records without the prior written approval of the Chief Probation Officer. Except when the request is made by a federal or state probation or parole officer, the Chief Probation Officer must consult with the Chief Judge of this Court regarding the proper response to the order, subpoena, or other demand. This rule does not apply to officers' testimony before this Court.

- (c) Bonds and sureties - In all proceedings the Clerk shall accept as surety upon bonds and other undertakings a surety company approved by the United States Department of Treasury, cash or an individual personal surety residing within the district. The Clerk shall maintain a list of approved surety companies. Any personal surety must qualify as the owner of real estate within this district of the full net value of twice the face amount of the bond. Attorneys or other officers of this Court shall not serve as sureties. This rule shall apply to supersedeas bonds and any other bonds required by law.
- (d) Appearance - An attorney appears by filing any pleading or other paper or by acknowledging in court that the attorney acts in the proceeding on behalf of a party. The appearance of an attorney is deemed to be the appearance of the law firm. Any attorney in the firm may be required by the Court to conduct a court-ordered conference or trial. Withdrawal of appearance may be accomplished only by leave of court.
- (e) Courthouse conduct
 - (i) Solicitation - Solicitation of business relating to bail bonds or to employment as counsel is prohibited in the courthouse.
 - (ii) Loitering - Loitering in or about the rooms or corridors of the courthouse is prohibited. Any behavior, group or individual, which impedes or disrupts the orderly conduct of the business of the Court is prohibited.
 - (iii) Signs - Cards, signs, placards, or banners shall not be brought into any of the courtrooms or hallways leading to courtrooms or on any floor in which courtrooms are located.
 - (iv) Enforcement - The United States Marshal, deputy marshals, and the authorized employees of the courthouse shall enforce this rule by ejecting violators from the courthouse or by causing them to appear before one of the judges of this Court for a hearing and for imposition of such punishment as the Court may deem proper.
 - (v) Photography and recording - The taking of photographs in any office, courtroom or its environs in connection with any judicial proceedings, the broadcast of judicial proceedings by radio, television or other means, or the audio recording

of judicial proceedings are prohibited, except that the judicial officer in whose courtroom the proceedings occur may authorize: (1) the use of electronic or photographic means for the preservation or presentation of evidence; and (2) the broadcasting, televising, recording or photographing of investitive, ceremonial or naturalization proceedings.

- (f) Other matters - All other matters scheduled before a judge shall be scheduled by the judge's case manager, who shall notify all parties or counsel of scheduled dates and the purpose of all court appearances.
- (g) Writs of habeas corpus - All writs of habeas corpus ad prosequendum or testificandum for an individual shall, in addition to stating a specific date and time, include the following phrase: "and at such other times and dates as the Court may decree." Further, every effort shall be made to allow ten (10) working days after service prior to the required appearance.
- (h) Suppression orders - For good cause shown, any party may obtain a protective order for the suppression of any action or of any pleading or other paper. Upon the entry of a suppression order, the Clerk shall prevent all persons, except those designated by the Court, from having access to the suppressed material.
- (i) Payment to court reporters - All parties, except defendants represented by CJA counsel, ordering a transcript must pay in advance by cash or certified check unless the court reporter agrees to other arrangements.

Local Criminal Rule 58. Misdemeanors; petty offenses and collateral forfeitures

58.1 Disposition of misdemeanor cases - 18 U.S.C. § 3401 - Each magistrate judge of this Court is empowered to exercise all jurisdiction conferred by 18 U.S.C. § 3401, including jurisdiction to:

- (a) try persons accused of, and sentence persons convicted of, misdemeanors in this District, after receiving such consent as may be required by 18 U.S.C. § 3401;
- (b) direct the probation service of the Court to conduct a presentence investigation in such misdemeanor case;
- (c) conduct a jury trial in any misdemeanor case where the defendant so requests and is entitled to trial by jury under the Constitution and laws of the United States; and
- (d) conduct all post judgment proceedings, including petitions to revoke or modify probation or supervised release, for any misdemeanor defendant who was originally sentenced by a magistrate judge.

58.2 Petty offenses and collateral forfeitures

- (a) Posting collateral in lieu of appearance - A person who is charged with a violation of a Federal Wildlife Act, parking regulations governing the Federal Building, National Forest Offenses, Conduct on Postal Service Property, Violation of Law on Military Property or any other petty offense as defined in 18 U.S.C. § 1(3), may, in lieu of appearance, post collateral in the amount indicated for the offense, waive appearance before a United States magistrate judge, and consent to the forfeiture of collateral to the United States. The posting of said collateral shall signify that the offender does not contest the charge or request a hearing before the designated United States magistrate judge. If the collateral is forfeited, such action shall be tantamount to a finding of guilty. Collateral will be permitted only for those offenses specifically authorized by the Court in separate orders. There shall be maintained in the office of the Clerk and with each United States magistrate judge a current list of the petty offenses and collateral applicable thereto which the Court has established as collateral forfeiture offenses.

Criminal Rule 58

- (b) Failure to post and forfeit collateral - If a person charged with an offense under this rule fails to post and forfeit collateral, any punishment, including fine, imprisonment or probation, may be imposed within the limits established by law upon conviction or after trial.
- (c) Aggravated offenses - If, within the discretion of the law enforcement officer, the offense is of an aggravated nature, the law enforcement officer may require appearance, and any punishment including fine, imprisonment or probation, may be imposed within the limits established by law upon conviction or after trial.
- (d) Appearance required - Nothing contained in this rule shall prohibit law enforcement officers from arresting a person for the commission of any offense, including those for which collateral may be posted and forfeited, and requiring the person charged to appear before a United States magistrate judge or, upon arrest, taking the person immediately before a United States magistrate judge.