LOCAL RULES

United States District Court
Southern District of Alabama

Effective August 1, 2015

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INTRODUCTION

The Local Rules are divided into three parts: (1) General Local Rules applicable to civil and criminal cases; (2) Civil Local Rules applicable only to civil cases; and (3) Criminal Local Rules applicable only to criminal cases. Each part begins with a Rule defining its scope.

Following the recommendation of the Judicial Conference, the numbering of the General and the Civil Local Rules has been tied to the Federal Rules of Civil Procedure and, in the case of the Criminal Local Rules, to the Federal Rules of Criminal Procedure.

Some of the Local Rules are similar to certain Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure. The Local Rules do not, however, repeat the Federal Rules in their entirety, and practitioners are advised to consult both the Local Rules and the applicable Federal Rules. These Local Rules have been adopted pursuant to the authority of 28 U.S.C. § 2071, Rule 83 of the Federal Rules of Civil Procedure, and Rule 57 of the Federal Rules of Criminal Procedure.

PART A. GENERAL RULES

I. SCOPE OF RULES; FORM OF ACTION

General L.R. 1. Scope and Purpose of Rules

(a) The General Rules set forth in Part A govern both civil and criminal proceedings in this District. The Rules set forth in Part B govern civil proceedings in this District. The Rules set forth in Part C govern criminal and petty offense proceedings in this District. The Rules are to be cited as follows: "S.D. Ala. GenLR ___"; "S.D. Ala. CivLR ___"; and "S.D. Ala. CrLR ___."

(b) These Rules are intended to supplement the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and other controlling statutes and rules. They shall be applied, construed, and enforced to avoid inconsistency with other governing statutes and rules, and shall be employed to provide fairness and simplicity in procedure to avoid technical and unjustified delay and to secure a just, expeditious, and inexpensive determination of all proceedings.

(c) In these Rules, "Court" includes both District Judges and Magistrate Judges; "Judge," without specifying "District" or "Magistrate," includes both; "Clerk" means the Clerk of the District Court and includes Deputy Clerks of Court; and "Marshal" means the United States Marshal and includes Deputy Marshals.

(d) Any Judge may, in the interests of justice in a particular case, suspend application and enforcement of any Local Rule or any portion thereof.

(e) Subject to the review of the District Court, the Bankruptcy Court for the Southern District of Alabama is authorized to make and amend rules governing practice and procedure in all actions within its jurisdiction. Any rules made pursuant to this authorization must be consistent with Bankruptcy Rule 9029, as well as Fed. R. Civ. P. 83, and may not limit the use of the Official Forms.

General L.R. 1.1. Procedures for Individual Judges

The Judges of this Court have adopted individual Orders Governing Final Pretrial Conference, copies of which are available from the Clerk and on the Court's website. Some Judges also have adopted rules regarding courtroom decorum and other matters applicable to actions assigned to their dockets. Some of these rules have been reduced to writing. Attorneys should check with the Clerk to ascertain whether a particular Judge has any such printed rules.

II. PLEADINGS AND OTHER PAPERS

General L.R. 5. Serving and Filing Pleadings and Other Papers

(a) General Format of Papers Presented for Filing.

(1) Pleadings and other papers must be formatted for reproduction on 8-½" x 11" paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least 1" on all four sides. Page numbers may be placed in the margins, but no text or footnotes may appear there.

(2) All pleadings and other papers must use a plain, Roman style (or similar) font, although italics or boldface may be used for emphasis. Case names must be italicized or underlined. Font must be 12 point or larger, including footnotes.

(3) For filings by represented parties, at least one attorney appearing in the action shall sign each document filed. In addition, there shall be included directly beneath the signature line the typed or printed name, address, and telephone number of all attorneys of record representing that party.

(4) For filings by *pro se* litigants, the unrepresented party shall personally sign each document filed and shall include, directly beneath the signature line, his or her name, address and telephone number.

(5) The requirements of this subsection (a)(1) and (2) are not applicable when using a form approved and/or furnished by the Court.

(b) Electronic Filing.

(1) The Clerk is authorized to implement and publish Electronic Case Filing Procedures (titled "*Administrative Procedures for Filing, Signing, and Verifying Pleadings and Documents by Electronic Means*"), including the procedure for registration of attorneys and for the distribution of passwords to permit electronic filing, service and noticing of pleadings and other documents.

(2) All pleadings and other papers must be filed by electronic means unless exempted by law or the Electronic Case Filing Procedures or excused by the Court. The Court may make reasonable exemption from the electronic filing requirement.

(3) The electronic filing or signing of pleadings or other documents by an attorney who is a registered participant in the Electronic Case Filing System shall constitute the signature of that attorney under Fed. R. Civ. P. 11.

(4) No attorney shall knowingly permit, or cause to permit, his/her password to be utilized by anyone other than an authorized member or employee of his/her law firm.

(5) No person shall knowingly utilize or cause another person to utilize the password of a registered attorney, unless such person is an authorized member or employee of the law firm.

(6) The electronic filing of a pleading or other document in accordance with the Electronic Case Filing Procedures shall constitute entry of that pleading or other document on the docket kept by the Clerk under Fed. R. Civ. P. 79.

(7) The Clerk shall enter all orders, decrees, judgments, and proceedings of the Court in accordance with the Electronic Case Filing Procedures, which shall constitute entry of the order, decree, judgment, or proceeding on the docket kept by the Clerk under Fed. R. Civ. P. 58 and Fed. R. Crim. P. 55.

(c) Non-Electronic Filing. If electronic filing is exempted or excused, the original of all papers must be filed conventionally. All papers filed by non-electronic means must be filed with the Clerk and not in the Judge's chambers. Except when the documents are deemed by the Clerk to be voluminous, the Clerk shall scan the original papers and enter them into the record electronically.

(d) Service.

(1) Whenever pleadings or other documents are filed electronically in accordance with the Electronic Case Filing Procedures, the Clerk shall serve the filing party, and all other parties whose attorney of record is a registered participant in the Electronic Case Filing System, with a "Notice of Electronic Filing" by electronic means at the time of docketing.

(2) The filing party shall serve the pleadings or other documents upon all persons entitled to notice or service in accordance with the applicable Rules. When service by first-class mail is permitted under the Rules, the filing party may make service in accordance with sub-paragraph (d)(3) below.

(3) If the recipient of notice or service is a registered participant in the Electronic Case Filing System, service by electronic means of the Notice of

Electronic Filing shall be the equivalent of service by first-class mail, postage prepaid.

(4) A separate certificate of service is not required for papers served electronically if all parties were served through the Court's Electronic Case Filing System.

(5) Service by electronic means is complete on transmission.

(6) Service by electronic means is not effective if the party making service learns that the attempted service did not reach the person to be served.

(7) Participation in the Electronic Case Filing System by receipt of a password from the Court shall constitute a request for service and notice electronically pursuant to Fed. R. Civ. P. 5(b)(2)(E) and Fed. R. Crim. P. 49. Participants in the Electronic Case Filing System, by receiving a password from the Court, agree to receive service by electronic means.

General L.R. 5.2. Sealed Documents

The following procedures govern documents under seal in criminal and civil cases in this District.

(a) General. A "sealed document" is a document access to which, other than by the Court or its authorized personnel, is prohibited or restricted. Portions of a document cannot be filed or placed under seal - only the entire document may be sealed. No sealed document may be unsealed or disclosed except upon order of the Court or in compliance with this Rule.

(b) Procedures for Filing a Sealed Document.

(1) Format. Any sealed document must be filed and conspicuously labeled "SEALED."

(2) Motion to Seal. To obtain a sealing order, a party must file an unsealed written motion containing:

(A) A generic, non-confidential identification of the document to be sealed;

(B) The basis upon which the party seeks the order, including the reasons why alternatives to sealing are inadequate; and

(C) The duration for which sealing is requested.

The moving party also must file to the motion a proposed unsealed order granting the motion and setting forth the basis for the Court's action.

The moving party also must file, *in camera and under seal*, the document proposed to be sealed. The CM/ECF "Sealed Document(s)" event may be used for this filing. The document will be kept under seal by the Clerk, pending a decision by the Court on the motion. If the motion to seal is denied, the Clerk will delete the document from the Electronic Case Filing System and return any conventionally filed document to the party, unless the Court orders otherwise.

(3) Public Notice of Motion to Seal or Sealing Order. A motion to seal, and any order to seal, must be docketed according to the Administrative Procedures of the Court.

(4) Objection to Sealing. Any person or entity, whether a party or not, may object to a motion to seal a document or may file a motion to unseal a document previously sealed.

(5) Agreement by Parties. These provisions do not limit the ability of the parties, by agreement, to restrict access to documents that are not filed with the Court. Any agreement calling for the sealing of any document to be filed with the Court is subject to the provisions of this Rule.

(6) Extension of Sealing. No order to seal will be extended except upon a subsequent order of the Court obtained in accordance with this Rule.

(7) Sealed Case. No case may be sealed in its entirety except by order of the Court obtained in accordance with this Rule and applicable law.

(c) Exceptions.

(1) No motion or order is required to file the following under seal:

(A) An unredacted version of a document containing personal data identifiers, filed in compliance with these Rules, the Federal Rules of Procedure, or the E-Government Act;

(B) An ex parte motion or application where sealing is permitted or required by law;

(C) Presentence investigation reports, pretrial services reports, psychiatric or psychological evaluations in criminal cases, including documents incorporating the content of the foregoing documents;

(D) Affidavits submitted in support of a motion for *in forma pauperis* status;

(E) Motions, orders, notices, and other matters occurring before the grand jury, subject to the provisions of Fed. R. Crim. P. 6;

(F) Applications and orders for the disclosure of tax information (26 U.S.C. § 6103);

(G) Motions and orders involving the Classified Information Procedures Act (18 U.S.C. app 3 §§ 1-16) or Foreign Intelligence Surveillance Act (50 U.S.C. § 1801);

(H) Pleadings and documents involving the Juvenile Delinquency Act;

(I) Requests and orders for authorization of investigative, expert, or other services pursuant to the Criminal Justice Act; or

(J) Other documents required by law to be filed under seal.

(2) No *publicly filed* motion or order under this Rule is required for sealing the following:

(A) Motion by the United States for a downward departure or reduction of sentence in a criminal case, with leave of Court upon a showing of particular need in an individual case to prevent serious harm; or

(B) Search, seizure, and arrest warrants and affidavits.

(3) A publicly filed motion and order citing only the statutory authority for sealing is required for the following:

(A) Applications and orders for pen/trap devices (18 U.S.C. § 2703); and

(B) Applications and orders for wire, oral, or electronic communication interception (18 U.S.C. § 2516).

(d) Unsealing. Unless the Court orders otherwise, the Clerk will unseal the following sealed documents when indicated:

(1) Search Warrant. After the search is executed and the warrant is returned to the Clerk.

(2) Arrest Warrant, and In a Violation Case, Any Violation Report. After the arrest is made.

(3) Indictment. Upon the arrest or appearance of a single Defendant. In multi-Defendant cases, and unless the Court orders otherwise, upon the earliest of any of the following:

(A) Ten (10) days following the arrest of any Defendant;

(B) Thirty (30) days after return of the indictment; or

(C) When all Defendants have been arrested or summoned.

In criminal cases, each Defendant must be provided with a copy of the charges against that Defendant (with other portions redacted, if necessary), even if the indictment or complaint is otherwise sealed. In multi-Defendant cases in which the indictment is to remain sealed, the government is responsible for submitting to the Magistrate Judge for approval, reasonably in advance of the initial appearance, an appropriately redacted indictment for disclosure to the Defendant and to the public.

(4) Criminal Complaint. Thirty (30) days after issuance or when all Defendants named are in custody or have been summoned, whichever is the earliest.

(5) Other Sealed Documents. The documents will be unsealed 120 days from the date of entry of the sealing order, unless the Court by order provides otherwise.

General L.R. 7. Requests for Court Action

A request for Court action must be presented by motion and may not be presented by informal means such as a letter.

III. DISCLOSURES AND DISCOVERY [Reserved]

IV. TRIAL

General L.R. 43. Examining Witnesses

Unless otherwise ordered, only one attorney for each party may examine or cross-examine a witness.

General L.R. 47. Selecting Jurors

(a) *Voir Dire* of Prospective Jurors. The Court may conduct the *voir dire* examination of prospective jurors or permit the parties to do so. When the Court conducts *voir* dire, the parties may submit written proposed questions to the Court and may request additional questions in light of prospective jurors' responses to the Court's examination.

(b) Juror Questionnaires. Juror questionnaires shall be available for inspection from the Clerk on the Thursday before jury selection is scheduled to commence. The information contained in the questionnaires is to be used for purposes of jury selection only. Only counsel, employees of counsel, and the parties are authorized to view juror information. Absent a Court order, this information shall not be disclosed to others and shall be destroyed after jury selection is complete.

The attorneys and *pro se* parties are expected to examine the juror questionnaires available in the Jury Section of the Clerk's Office prior to jury selection in order to become familiar with each potential venire person's background, occupation, etc. During the jury selection proceedings, the Court will have each venire member identified by number only, thus enabling the parties to match each potential juror with his/her background information.

(c) Jury Selection Procedure. A venire shall be drawn according to the Court's plan for the qualification and random selection of petit jurors. Once the Judge or a Deputy Clerk, in the presence of all parties and their counsel, has generally qualified the venire, a panel of prospective jurors will be identified for each particular action. After questioning the members of the panel and resolving all strikes for cause, the Court will ask the parties to exercise their peremptory strikes simultaneously and in writing. Beginning with the first qualified juror remaining on the panel, the strike list will contain a sufficient number of prospective jurors necessary to establish a jury of a predetermined size once the parties have had an opportunity to use all authorized peremptory strikes. If all strikes are not used, or if any of the strikes overlap, resulting in more qualified jurors available for service than are needed, the jury will be composed of the previously determined number of jurors beginning with the first juror on the list. The time necessary for the parties to produce their lists of peremptory strikes is ten (10) minutes, unless, for good cause shown, the Court extends that time. Once all strikes have been recorded, the parties shall be afforded an opportunity to review the strikes of any opposing party in order to present any objections or motions related to those strikes. Once any and all objections or motions are resolved, the Deputy Clerk shall be asked to seat the jury. After the Deputy Clerk has identified and seated the jury, the parties

shall be prepared to confirm that the jury seated in the jury box is the jury that was selected.

(d) Peremptory Challenges. Each party shall be entitled to the number of peremptory challenges authorized by 28 U.S.C. § 1870 in civil cases and by Fed. R. Crim. P. 24 in criminal cases. Within the discretion of the Judge, additional peremptory challenges may be allowed in any case. In civil cases where there are multiple Plaintiffs or Defendants, requests for additional peremptory challenges shall be filed no later than the final pretrial conference. In criminal cases involving multiple Defendants, the Judge may allow additional challenges and authorize the Defendants to exercise those challenges separately or jointly, so long as they are requested at least seven (7) days in advance of jury selection.

(e) Communications with Jurors. Parties, attorneys, and the agents or employees of parties or attorneys may not approach, interview, or communicate with a venire member or juror before, during, or after trial, except with leave of Court. Such leave may be granted only upon notice to opposing counsel (or *pro se* opponent) and a showing of good cause. A juror must be advised at the outset of any communication that his or her participation is voluntary. Any juror contact permitted by the Court under this Rule is subject to the Court's control.

General L.R. 51. Instructions to the Jury

The parties must submit any proposed written jury instructions and, if required, a written form of verdict before the commencement of trial on a schedule established by the trial Judge. Further instructions may be submitted after the commencement of trial only as permitted by the Court.

V. MAGISTRATE JUDGES

General L.R. 72. Duties Under 28 U.S.C. § 636(a) and (b)

(a) Authorized Duties.

(1) Magistrate Judges are authorized to exercise all of the powers and duties set forth in 28 U.S.C. § 636(a) and (b) and are authorized to perform any and all additional duties as may be assigned from time to time, consistent with the Constitution and laws of the United States.

(2) The duties authorized to be performed by Magistrate Judges, when assigned to them pursuant to Local Rule 72(b), include, but are not limited to:

(A) Issuing search warrants, Fed. R. Crim. P. 41, issuing seizure warrants, issuing warrants to install a tracking device, 18 U.S.C. § 3117 or Fed. R.

Crim. P. 41, issuing orders for disclosure of the contents of wire or electronic communications or records, 18 U.S.C. § 2703(d), issuing orders for a pen register or a trap and trace device, 18 U.S.C. §§ 3122-3123, and issuing administrative inspection warrants upon proper application meeting the requirements of applicable law;

(B) Issuing complaints and appropriate summonses or arrest warrants for the named Defendant, Fed. R. Crim. P. 4;

(C) Conducting initial appearance proceeding, Fed. R. Crim. P. 5;

(D) Appointing counsel for indigent persons, approving compensation and expense vouchers, and all other duties in conformance with the Court's Criminal Justice Act Plan;

(E) Conducting preliminary examinations, Fed. R. Crim. P. 5.1; 18 U.S.C. § 3060;

(F) Conducting removal hearings for Defendants charged in other Districts, including the issuance of warrants of removal, Fed. R. Crim. P. 40;

(G) Issuing writs of habeas corpus *ad testificandum* and habeas corpus *ad prosequendum*, 28 U.S.C. § 2241(c)(5);

(H) Releasing or detaining material witnesses, 18 U.S.C. § 3144;

(I) Issuing warrants and conducting extradition proceedings pursuant to 18 U.S.C. § 3184;

(J) Conducting proceedings for the discharge of indigent prisoners or persons imprisoned for debt under process or execution issued by a Federal Court, 28 U.S.C. § 2007;

(K) Issuing attachment or other orders to enforce obedience to an Internal Revenue Service summons to produce records or given testimony, 26 U.S.C. § 7604(b);

(L) Conducting post-indictment arraignments, accepting not guilty pleas, accepting guilty pleas in misdemeanor and other petty offense cases with the consent of the Defendant, when required, and the ordering of a presentence investigation report concerning any Defendant who expresses the desire to plead guilty, Fed. R. Crim. P. 10, 11(a), 32(c) & 58;

(M) Empaneling grand juries; accepting the return of an indictment by the grand jury; granting leave to the government to dismiss a criminal complaint; and dismissing a criminal complaint upon a finding of unnecessary delay in presenting a charge to the grand jury, filing an information against a Defendant, or bringing a Defendant to trial, Fed. R. Crim. P. 6(a) & 6(f), 48(a) & 48(b);

(N) Supervising and determining all pretrial proceedings and motions made in criminal cases including, without limitation, motions and orders made pursuant to Fed. R. Crim. P. 12, 12.2(c), 14-17.1, & 28, 18 U.S.C. § 4244, orders determining excludable time under 18 U.S.C. § 3161, and orders dismissing a complaint without prejudice for failure to return a timely indictment under 18 U.S.C. § 3162; except that a Magistrate Judge may not grant a motion to dismiss or quash an indictment or information, or a motion to suppress evidence, or any other case dispositive motion, but may make recommendations to the District Judge concerning them;

(O) Conducting hearings and issuing orders upon motions arising out of grand jury proceedings, including orders entered pursuant to 28 U.S.C. § 6003, and orders involving enforcement or modification of subpoenas, directing or regulating lineups, photographs, handwriting exemplars, fingerprinting, palm printing, voice identification, medical examinations, and the taking of blood, urine, fingernail, hair, and bodily secretion samples (with appropriate safeguards);

(P) Conducting hearings and issuing orders arising out of a motion for return of property pursuant to Fed. R. Crim. P. 41(g), except that, to the extent the motion is treated as a motion to suppress under Fed. R. Crim. P. 12, then it must be handled in accordance with subparagraph (2)(N) of this Rule;

(Q) Conducting preliminary hearings in all probation or supervised release revocation proceedings, and conducting final hearings for misdemeanors when the Defendant has previously consented to the exercise of jurisdiction by the Magistrate Judge, Fed. R. Crim. P. 32.1;

(R) Processing and reviewing habeas corpus petitions or applications filed pursuant to 28 U.S.C. § 2241, those filed by state prisoners pursuant to 28 U.S.C. § 2254, or by federal prisoners pursuant to 28 U.S.C. § 2255, and civil suits filed by state prisoners under 42 U.S.C. § 1983. Magistrate Judges have the authority to require responses, issue orders to show cause and any other orders necessary to develop a complete record, and to prepare a report and recommendation to the District Judge as to appropriate disposition of the application, petition, or claim;

(S) Supervising and determining all pretrial proceedings and motions made in civil cases including, without limitation, rulings upon all procedural and discovery motions, and conducting pretrial conferences; except that a Magistrate Judge (absent the consent of all affected parties) may not appoint a receiver, issue an injunctive order pursuant to Fed. R. Civ. P. 65, enter an order dismissing or permitting maintenance of a class action pursuant to Fed. R. Civ. P. 23, enter any order granting judgment on the pleadings or summary judgment, in whole or in part, pursuant to Fed. R. Civ. P. 12(c) or 56, enter an order of involuntary dismissal pursuant to Fed. R. Civ. P. 41(b) or (c), or enter any other order or judgment dispositive of a claim or defense, but may make reports and recommendations to that District Judge concerning them;

(T) Conducting mediation conferences, or other alternative dispute resolution (ADR) procedures, pursuant to the District's ADR Program;

(U) Conducting all proceedings in civil suits after judgment incident to the issuance of writs of replevin, garnishment, attachment, or execution pursuant to governing state or federal law, and conducting all proceedings and entering all necessary orders in aid of execution pursuant to Fed. R. Civ. P. 69;

(V) With the consent of the parties, presiding over the *voir dire* examination and empanelment of trial juries in civil and criminal cases and accepting jury verdicts in the absence of the District Judge;

(W) Processing and reviewing all suits instituted under any law of the United States providing for judicial review of final decisions of administrative officers or agencies on the basis of the record of administrative proceedings, and the preparation of a report and recommendation to the District Judge concerning the disposition of the case;

(X) Serving as a special master in accordance with Fed. R. Civ. P. 53;

(Y) In admiralty cases, entering orders:

(i) For the seizure and appointing substitute custodians of vessels or property seized *in rem*;

(ii) Fixing the amount of security pursuant to Rule E(5), Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, that must be posted by the claimant of a vessel or property seized *in rem*;

(iii) In limitation of liability proceedings, for monition and restraining orders, including approval of the *ad interim* stipulation filed with the complaint, establishment of the means of notice to potential claimants and a deadline for the filing of claims; and

(iv) To restrain further proceedings against the Plaintiff in limitation, except by means of the filing of a claim in the limitation proceedings;

(Z) Appointing persons to serve process pursuant to Fed. R. Civ. P. 4(c); and

(AA) Supervising proceedings conducted pursuant to letters rogatory or request in accordance with 28 U.S.C. § 1781.

(b) Assignment of Duties. The assignment of duties to the Magistrate Judges by the District Judges of the Court may be made by standing order entered collectively, or by any individual District Judge in any case assigned to the District Judge, through written order or oral directive, made or given with respect to such case or cases. In any case, the assigned District Judge may designate the Magistrate Judge to perform any or all of the duties authorized by 28 U.S.C. § 636(a) or (b) or by these Local Rules. The Clerk, in an electronic reference, shall refer all duties authorized by this Rule to the Magistrate Judges. This reference shall be sufficient notice to the parties that a particular matter has been referred to the Magistrate Judge for appropriate action.

(c) Objections to Magistrate Judge's Determination in Criminal Cases and in Civil Cases in Which the Parties Have Not Consented to Magistrate Judge Jurisdiction.

(1) In civil and criminal cases in which the parties have not consented to Magistrate Judge jurisdiction, objections to a determination by the Magistrate Judge are governed by Fed. R. Civ. P. 72 and Fed. R. Crim. P. 59.

(2) Any other party may serve and file a response to the objection within fourteen (14) days from the date of service of the objection, unless the Court sets a different deadline.

(3) Unless the Court orders otherwise, the objecting party may serve and file a reply within seven (7) days from the date of service of the response.

(d) Record of Proceedings Before Magistrate Judge.

(1) The Magistrate Judge must determine, after taking into account the complexity of the particular matter, whether the record must be taken down by a reporter or recorded by suitable sound equipment.

(2) Notwithstanding the Magistrate Judge's determination:

(A) The proceeding may be taken down by a reporter if any party so requests;

(B) The proceeding must be recorded by suitable sound equipment if all parties agree; and

(C) The Magistrate Judge may choose to make no record of the proceeding if all parties agree.

General L.R. 73. Duties Under 28 U.S.C. § 636(c)

(a) Authorized Duties. The Magistrate Judges in this District are designated to exercise the jurisdiction and authority provided by 28 U.S.C. § 636(c) upon the expressed consent of all parties and may conduct any or all proceedings, including a jury or non-jury trial, in a civil case.

(b) Transfer of Civil Cases to Magistrate Judges. In any case assigned to a District Judge pursuant to Civil Local Rule 3(b), if the parties consent to the Magistrate Judge's jurisdiction pursuant to 28 U.S.C. § 636(c) and follow the procedure set forth in General Local Rule 73(c)(4), the District Judge may refer the case to the Magistrate Judge by written order.

(c) Direct Assignment of Civil Cases to Magistrate Judges. The Clerk shall randomly assign to the full-time Magistrate Judges a percentage of the Court's total civil docket in an effort to enhance the opportunity for litigants to more fully utilize the services of the Magistrate Judges. The specific percentage of cases referred shall be set by the District Judges and may be changed from time to time in their discretion. The following procedure applies:

(1) The Clerk shall establish a method of randomly selecting civil cases for reference to the Magistrate Judges of this District. Once identified, the cases shall be referred to all Magistrate Judges on an equal rotation basis, with the total number referred not exceeding the percentage established by the District Judges.

(2) When an action is referred to a Magistrate Judge pursuant to this Rule, the Clerk shall notify all parties who have appeared by sending a Notice of Assignment of Case to a Magistrate Judge for Trial. In accordance with Fed. R. Civ. P. 4 and 5, it shall be the responsibility of Plaintiffs to immediately serve a copy of this Notice on those parties named as Defendants but who have not appeared.

(3) Prior to formal reference under sub-paragraph (4) of this Rule, any party to a referred action may obtain reassignment to a District Judge by sending the Clerk a Request for Reassignment to a United States District Judge for Trial and Disposition. The Clerk shall keep such requests confidential, and the identity of any party seeking reassignment shall not be revealed to either the District Judge or the Magistrate Judge. All parties are free to obtain reassignment in accordance with this sub-paragraph without the imposition of any adverse consequences.

(4) Should all parties in a referred action agree to authorize a Magistrate Judge to exercise consent jurisdiction, they shall execute and file a joint form of consent that complies with the requirements of the Consent to Exercise of Jurisdiction by a United States Magistrate Judge (Appendix of Forms). Upon the filing of this form, the action shall be referred to the appropriate District Judge for the entry of a formal reference, signifying his or her final approval of the reference.

(5) If the parties do not execute and file a joint consent form prior to the deadline established by the Magistrate Judge, the Clerk will reassign the action to a District Judge.

(6) In his or her discretion, the Magistrate Judge to whom any action is referred may order reassignment *sua sponte*. If, during the pendency of an action referred to a Magistrate Judge pursuant to this Rule, it is discovered that all parties have not executed a consent form and, further, that all parties have not agreed to consent jurisdiction, the action shall be reassigned.

(d) Appeals. In actions referred to the Magistrate Judges, they shall conduct all further proceedings, including a jury or non-jury trial, and shall order the entry of a final judgment in accordance with 28 U.S.C. § 636(c). Any appeal of a judgment entered by a Magistrate Judge in consent actions shall be taken directly to the Eleventh Circuit Court of Appeals as required by 28 U.S.C. § 636(c)(3).

VI. DISTRICT COURT AND CLERK

General L.R. 77. Place of Trial and Other Proceedings

As prescribed by 28 U.S.C. § 81, the Southern District of Alabama has two Divisions.

(a) Northern Division. The Northern Division is comprised of the counties of Dallas, Hale, Marengo, Perry, and Wilcox. Court for the Northern Division shall be held in Selma when ordered by the Court in a particular case.

(b) Southern Division. The Southern Division is comprised of the counties of Baldwin, Choctaw, Clarke, Conecuh, Escambia, Mobile, Monroe, and Washington. Court for the Southern Division shall be held in Mobile unless otherwise ordered by the Court in a particular case.

General L.R. 79. Custody of Files and Exhibits

(a) Clerk's Custody. In general, documents or physical items belonging to the Court's paper or electronic files remain in the Clerk's custody throughout a judicial proceeding.

(b) Viewing and Copying Court Files.

(1) Paper Files. The public may view files and documents in the Clerk's Office in Mobile, Alabama, between 8:00 a.m. and 4:30 p.m. on days when the Courthouse is open for business. Upon request, the Clerk will copy public documents for a fee as allowed by 28 U.S.C. § 1914.

(2) Electronic Files. Access to the electronic docket and documents filed in the Electronic Case Filing System is available to the public at no charge at the Clerk's Office in Mobile, Alabama, between 8:00 a.m. and 4:30 p.m. on days when the Courthouse is open for business. Fees to print a paper copy of an electronic filing and to obtain a certified copy of an electronically filed document are allowed by 28 U.S.C. § 1914.

(3) Payment for Copies. Payment must be made in cash, by credit card, check, or money order payable to "Clerk, U. S. District Court." Fees apply to copying services for the United States if the record or paper requested can be electronically accessed. The Clerk cannot make change for cash payments.

(c) Inspecting Physical Evidence. No one may inspect physical evidence in the Clerk's custody (including without limitation photographic negatives, tape recordings, contraband such as drugs and narcotics, firearms, ammunition,

currency, negotiable instruments, computer disks or tapes, and other items designated by a Judge) except while in the presence and under the control of the Clerk. The Clerk may limit or preclude access and copying in order to preserve evidence.

(d) Temporary Withdrawal of Paper Court Files, Exhibits, and Documents. Paper Court files, exhibits, documents, and transcripts may not be taken from the Clerk's Office or custody without a written order of the assigned Judge. To request permission to check out a Court file, exhibit, document, or transcript, a party must file a written motion. If the assigned Judge grants the motion, the party may have the Court file, exhibit, document, or transcript upon delivery of a receipt for the same to the Clerk. The party must return the Court file, exhibit, document, or transcript within seven (7) days (unless the Judge by order sets a different time), in the same condition and order in which it was received.

(e) Permanent Withdrawal of Files and Documents. Upon a showing of good cause, the Court may order an item in a file to be permanently withdrawn. The Clerk may require a party requesting withdrawal to provide a copy of the item for certification and a receipt for the original. The certified copy and receipt are filed in lieu of the original, and the party receiving the original must pay the Clerk any costs.

(f) Withdrawal, Retention, and Destruction of Trial Exhibits and Discovery Material at Case Conclusion.

(1) Withdrawal. Within fourteen (14) days after a trial is concluded (whether by verdict, mistrial, settlement, or otherwise), the offering party must withdraw all exhibits in the Clerk's custody and give the Clerk a receipt for the exhibits. The Clerk shall ensure that all exhibits of a sensitive nature (e.g., controlled substances, cash, counterfeit currency, precious stones and metals, weapons, ammunition, volatile, poisonous and hazardous substances, and all other exhibits which require special handling) are withdrawn by the offering party or investigating agency within the time set forth above. Within fourteen (14) days after a case is concluded (whether by judgment, order of dismissal, or otherwise), the offering party must withdraw all discovery material in the Clerk's custody and give the Clerk a receipt for such material.

(2) Destruction. Exhibits and discovery material filed with the Clerk and not withdrawn within sixty (60) days after a case is concluded may be disposed of by the Clerk.

(3) Duty to Retain Exhibits and Discovery Material.

A party must:

(A) A party must retain exhibits and discovery material withdrawn from the Clerk's custody for at least one (1) year after the judgment is final;

(B) Preserve the retained exhibits and discovery material in the same condition as when withdrawn;

(C) If an opposing party requests the exhibits or discovery material, make them available for examination and use at reasonable times and places;

(D) Upon request, promptly return the exhibits and discovery material to the Clerk; and

(E) In the event of an appeal, post-trial motion or post-judgment motion, it shall be the duty of the party, investigating agency or attorney to whom such exhibits and discovery material have been delivered to produce same as may be required for such appellate process or other further proceedings in the Court. In criminal cases, it shall also be the responsibility of the investigating agency or the United States Attorney to document the chain of custody for each returned exhibit for the period the exhibit was not in judicial custody.

(4) Sanctions. Sanctions may be awarded for the failure to abide by General Local Rule 79(f). Despite entry of judgment, the Court retains jurisdiction over the parties and attorneys for purposes of enforcing this Rule.

VII. GENERAL PROVISIONS

General L.R. 83.1. Courthouse Decorum

(a) Photographing, Broadcasting, and Recording. No one may take any interior photographs of, make any recordings in, or make any broadcasts from any courthouse without first obtaining permission from the Court. These prohibitions do not apply to ceremonial proceedings.

(b) Causing a Disturbance or Nuisance. Causing a disturbance or nuisance in any courthouse is prohibited.

(c) Contempt. The United States Attorney may enforce these prohibitions by seeking an order that requires any person who violates General Local Rule 83.1 to appear before a Judge to answer to a charge of contempt.

(d) Enforcement. The Marshal or a custodian of the courthouse may enforce General Local Rule 83.1 by ejecting violators or by referring the matter to the United States Attorney.

General L.R. 83.2. Appearing Before the Court

Unless appearing *pro se* or through counsel under General Local Rule 83.3(f) or (g), all parties to proceedings in this Court must appear by an attorney admitted to practice in this Court. Only natural persons may appear *pro se*.

General L.R. 83.3. Admission to Practice

(a) Bar of Court. The Bar of this Court consists of those persons previously admitted to (and not removed from) the Bar of this Court and of those persons who hereafter are admitted under this Rule.

(b) Procedure for Admission to Practice. Any attorney who is admitted to practice before the Supreme Court of Alabama may be admitted to the Bar of this Court upon the submission of an application, payment of the prescribed admission fee, and

(1) The order of a District Judge of this Court (on oral or written motion by a member of the Bar of this Court or on the Court's own motion), and the administering of the prescribed oath before any Judge (or other designee) of this Court; or

(2) The filing of a Certificate of Good Standing from the Clerk of the United States District Court for the District in which the applicant resides or regularly practices law.

(c) Renewed Application for Admission. Attorneys are required to renew their application for admission every five (5) years by submission of an application and payment of the prescribed fee.

(d) Admission *Pro Hac Vice*.

(1) Any attorney who is not a member of the Bar of this Court but who is admitted to practice before any United States Court for the District in which such person resides or regularly practices law, or the highest Court of any State or the District of Columbia, may, upon motion and payment of the prescribed admission fee, be admitted *pro hac vice* by an order of any District Judge, Magistrate Judge, or Bankruptcy Judge of this Court.

(2) The attorney must attach to his/her motion a Certificate of Good Standing, dated within thirty (30) days of the application for admission, from (i) a Federal Court described in sub-paragraph (d)(1) or, if the attorney is not admitted to practice in such a court, (ii) the highest Court of the State (or District of Columbia) where the attorney resides or regularly practices law.

(3) Any such attorney who appears as counsel by filing any pleading, document, or other paper in any case pending in this Court shall, contemporaneously with the filing of such papers, apply for admission *pro hac vice* as set out herein.

(e) Local Counsel. At any time, upon its own motion, the Court may require that a non-resident attorney obtain local counsel to assist in the conduct of the action.

(f) Appearance on Behalf of the United States. Any attorney representing the United States or any agency thereof, having the authority of the government to appear as its counsel, may appear specially and be heard in any case in which the government or such agency is a party, without formal or general admission.

(g) Appearance by the Federal Public Defender. Any attorney employed by the Federal Defender Office of this District may appear specially and be heard in any action in which the Federal Defender has been appointed without formal or general admission.

(h) Continuing Representation. Unless disbarred or suspended, attorneys shall be held at all times to represent the parties for whom they appear of record in the first instance until, after formal motion and notice to such parties and to opposing counsel, they are permitted by order of the Court to withdraw from such representation. The Court may, however, permit withdrawal without formal motion and notice if other counsel has entered an appearance for the party.

(i) Standards for Professional Conduct; Obligations. Attorneys appearing before this Court shall adhere to this Court's Local Rules, the Alabama Rules of Professional Conduct, and the Alabama Standards for Imposing Lawyer Discipline. Attorney misconduct, whether or not occurring in the course of an attorney/client relationship, may be disciplined by disbarment, suspension, reprimand, monetary sanctions, removal from this Court's roster of attorneys eligible for practice before it, or such other sanction as the Court may deem appropriate.

General L.R. 83.4. Attorney Discipline

(a) Discipline. When alleged attorney misconduct is brought to the attention of the Court, whether by a Judge, any lawyer admitted to practice before the Court, any officer or employee of the Court, or otherwise, the Court may, in its discretion, dispose of the matter through the use of its inherent, statutory, or other powers; refer the matter to an appropriate State Bar agency for investigation and disposition; refer the matter to the Local Grievance Committee as hereinafter defined; or take any other action the Court deems appropriate. These procedures are not mutually exclusive.

(b) Grievance Committee. The Judges of this Court may appoint a standing Committee of not less than five (5) members of the Bar to address alleged attorney misconduct. A majority of the Committee shall constitute a quorum.

(1) Purpose and Function. The purpose and function of such appointed Committee shall be to conduct, upon referral by the Court, investigations, inquiries, and hearings, where appropriate, of alleged misconduct of any member of the Bar of this Court; and to submit written findings and recommendations to the Court thereafter. Members of a Grievance Committee, while serving in their official capacities, shall be considered to be representatives of and acting under the powers and immunities of the Court, and shall enjoy such immunities while acting in good faith in such capacity.

(2) Powers of Committee. The Committee shall be vested with such powers as are necessary to conduct the proper and expeditious disposition of any matter referred by the Court, including the power to compel the attendance of witnesses, to take or cause to be taken the deposition of any witnesses, to secure the production of documentary evidence, and to administer oaths and those powers described elsewhere in these Rules.

(c) Disciplinary Proceedings.

(1) Preliminary Investigation. Upon referral of a disciplinary matter, the Committee shall conduct a preliminary investigation to determine whether a formal disciplinary proceeding should be initiated. If no such finding is made, the Committee shall file with the Court its written recommendations for disposition of the matter, whether by dismissal, admonition, deferral, or any other action. In cases of dismissal, the attorney who is the subject of the investigation need not be notified of the proceeding. All investigative reports, records, and recommendations generated by or on behalf of the Committee under such circumstances shall remain strictly confidential. Such reports, records, and recommendations shall be kept with the Clerk in a sealed

electronic file to be opened only upon written order of the Court and shall be destroyed five (5) years after final disposition of the matter.

(2) Probable Cause, Show Cause Order. Upon a finding that probable cause exists, the Committee shall file with the Court a written report of its investigation, stating with specificity the facts supporting its conclusions, and shall apply to the Court for issuance of an order requiring the attorney to show cause within 30 days after service of that order why the attorney should not be disciplined. The Court may, upon concurrence by a majority of its members, issue an appropriate show cause order. Such issued show cause order shall be accompanied by a copy of the Committee's written report for service upon the attorney. Such written report shall otherwise remain confidential.

(3) Rescission of Show Cause Order, Hearing. The Committee shall act on the attorney's response either by recommending the Court rescind its Order To Show Cause or by conducting a confidential hearing on the matter, affording the attorney an opportunity to be represented by counsel, to present witnesses and other evidence, and to confront and cross-examine witnesses in a proceeding guided by the spirit of the Federal Rules of Evidence. A record shall be made of all proceedings. Unless he or she asserts a privilege or right properly available under applicable Federal or State law, the attorney may be called as a witness by the Committee to make specific and complete disclosure of all matters material to the charge of misconduct.

(4) Recommendations. Upon completion of the proceeding, the Committee shall make its confidential written report and recommendation to the Court. The Committee shall include findings of fact as to the charges and recommendations regarding whether or not the accused attorney should be found guilty of misconduct justifying disciplinary actions by the Court, and recommendations as to the disciplinary measures to be applied by the Court. A record of the proceedings, which shall include an appropriate index, a transcript of the proceedings, all pleadings, and all evidentiary exhibits, shall accompany the report. A copy of the report and recommendation shall also be furnished to the attorney.

(5) Actions by Court. The Court, by majority vote of its Judges, shall take such further action as it deems appropriate.

(d) Conviction of Crime.

(1) Suspension. Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating an attorney has been convicted in a Court of competent jurisdiction of a felony or a misdemeanor involving moral

turpitude, the Court shall enter an order suspending the attorney, unless a majority of the Judges of the Court deem such a suspension contrary to the interests of justice. The suspension shall remain in effect until further order of the Court.

(2) Proceedings. The Court may also institute such proceedings, to include Grievance Committee proceedings, to determine the extent of final discipline to be imposed upon the attorney, provided the final proceedings shall not occur until all appeals from the conviction are concluded.

(3) Reinstatement, Proceedings Then Pending. A suspension hereunder shall be terminated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed. However, reinstatement shall not terminate any disciplinary proceedings then pending against the attorney, the disposition of which shall be determined by the Court utilizing the procedures herein.

(e) Discipline Imposed by Other Courts.

(1) Notification to Clerk. An attorney admitted to practice before this Court shall, upon being suspended, disbarred, or subjected to any form of public discipline by any other Court, promptly inform the Clerk of Court of such action. This Court, acting by a majority of its Judges, may refer this matter to a Grievance Committee or issue its order to the attorney to show cause, within thirty (30) days, why he or she should not be disciplined by this Court.

(2) Conclusiveness of Final Adjudication. A final adjudication in another Court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purpose of a disciplinary proceeding in this Court, unless the attorney clearly demonstrates to the Court's satisfaction that, upon the face of the record upon which the discipline in another jurisdiction is predicated:

(A) The procedure in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(B) There was such infirmity of proof establishing misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject.

(3) Actions by Court. The Court, acting upon the attorney's response to the Show Cause Order or upon the report and recommendation of a Grievance

Committee, if appointed, may take such further disciplinary action, as a majority of the Judges deem appropriate under the circumstances.

(f) Disbarment on Consent or Resignation in Other Courts.

(1) Notification to Clerk. Any attorney admitted to practice before the Court shall, upon being disbarred on consent or resigning from any other Bar while an investigation into allegations of misconduct is pending, promptly inform the Clerk of Court of such disbarment on consent or resignation.

(2) Removal from Roll of Attorneys. An attorney admitted to practice before this Court who shall be disbarred on consent or resign from any other Bar while an investigation into allegations of misconduct is pending shall, upon filing with this Court of a certified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this Court and be stricken from the roll of attorneys admitted to practice before this Court.

(g) Disbarment on Consent While Under Disciplinary Investigation or Prosecution, or Otherwise.

(1) Consent. Any attorney who desires to consent to disbarment by this Court for any reason, to include those related to allegations of misconduct, may consent to disbarment, but only upon delivery of an affidavit to this Court in such form and content as may be required to satisfy the Court that the consent to disbarment is:

(A) Freely and voluntarily rendered without coercion or duress and that the attorney is fully aware of the implications of so consenting; and

(B) For reasons recited within the affidavit, which the attorney acknowledges are true and form the basis for disbarment.

(2) Entry of Order of Disbarment. Upon receipt of the required affidavit, this Court shall enter its order of disbarment. However, the affidavit required pursuant to the provisions of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

(h) Incompetence or Incapacity.

(1) When it appears that an attorney, for whatever reason, is failing to perform at an adequate level of competence necessary to protect his/her client's interests, the Court shall be empowered to take such remedial action

as it deems appropriate to insure the attorney's maintenance of an adequate level of competency, to include, but not be restricted to:

(A) Appropriate referral of the affected attorney to such entities or parties as may assist the attorney in achieving necessary levels of competency;

(B) Limiting or restricting the attorney's practice before the Court; or

(C) Suspension from practice until compliance with competency levels is insured.

(2) Action by the Court relating to matters of attorney competency shall be taken by a majority vote of the Judges thereof after consideration of such response from the attorney, as the Court may deem appropriate.

(i) Reinstatement.

(1) After Disbarment or Suspension. An attorney suspended for three (3) months or less shall be automatically reinstated at the end of the period of suspension upon the filing with this Court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three (3) months, or disbarred, may not resume the practice of law before this Court until reinstated by order of the Court.

(2) Time of Application Following Disbarment. An attorney who has been disbarred after hearing or consent may not apply for reinstatement until the expiration of at least five (5) years from the effective date of disbarment.

(3) Hearing on Application. Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the Chief Judge of this Court. The Chief Judge may submit the petition to the Court or may, in his/her discretion, refer the petition to the Grievance Committee which shall, within thirty (30) days of the referral, schedule a hearing at which the petitioner shall have the burden of establishing by clear and convincing evidence that he or she has the moral qualifications, competency, and learning in the law required for admission to practice before this Court and that his/her resumption of the practice of law will not be detrimental to the integrity and standing of the Bar or the administration of justice, or subversive of the public interest. Upon completion of the hearing, the Committee shall make a full report to the Court. The Committee shall include its findings of fact as to the petitioner's fitness to resume the practice of law and its recommendations as to whether or not the petitioner should be reinstated.

(4) Conditions of Reinstatement. If, after consideration of the Committee's report and recommendation, the Court finds that the petitioner is unfit to resume the practice of law, the petition shall be dismissed. If, after consideration of the Committee's report and recommendation, the Court finds that the petitioner is fit to resume the practice of law, the Court shall reinstate the petitioner, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and on the making of partial or complete restitution to all parties harmed by the conduct that led to the suspension or disbarment. Provided further, that if the petitioner has been suspended or disbarred for five (5) years or more, reinstatement may be conditioned, in the discretion of the Court, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the Bar Examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment. Provided further, that reinstatement may be subject to any conditions that the Court in its discretion deems appropriate.

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

(6) Deposit for Costs of Proceedings. Petitions for reinstatement under this Rule shall be accompanied by a deposit in an amount to be set from time to time by the Court, in consultation with the Grievance Committee, to cover anticipated costs of the reinstatement proceeding.

(7) Oath and Fee Upon Reinstatement. Any attorney disbarred or suspended from practice in this Court and subsequently readmitted shall take the oath, pay the fee then prescribed, and sign the roll of attorneys for this District.

(j) Attorneys Specially Admitted Subject to Discipline. Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (*pro hac vice*), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct arising in the course of, or in the preparation for, such a proceeding which is a violation of this Court's Local Rules and/or the Rules of Professional Conduct adopted by this Court as provided in these Rules.

(k) Appointment of Counsel. Whenever, at the direction of the Court or upon request of the Grievance Committee, counsel is to be appointed pursuant to these Rules to investigate or assist in the investigation of misconduct, to prosecute or assist in the prosecution of disciplinary proceedings, or to assist in

the disposition of a reinstatement petition filed by a disciplined attorney, this Court, by a majority vote of its active Judges, may appoint as counsel any active member of the Bar of this Court, or may, in its discretion, appoint the disciplinary agency of the highest Court of the state wherein the Court sits, or other disciplinary agency having jurisdiction.

(l) Service of Paper and Other Notices. Service of an Order to Show Cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the affected attorney at the address shown on the roll of attorneys admitted to practice before this Court. Service of any other papers or notices required by these Rules shall be deemed to have been made if such paper or notice is addressed to the attorney at the address shown on the roll of attorneys admitted to practice before this Court; or to counsel or the respondent's attorney at the address indicated in the most recent pleading, document, or other paper filed by them in the course of any proceeding.

(m) Duties of the Clerk.

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

(2) Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another Court, the Clerk shall determine whether a certified or exemplified copy of the order has been filed with this Court, and, if not, the Clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this Court.

(3) Whenever it appears that any person, who has been convicted of any crime, or disbarred, suspended, censured, or disbarred on consent by this Court, is admitted to practice law in any other jurisdiction or before any other Court, the Clerk shall, within fourteen (14) days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other Court, a certificate of the conviction or a certified or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the disciplined attorney.

(4) The Clerk shall, likewise, promptly notify the National Lawyer Regulatory Data Bank operated by the American Bar Association of any order

imposing public discipline on any attorney admitted to practice before this Court.

(n) Retained Powers. Nothing contained in this Rule shall be construed to deny the Court its inherent power to maintain control over the proceedings conducted before it or to deny the Court those powers derived from statute, rules of procedure, or other rules of court.

(o) Sanctions. The Court may impose appropriate sanctions on any party or attorney who fails to comply with a Local Rule. The Local Rules are intended to be enforced primarily upon the Court's own initiative. A party should not file a motion seeking sanctions for alleged non-compliance with a Local Rule unless the alleged violation is egregious or unfairly prejudicial.

General L.R. 83.5. Persons Proceeding Without Counsel

(a) All persons proceeding *pro se* shall be bound by, and must comply with, all Local Rules of this Court, as well as the Federal Rules of Civil and Criminal Procedure, unless excused by Court order.

(b) Any person proceeding *pro se* must, at all times during the pendency of the action to which he or she is a party, keep the Clerk informed of his or her current address and telephone number. A *pro se* party must promptly notify the Clerk of any change of address or telephone number. Failure to comply with this Rule may result in sanction, including dismissal of a *pro se* plaintiff's action or entry of judgment against a *pro se* defendant.

General L.R. 84. Forms

The forms in the Appendix suffice under these Local Rules and illustrate the information that the Court deems necessary in those situations applicable to each form. When required by these Local Rules, the prescribed form must be utilized.

General L.R. 86. Effective Date

These General, Civil, and Criminal Local Rules are effective as of August 1, 2015 and, subject to General Local Rule 1(d), apply to all actions pending on that date.

General L.R. 87. Reference of Bankruptcy Matters

Pursuant to Title 28, United States Code, Section 157(a) and the General Order of reference entered July 10, 1984, all cases arising under Title 11 of the United States Code, and proceedings arising in or related to cases under Title 11, United

States Code, have been referred to the Bankruptcy Judges of this District and shall be commenced in the Bankruptcy Court pursuant to the Local Bankruptcy Rules.

PART B: CIVIL RULES

I. SCOPE OF RULES

Civil L.R. 1. Scope of Rules

The Civil Rules set forth in Part B govern all civil proceedings in this District.

II. COMMENCING AN ACTION; SERVICE OF PROCESS AND PAPERS

Civil L.R. 3. Commencing an Action

(a) Civil Cover Sheet. A Civil Cover Sheet (AO Form JS 44) must accompany each civil action or notice of removal presented for filing.

(b) Civil Case Assignments. Except as provided in General Local Rule 73(c), all civil cases are randomly assigned to both a District Judge and a Magistrate Judge. As provided in General Local Rule 73(b), the parties may in any case consent to the Magistrate Judge's jurisdiction.

(c) Assigning Related Actions. Where the Civil Cover Sheet discloses a pending related civil action, the new civil action will be assigned to the same Judges as the pending action. Factors to be considered in determining whether the actions are related include whether the actions arise from substantially the same transaction or events or involve substantially the same parties or property. The Judge to whom the action with the lower case number is assigned will resolve any dispute as to whether the actions are related.

(d) Re-Filed Actions. Whenever an action terminated by entry of a notice or order of dismissal is re-filed without a substantial change in issues or parties, it shall be assigned or transferred to the Judges to whom the original action was assigned, unless otherwise ordered by the Chief Judge.

Civil L.R. 4. Service of Process

(a) Unless otherwise ordered by the Court, the following procedures for service of process shall be followed in this District:

(1) Service by Summons. If service is completed by summons, the party or person making service shall file proof thereof within seven (7) days of the date of service.

(2) Waiver of Service. If service is waived, Plaintiff shall file the waiver of service with the Court within seven (7) days after receipt of the waiver.

(3) Notice of Service Attempt. If within forty-five (45) days after the filing of the Complaint, Plaintiff has neither completed service by summons nor received a waiver of service, Plaintiff shall file a notice describing the action taken by Plaintiff to complete service and the results of those efforts.

(b) Service Made by the Court. When the Court orders service under Fed. R. Civ. P. 4(c)(3), the Court shall utilize the procedures set forth in Standing Order No. 17 to ensure that service is completed in the most efficient and cost-effective manner.

Civil L.R. 5. Filing Discovery Materials and Exhibits

(a) Discovery Materials Filed with Motions. If discovery materials are germane to any motion or response, only the relevant portions of the material shall be filed with the motion or response.

(b) Notice to Clerk of Tendered Discovery. Whenever any discovery material is served, counsel shall contemporaneously file a notice identifying the date of service and the nature of the material.

(c) Duties of Custodian of Discovery. During the pendency of any action, the custodian of any discovery material shall provide all other parties reasonable access to the material and an opportunity to duplicate the material at the expense of the copying party. No other person may obtain a copy of any discovery material from its custodian except on motion and with leave of Court, upon payment of the expense of the copy.

III. PLEADINGS AND MOTIONS

Civil L.R. 7. Form of Motions and Other Papers

(a) Form of Motion. Every motion must state the statute, rule, or legal or equitable principle pursuant to which it is made.

(b) Movant's Supporting Materials. Except as ordered by the Court, any motion filed pursuant to Fed. R. Civ. P. 12(b) or 56 must be supported by a brief. For other motions, supporting briefs are required where necessary to set forth the legal and factual basis for the relief sought. A supporting brief may be included within the body of the motion. Absent Court order otherwise, any brief, exhibit, or other supporting paper must be filed contemporaneously with

the motion. Failure to file a brief in support of a motion under Fed. R. Civ. P. 12(b) or 56 is sufficient cause to deny the motion, and failure to file a brief may be sufficient cause to deny any other motion.

(c) Non-Movant's Response. Unless the Court orders otherwise, the non-movant must file any brief, exhibit, or other paper in opposition to a motion, except a motion under Fed. R. Civ. P. 56, within fourteen (14) days of service of the motion. Failure to file a brief in opposition to any motion, other than one under Fed. R. Civ. P. 12(b) or 56, may be sufficient cause to grant the motion.

(d) Movant's Reply. Unless the Court orders otherwise, any reply in support of a motion, except a motion under Fed. R. Civ. P. 56, must be filed within seven (7) days of service of the non-movant's response.

(e) Length of Briefs. Principal briefs in support of, or in opposition to, any motion must not exceed thirty (30) pages, and reply briefs must not exceed fifteen (15) pages. These limitations exclude any caption, cover page, table of contents, table of authorities, and signature block. No brief exceeding these page limitations may be filed unless the Court has previously granted leave to file a brief in excess of these limits.

(f) Citations.

(1) This Court does not prohibit or restrict the citation of unreported or non-precedential opinions, decisions, orders, judgments, or other written dispositions.

(2) If a party cites a judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of the document with the brief or other paper in which it is cited.

(3) If pertinent and significant authority comes to a party's notice after the briefs have been filed, but before decision, a party may promptly advise the Court by notice setting forth the citations and stating the reason the authority was not cited in the party's brief. The notice must specifically refer either to a page of the brief(s) already filed or to a point argued orally. The notice may not exceed two (2) pages and must not present a new argument. No response may be filed unless the presiding Judge so authorizes.

(g) Courtesy Copy of Supporting Papers. If a party's exhibits in support of, or in opposition to, a motion exceed fifty (50) pages in the aggregate, that party must submit a courtesy copy to chambers. The courtesy copy must be printed from PACER (i.e., after electronic filing) so that the CM/ECF PDF

headers, which contain the case number, docket number, and page number, appear at the top of every page. Additionally, where exhibits are numerous, it is helpful to the Court to receive well-organized, tabbed binders of double-sided copies, along with an index or table of contents.

(h) Oral Argument. In its discretion, the Court may rule on any motion without oral argument. Oral argument requests must contain specific reasons why oral argument would be helpful. Unless otherwise ordered by the Court, oral arguments will not exceed thirty (30) minutes, apportioned among the participants as appropriate.

(i) Modification of Provisions in Particular Cases. The Court in any case may provide by order or other notice to the parties that different or additional provisions regarding motion practice apply.

Civil L.R. 7.1. Disclosure Statements

(a) All non-governmental artificial entities appearing as parties or *amici curiae* shall file a Disclosure Statement along with the initial filing on behalf of that party or *amicus*. Where filing the Disclosure Statement with the initial filing is impossible or impracticable, it shall be filed within seven (7) days after the initial filing, or within such other time as the Court may direct.

(b) The Disclosure Statement shall identify the represented entity's general nature and shall identify all parents, subsidiaries, partners, members, managers, trustees, affiliates, and similarly related persons and entities. Members of a trade association or professional association need not be identified. For purposes of this Rule, an "affiliate" is an entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified entity; a "parent" is an affiliate that controls such entity directly, or indirectly through intermediaries; a "subsidiary" is an affiliate controlled by such entity directly, or indirectly through one or more intermediaries; and a "trade association" is a continuing association of numerous organizations or individuals operated for the purpose of promoting the general commercial, professional, legislative or other interests of the membership.

(c) The purpose of the Disclosure Statement is to enable the Judges of this Court to determine the need for recusal pursuant to 28 U.S.C. § 455 or otherwise. Counsel shall have the continuing obligation to amend the Disclosure Statement to reflect relevant changes.

(d) The form of the Disclosure Statement is set forth in the Appendix of Forms attached to these Rules.

(e) A party who commences a civil action using a pseudonym instead of his or her actual name must file a Disclosure Statement, under seal, identifying the Plaintiff's actual name.

Civil L.R. 8. Pleading Jurisdiction

A pleading or notice of removal asserting jurisdiction based on diversity of citizenship must identify the citizenship of each party to the litigation. If any party is a corporation, the pleading or notice must identify both the state of incorporation and the state in which the corporation has its principal place of business. If any party is an unincorporated association, limited liability company, or partnership, the pleading or notice must identify the citizenship of all members. A notice of removal asserting diversity jurisdiction must also assert a factual basis supporting the allegation that the requisite amount is in controversy.

Civil L.R. 9. Pleading Special Matters

(a) All persons applying or petitioning for release from custody under 28 U.S.C. § 2241 or 28 U.S.C. § 2254, or moving under 28 U.S.C. § 2255 to challenge a sentence imposed by this Court, must file their application, petition, or motion with the Clerk using forms available from the Court. The Clerk will provide the forms and directions for their preparation without charge.

(b) When an application for release from custody is filed, the respondent is not required to file an answer or respond to the application unless directed by the Court. The Court may apply any of the Rules Governing 28 U.S.C. § 2254 Cases in the United States District Courts to applications for release from custody under 28 U.S.C. § 2241.

(c) Prisoners appearing *pro se* who commence an action under 42 U.S.C. § 1983 for deprivations of federal rights by persons acting under color of state law must file the complaint with the Clerk using the form available from the Court. The Clerk will provide the forms and directions for their preparation without charge.

Civil L.R. 10. Form of Pleadings

(a) Paragraphs. A party, including a party proceeding *pro se*, must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances.

(b) Answers and Replies. An answer or reply must respond in numbered paragraphs corresponding to the paragraphs of the pleading to which it refers.

(c) Pseudonyms. A party who commences a civil action using a pseudonym instead of his or her actual name must, within twenty-one (21) days of service of the complaint, file and serve a motion seeking permission to proceed using a pseudonym.

Civil L.R. 12. Motions to Dismiss or Motions for Judgment on the Pleadings in *Pro Se* Litigation

Unless otherwise ordered by the Court, in litigation involving a *pro se* party where matters outside the pleadings are presented to the Court, in conjunction with a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) or a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c), the procedure set forth in Civil Local Rule 56(a) applies.

Civil L.R. 15. Amended and Supplemental Pleadings

(a) Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must reproduce the entire pleading as amended and may not incorporate any prior pleading by reference.

(b) A motion to amend a pleading must state specifically what changes are sought by the proposed amendments. The proposed amended pleading must be filed as an attachment to the motion to amend.

(c) If the Court grants the motion to amend, the party must promptly file the amended pleading. If a responsive pleading is required, any party that has appeared in the action and was served with the proposed amended pleading must serve an answer or other responsive pleading within fourteen (14) days after the Court grants the motion to amend. The time for a party that has not appeared in the action to serve an answer or other responsive pleading begins to run when that party is properly served with the amended pleading.

Civil L.R. 16. Pretrial Conferences; Scheduling; Management; Alternative Dispute Resolution

(a) Preliminary Pretrial Conferences.

(1) A Judge may require the parties to appear to consider the future conduct of the case. The parties must be prepared to discuss the matters enumerated in Fed. R. Civ.P. 16 and 26(f). The parties also should be prepared to state:

(A) The nature of the case;

(B) Any contemplated motions;

(C) The parties' discovery plan, including the amount of further discovery each party contemplates, the approximate time for completion of discovery, and any disputes regarding discovery;

(D) Whether the parties anticipate the disclosure or discovery of electronically stored information;

(E) Whether the parties have reached an agreement for asserting post-production claims of privilege or of protection as trial-preparation material, and whether the parties request the Judge to enter an order including the agreement;

(F) Whether settlement discussions have occurred;

(G) The basis for the Court's subject matter jurisdiction; and

(H) Such other matters as may affect further scheduling of the case for final disposition.

(2) The Judge may enter any orders necessary to aid in scheduling the action, including dates for further conferences, schedules for filing and briefing motions, and cutoff dates for completing discovery. The Judge also may enter any orders permitted under Fed. R. Civ. P. 16, or 26(f), or Civil Local Rule 26(e).

(3) Scheduling orders are not necessary in the following categories of actions: administrative proceedings, including all Social Security cases; habeas corpus cases or other proceedings to challenge a criminal conviction or sentence; *pro se* prisoner litigation; actions by the United States to recover benefit payments or to collect on a student loan guaranteed by the United States; cases in which the only relief sought is an order compelling arbitration or enforcing an arbitration award; actions to enforce or quash an administrative summons or subpoena; proceedings ancillary to proceedings in other Courts; and mortgage foreclosure actions in which an agency of the United States is a secured party. Fed. R. Civ. P. 16(b)(1).

(b) Final Pretrial Conference. Counsel and any parties proceeding *pro* se may be required to appear for a final pretrial conference to consider the subjects specified in Fed. R. Civ. P. 16 or to consider other matters determined by the Judge. Unless excused by the Judge, principal trial counsel for each party must appear at the final pretrial conference.

(c) Joint Pretrial Document.

(1) Unless otherwise ordered, the parties must file a joint pretrial document seven (7) days before the final pretrial conference. The joint pretrial document must be signed by the attorneys (or the parties personally, if not represented by counsel) who will try the case. The joint pretrial document shall contain the information required by the forms adopted by the Judges of this Court. A copy of the assigned Judge's form order shall be attached to each Rule 16 Scheduling Order entered by the Magistrate Judges, and they are also available through the Clerk and on the Court's website. Sanctions, which may include the dismissal of the action and entry of default judgment, may be imposed if a joint pretrial document is not filed.

(2) The parties are required to confer and make a good faith effort to settle the case prior to the final pretrial conference. In preparing the joint pretrial document, the parties are expected to work together in good faith to reach stipulations that may save time during the trial.

(d) Alternative Dispute Resolution.

(1) Participation. Each Judge may conduct an Alternative Dispute Resolution (ADR) Evaluation Conference during the early stages of case development to determine whether a civil case is appropriate for ADR. This conference may be held in conjunction with a pretrial conference or as a separate conference. If the Judge determines that a case is appropriate for ADR, the Judge may encourage the parties to participate in ADR before a Magistrate Judge or an appropriate neutral evaluator.

(2) Exemptions. The types of cases identified in Civil Local Rule 16(a)(3) are exempt from this procedure.

(3) Confidentiality. The Court, the neutral, all counsel and parties, and any other persons attending an ADR session under these Rules must treat as confidential all written and oral communications made in connection with, or during, any ADR session. Except as otherwise stipulated or ordered, the disclosure of any written or oral communication made by any party, counsel, or other participant in connection with or during any ADR session is prohibited. ADR proceedings pursuant to these Rules must be treated as compromise negotiations for purposes of all applicable rules of evidence.

(4) Early Neutral Evaluation. Early Neutral Evaluation (ENE) is a procedure in which the parties and their counsel, early in the case after an opportunity for limited discovery, meet with a neutral evaluator who is knowledgeable in the subject matter. The purpose is to reduce the cost and

duration of litigation by providing an early opportunity for the parties to obtain a neutral evaluation of their case and to engage in meaningful settlement negotiations.

(A) Cases Subject to ENE. Any civil case may be referred to ENE if all parties agree. A case may be selected for ENE at the preliminary pretrial conference held pursuant to Civil Local Rule 16(a), or at any other time by stipulation of the parties.

(B) ENE Process. Within thirty (30) days of the case being referred to ENE, the neutral evaluator, an experienced attorney with expertise in the subject matter of the case, hosts a confidential and informal meeting of clients (companies are to be represented by someone knowledgeable about the case and with full settlement authority) and lead counsel at which each side, through counsel, clients or witnesses, presents evidence and arguments supporting its case (without regard to the Rules of Evidence and without direct or cross-examination of witnesses). The neutral evaluator identifies areas of agreement, clarifies and focuses the issues, and encourages the parties to enter into procedural and substantive stipulations. The neutral evaluator, in private, prepares an evaluation that includes an assessment of the case, the reasoning that supports the assessment, and, where feasible, an estimate of the likelihood of liability and range of damages. Before the neutral evaluator provides the evaluation to the parties, the parties may engage in settlement discussions facilitated by the neutral evaluator. If settlement does not result, the neutral evaluator will present the parties with the evaluation. The neutral evaluator's evaluation is not shared with the trial Judge.

(C) Preservation of Right to Trial. The neutral evaluator has no power to impose settlement. The confidential evaluation is non-binding. If no settlement is reached, the case remains on the litigation track.

(D) The Neutral Evaluator. The neutral evaluator must have experience in the substantive legal area of the lawsuit. The parties must attempt to agree upon a neutral evaluator. If the parties cannot agree upon a neutral evaluator, the trial Judge will appoint an available neutral evaluator. The neutral evaluator may be, but need not be, a member of the Panel of Neutrals under the District's Alternative Resolution Plan. The trial Judge may, but is not required to, appoint one of the Magistrate Judges of this District as the neutral evaluator.

(E) Compensation of Neutral Evaluators other than Magistrate Judges. Neutral evaluators volunteer their preparation time and the first

four (4) hours in an ENE session. After four (4) hours in an ENE session, the neutral evaluator may either

(i) Continue to volunteer his or her time, or

(ii) Give the parties the option of concluding the session or paying the neutral evaluator for additional time at sixty percent (60%) of the neutral evaluator's standard hourly billing rate, to be split equally among the parties unless they agree to a different apportionment.

The ENE session will continue only if all parties and the neutral evaluator agree. After eight (8) hours in one or more ENE sessions, if all the parties agree that further assistance is desired, the neutral evaluator may charge his or her standard hourly billing rate or such other rate that is acceptable to the neutral evaluator and all parties.

IV. PARTIES [Reserved]

V. DISCLOSURES AND DISCOVERY

Civil L.R. 26. Duty to Disclose; General Provisions Governing Discovery

(a) Conference of the Parties; Planning for Discovery. The parties' discovery plan must indicate whether they anticipate any party will be required to disclose or be requested to produce electronically stored information. If so, the parties must consider:

(1) The reasonable accessibility of electronically stored information and the burdens and expense of discovery of electronically stored information;

(2) The format and media for the production of electronically stored information;

(3) Measures taken to preserve potentially discoverable electronically stored information from alteration or destruction;

(4) Procedures for asserting post-production claims of privilege or of protection as trial-preparation material; and

(5) Other issues in connection with the discovery of electronically stored information.

(b) Disclosure of Expert Testimony.

(1) Each party must disclose to every other party the substance of all evidence under Fed. R. Evid. 702, 703, or 705 that the party may use at trial, including the evidence of witnesses who have not been retained or specially employed to provide testimony, subject to the following:

(A) Each party must provide the written report required under Fed. R. Civ. P. 26(a)(2)(B) for a witness who has been retained or specially employed to provide expert testimony or one whose duties, as the party's employee, regularly involve giving expert testimony.

(B) A person, including a treating physician, who has not been retained or specially employed to provide expert testimony, or whose duties as the party's employee do not regularly involve giving expert testimony, may be used to present evidence under Fed. R. Evid. 702, 703, or 705 only if the party offering the evidence discloses to every other party the information identified in Fed. R. Civ. P. 26(a)(2)(B)(i), although a report written and signed by the witness is not required.

(2) Absent a stipulation or a Court order, disclosures required under this Rule must be made in accordance with Fed. R. Civ. P. 26(a)(2)(C).

(c) Completion of Discovery. All discovery, including the filing of motions to compel, must be completed before the date established in the Rule 16 Scheduling Order. Completion of discovery means that discovery (including depositions to preserve testimony for trial) must be scheduled to allow depositions to be completed, interrogatories and requests for admissions to be answered, and documents to be produced before the deadline and in accordance with the provisions of the Federal Rules of Civil Procedure. For good cause, which typically requires a showing that the parties have diligently pursued discovery, the Court may extend the time during which discovery may occur or may reopen discovery.

(d) Standard Definitions Applicable to All Discovery.

(1) The full text of the definitions set forth in subparagraph (2) is deemed incorporated by reference in all discovery, and may not be varied by litigants, but does not preclude:

(A) The definition of other terms specific to the particular litigation;

(B) The use of abbreviations; or

(C) A more narrow definition of a term defined in subparagraph (2).

(2) Definitions. The following definitions apply to all discovery:

(A) Communication. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

(B) Document. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a). A draft or non-identical copy is a separate document within the meaning of this term.

(C) To Identify.

(i) With Respect to Persons. When referring to a person, "to identify" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(ii) With Respect to Documents. When referring to documents, "to identify" means to give, to the extent known, the type of document; general subject matter; date of the document; and author(s), addressee(s), and recipient(s).

(D) Person. The term "person" is defined as any natural person or any business, legal, or governmental entity, or association.

(e) Confidentiality of Discovery Materials.

(1) Upon a showing of good cause, the Court may enter a protective order regarding the confidentiality of all, or—more likely—portions of, documents produced in the course of discovery, answers to interrogatories, answers to requests for admission, and deposition testimony.

(2) At the conclusion of the litigation, all material not received in evidence and treated as confidential under this Rule must be returned to the originating party. If the parties so stipulate, the material may be destroyed.

(f) Filing Papers Under Seal. A party seeking to file a document under seal must follow the procedure set forth in General Local Rule 5.2.

Civil L.R. 33. Interrogatories

(a) Limitation on Interrogatories.

(1) Any party may serve upon any other party no more than twenty-five (25) written interrogatories. The twenty-five (25) permissible interrogatories may not be expanded by the creative use of subparts.

(2) For the purpose of computing the number of interrogatories served:

(A) Parties represented by the same attorney or law firm are regarded as one party.

(B) Interrogatories inquiring about the names and locations of persons having knowledge of discoverable information or about the existence, location, or custodian of documents or physical evidence do not count toward the twenty-five (25) interrogatory limit.

(3) More than twenty-five (25) interrogatories may be served on a party only if that party agrees in writing or the Court so orders. A party seeking to serve more than twenty-five (25) interrogatories may move the Court for permission only after seeking the agreement of the party to whom the additional interrogatories would be served. If a party desires to serve additional interrogatories, the party must promptly consult with the party to whom the additional interrogatories would be propounded and attempt to reach a written stipulation as to a reasonable number of additional interrogatories. The stipulation allowing additional interrogatories to be served should not be filed with the Court except in connection with a motion to compel answers. If a stipulation cannot be reached, the party seeking to serve additional interrogatories may move the Court for permission to serve additional interrogatories.

(4) The Court will not compel a party to answer any interrogatories served in violation of this Rule.

(b) Answering Interrogatories. An objection or an answer to an interrogatory must reproduce the interrogatory to which it refers.

Civil L.R. 34. Producing Documents

A response or an objection to a request for production of documents must reproduce the request to which it refers.

Civil L.R. 36. Requests for Admission

A response or an objection to a request for admission must reproduce the request to which it refers.

Civil L.R. 37. Discovery Motions

All motions to compel disclosure or discovery pursuant to Fed. R. Civ. P. 26-37 must be accompanied by a written certification by the movant that, after the movant in good faith has conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without Court action, the parties are unable to reach an accord. The statement must recite the date and time of the conference or conferences and the names of all parties participating in the conference or conferences.

VI. TRIALS

Civil L.R. 41. Dismissal of Actions

(a) Dismissal Where No Service of Process. Whenever the Plaintiff has not completed service of process within the time required by Fed. R. Civ. P. 4(m), and the Defendant has not waived service under Fed. R. Civ. P. 4(d), the Court upon notice may dismiss the action in accordance with Fed. R. Civ. P. 4(m).

(b) Dismissal Where No Answer or Other Pleading Filed. Whenever a served Defendant has failed to answer or otherwise defend within six (6) months from the filing of the complaint and the Plaintiff has not sought default and default judgment, the Court upon notice may dismiss the action for failure to prosecute, in accordance with applicable law.

(c) Dismissal for Lack of Diligence. Whenever it appears that the Plaintiff is not diligently prosecuting the action, the Court upon notice may dismiss the action for failure to prosecute, in accordance with applicable law.

(d) Dismissal of Frivolous Action or Pleading. Whenever it appears that the Plaintiff's complaint, the Defendant's answer (including counterclaims), or any other pleading filed by a party is frivolous or interposed primarily for any improper purpose, the Court upon notice may dismiss or strike the pleading, or any portion of the pleading, in accordance with applicable law.

(e) Improper Re-Filing of Actions. No party or attorney may dismiss and re-file an action for the purpose of obtaining a different Judge.

Civil L.R. 42. Consolidation

(a) When a party moves to consolidate two or more cases, whether for a limited purpose or for all future proceedings, the motion to consolidate and supporting materials must be captioned with the case names and numbers of all cases sought to be consolidated. Service and filing must be effected in all of the cases sought to be consolidated. The motion must be decided by the Judge to whom the lowest-numbered case is assigned. If the motion is granted, the Judge to whom the lowest-numbered case is assigned will handle all future proceedings covered by the consolidation order.

(b) After two or more cases are consolidated, all papers relevant to the purposes for which consolidation was granted will be filed and docketed only in the lowest-numbered case. A notation to check the docket sheet for the lowest-numbered case will be entered on the docket sheet for each higher-numbered case.

(c) If cases are consolidated for some but not all purposes, documents relating only to a particular case will be docketed on the docket sheet for that case and be filed only in that case file.

VII. JUDGMENT

Civil L.R. 54. Costs

(a) Bill of Costs.

(1) No later than fourteen (14) days after entry of judgment, a party seeking costs must file a verified bill of costs, using forms available from the Clerk. If a timely motion pursuant to Fed. R. Civ. P. 50(b) or 59 is filed, the bill of costs must be filed within fourteen (14) days after entry of the order resolving the motion.

(2) When an appeal is taken, the parties may jointly move to delay filing the bill of costs until after the appeal is decided. Absent Court order, an appeal will not extend the deadline for filing a bill of costs or delay the taxing of costs.

(3) Any party opposing taxation of costs must file its objections within fourteen (14) days of service of the bill of costs. The party claiming costs must serve any response within seven (7) days of service of the objections. Costs will be taxed by the Clerk on the basis of these materials.

(b) Review of Clerk's Taxation of Costs. A party may move for review of the Clerk's decision taxing costs pursuant to Fed. R. Civ. P. 54(d) no later than seven (7) days after taxation.

Civil L.R. 56. Summary Judgment

Motions for summary judgment must comply with Fed. R. Civ. P. 56 and Civil Local Rule 7. With the exception of Social Security reviews, other actions for review of administrative agency decisions, and other actions in which a Judge relieves the parties of this Rule's requirements, the following additional requirements must be met:

(a) Movant's Supporting Materials. The movant must file a brief that includes: (1) all facts relied upon, each supported by a specific, pinpoint citation to the record; and (2) argument supported by legal authority as appropriate. The movant must also file all evidence relied upon. A movant seeking affirmative relief other than, or in addition to, monetary damages (such as declaratory or injunctive relief) must file a proposed judgment (not order or opinion) granting such relief in the form sought by the movant. No other supporting documents may be filed absent Court order.

(b) Non-Movant's Response. Unless the Court orders otherwise, the non-movant must file any response in opposition to the motion within twenty-eight (28) days of service of the motion. The non-movant's brief must include: (1) all facts relied upon, each supported by a specific, pinpoint citation to the record; (2) all challenges to the movant's asserted facts; and (3) argument supported by legal authority as appropriate. The non-movant must also file all evidence relied upon. No other supporting documents may be filed absent Court order.

(c) Movant's Reply. Unless the Court orders otherwise, any reply must be filed within fourteen (14) days of service of the non-movant's response.

(d) Effect of Uncontroverted Facts. The Court will deem uncontroverted material facts to be admitted solely for the purpose of deciding the motion for summary judgment.

(e) Stipulated Facts. Parties are encouraged to stipulate to facts. Facts so stipulated do not require references to evidentiary support.

(f) Modification of Provisions in Particular Cases. The Court may provide by order or other notice to the parties that different or additional provisions regarding summary judgment motion practice apply.

Civil L.R. 62. Supersedeas Bonds

(a) A supersedeas bond, where the judgment is for a sum of money only, must be in the amount of the judgment plus fifteen percent (15%) to cover interest and such damages for delay as may be awarded, as well as an additional $500.00 to cover costs. An appellant may move for relief from this Rule.

(b) When a money judgment also provides non-monetary relief, the Court may, on notice, grant a stay on such terms as to security and otherwise as it may deem proper.

(c) Upon approval, a supersedeas bond must be filed with the Clerk, and a copy with a notice of filing must be served promptly on the parties affected thereby. If the appellee objects to the form of the bond or to the sufficiency of the surety, the Court may conduct a hearing to resolve the objections.

VIII. PROVISIONAL AND FINAL REMEDIES

Civil L.R. 65.1. Sureties

A corporation authorized by the Secretary of the Treasury of the United States must be accepted as surety on bonds.

Civil L.R. 65.2. Security for Costs

In addition to any security required by law, the Court, at any time upon good cause shown, may order that security for costs be given by any party. Security for costs must consist of a cash deposit or a bond, with surety, in the sum of $500.00, unless otherwise ordered. The security must be conditioned to secure the payment of costs that the posting party may ultimately be ordered to pay to a party. A party may raise objections to the form, amount, or sufficiency of security for costs.

Civil L.R. 67. Deposit Into Court; Withdrawal of Monies; Registry Fee

(a) Registry Deposits. All funds to be deposited with the Court, with the exception of criminal cash bail, cost bonds, and civil garnishments, shall be deposited in accordance with the provisions of Rule 67, 28 U.S.C. §§ 2041-2042, and any other applicable law.

(b) Order and Directions for Deposit. Any party depositing money into the Court must serve the Clerk with a Court order and notice in accordance with the provisions of Fed. R. Civ. P. 67. The order must specify the amount to be deposited. If the Clerk is not served with an order in accordance with this Rule upon tender of the monies to be deposited, the Clerk will deposit funds into the

Court's non-interest-bearing registry account until further order of the Court directing how to invest the funds.

(c) Non-Interest Bearing Deposits. Cost bonds, and other bonds in the form of cash, such as admiralty cost bonds, injunction cost bonds, and supersedeas bonds, are not subject to Fed. R. Civ. P. 67, nor are civil garnishment payments. Funds not subject to Rule 67 will not be deposited in interest bearing accounts, except on the special order of the Court. These funds, when received, will be deposited into the registry of the Court. Payments received on garnishments will be deposited into the Court's general deposit fund.

(d) Investment of Registry Funds.

(1) Court Registry Investment System (CRIS). Where, by order of the Court, funds on deposit with the Court are to be placed in some form of interest-bearing account, the Court Registry Investment System administered through the Administrative Office of the United States Courts will be the only investment mechanism authorized.

(2) Custodian for CRIS. The Director of the Administrative Office of the United States Courts is designated as custodian for the CRIS. The Director or the Director's designee will perform the duties of custodian. Funds held in the CRIS remain subject to the control and jurisdiction of the Court.

(3) Pooling and Investing of Funds. Money from each case deposited in the CRIS will be "pooled" together with those on deposit with the Treasury to the credit of other Courts in the CRIS and used to purchase Government Account Series securities through the Bureau of Public Debt, which will be held at the Treasury, in an account in the name and to the credit of the Director of the Administrative Office of the United States Courts. The pooled funds will be invested in accordance with the principles of the CRIS Investment Policy approved by the Registry Monitoring Group.

(4) Minor's Fund. A Minors' Fund is established within CRIS to invest post-adjudication deposits held on behalf of minors until their age of majority, which is often longer than one hundred (100) days. The fund improves the match between investment holdings and the length of time each minor's case remains invested, thereby capitalizing on higher-yielding securities. Minor's funds deposited with the Court shall be identified in a movant's motion to deposit sum of money and must include the estimate of the future withdrawal date and the date the minor reaches the age of majority.

(5) Individual Accounts. An account for each case will be established in the CRIS titled in the name of the case giving rise to the investment in the

fund. Income generated from fund investments will be distributed to each case based on the ratio each account's principal and earnings have to the aggregate principal and the income total in the fund. Reports showing the interest earned and the principal amounts contributed in each case will be prepared and distributed to each Court participating in the CRIS and made available to litigants and their counsel.

(e) Disbursement of Funds. Funds deposited by the Clerk in accordance with this Rule will be disbursed only with prior order signed by a Judge of this Court. Funds will not be disbursed until counsel has furnished to the Clerk, in writing, the social security number or tax identification number of any and all recipients of more than ten dollars ($10.00) of the interest accrued. In any case proceeding before a Magistrate Judge by consent of all parties under 28 U.S.C. § 636(c), the Magistrate Judge may order disbursement of funds from the registry of this Court in accordance with applicable law.

(f) Designated Fiduciary Officers. The Clerk and Chief Deputy Clerk are the fiduciary officers of this Court and have the authority to sign account checks and/or withdrawal slips from CRIS accounts.

(g) Fees Assessed on Accounts. Under the authority of 28 U.S.C. §§ 1914 and 1930, the Clerk, whose fee schedules are set by the Judicial Conference of the United States, will assess a fee for the handling of all funds deposited with the Court in non-criminal proceedings and held in CRIS accounts pursuant to 28 U.S.C. § 2041 and Fed. R. Civ. P. 67.

Civil L.R. 67.1. Special Attorney Admission Fund

(a) Purpose of Fund. The Special Attorney Admission Fund ("the Fund") shall be maintained by the Clerk to compensate appointed counsel in civil rights actions for reasonably incurred expenses authorized by prior order of the Judge to whom the action is assigned. Compensation from the Fund is not authorized for attorney's fees or for expenses for which any other source of payment exists.

(b) Source and Administration of Funds. The funds generated from the admission fees required by General Local Rule 83.3 shall be used to establish the Fund. The Fund shall be managed in accordance with the Court's Plan for the Administration of the Special Attorney Admissions Fund.

(c) Authorization for Payment. Payments from the Fund require the order of the Chief District Judge or his/her designee, in an amount and with a priority determined by such District Judge in light of the condition of the Fund and any other pending or anticipated requests.

(d) Requests for Payment. All requests for payment from the Fund shall first be submitted in writing to the Judge assigned to the action. If the request is approved, the assigned Judge's written authorization shall then be forwarded to the Chief Judge or his/her designee for action in accordance with subsection(c) above.

IX. SPECIAL PROCEEDINGS [Reserved]

X. DISTRICT COURTS AND CLERKS: CONDUCTING BUSINESS; ISSUING ORDERS [Reserved]

XI. GENERAL PROVISIONS [Reserved]

XII. ADMIRALTY OR MARITIME CLAIMS AND ASSET FORFEITURE ACTIONS

Civil L.R. 100. Rule A – Authority, Scope, and Definitions

(a) Scope. The Rules set forth in this Part XII (Local Admiralty Rules) apply to civil actions that are governed by Rule A of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (Supplemental Rules). All other General and Civil Local Rules are applicable in these cases, but to the extent that another Local Rule is inconsistent with the applicable Local Admiralty Rule, the Local Admiralty Rule governs.

(b) Definitions. As used in the Local Admiralty Rules, "Rule," followed by a numeral, *e.g.*, Rule 12, means a Federal Rule of Civil Procedure; "Rule," followed by a capital letter, *e.g.*, Rule C, means a Supplemental Rule; "Judicial Officer" includes both District Judges and Magistrate Judges; "keeper" means any person or entity appointed by the Marshal to take physical custody of and maintain the vessel or other property under arrest or attachment; and "substitute custodian" means the individual who, or entity that, upon motion and order of the Court, assumes the duties of the Marshal or keeper with respect to the vessel or other property that is arrested or attached.

Civil L.R. 101. Rule B – Maritime Attachment and Garnishment

When the Plaintiff invokes a state procedure in order to attach or garnish as permitted by the Federal Rules of Civil Procedure or the Supplemental Rules, the process of attachment or garnishment shall identify the state law upon which the attachment or garnishment is based.

Civil L.R. 102. Rule C – Actions *In Rem*: Special Provisions

(a) Intangible Property. The summons issued pursuant to Rule C(3)(c) shall direct the person having control of intangible property to show cause no later than fourteen (14) days after service as to why the intangible property should not be delivered to the Court to abide the judgment. A Judicial Officer for good cause shown may lengthen or shorten the time. Service of the summons has the effect of an arrest of the intangible property and brings it within the control of the Court. Service of the summons to show cause requires a garnishee wishing to retain possession of the property to establish grounds for doing so, including specification of the measures taken to segregate and safeguard the intangible property arrested. The person who is served may deliver or pay over to the Marshal the intangible property proceeded against to the extent sufficient to satisfy the Plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. A person who asserts a right of possession or ownership may show cause as provided in Rule C(6)(a) as to why the property should not be delivered to the Court.

(b) Publication of Notice of Action and Arrest. The notice required by Rule C(4) shall be published in a newspaper of general circulation in the District once a week for three (3) consecutive weeks, said notice to begin not later than twenty-one (21) days following seizure, and Plaintiff's attorney shall file with the Clerk a copy of the notice as it was published. The notice shall contain:

(1) The Court, title, and number of the action;

(2) The date of the arrest;

(3) The identity of the property arrested;

(4) The name, address, and telephone number of the attorney for Plaintiff;

(5) A statement that the claim of a person who is entitled to possession or who claims an interest pursuant to Rule C(6)(a) must be filed with the Clerk and served on the attorney for Plaintiff within fourteen (14) days after final publication;

(6) A statement that an answer to the complaint must be filed and served within twenty-one (21) days after filing the statement of interest or right and that, otherwise, default may be entered and condemnation ordered;

(7) A statement that applications for intervention under Rule 24 by persons claiming maritime liens or other interests shall be filed within the time fixed by the Court; and

(8) The name, address, and telephone number of the Marshal, keeper, or substitute custodian.

(c) Default in Actions *In Rem*.

(1) Notice Required. A party seeking a default judgment in an action *in rem* must satisfy the Court that notice of the action and arrest of the property has been given:

(A) By publication as required in Local Admiralty Rule 102(b);

(B) By service upon the Marshal, keeper, substitute custodian, master, or other person having custody of the property; and

(C) By mailing notice to every other person who has not appeared in the action and is known to have an interest in the property.

(2) Persons with Recorded Interests.

(A) If the Defendant property is a vessel documented under the laws of the United States, Plaintiff must attempt to notify all persons named in the United States Coast Guard certificate of ownership.

(B) If the Defendant property is a vessel numbered as provided in the Federal Boat Safety Act, Plaintiff must attempt to notify the persons named in the records of the issuing authority.

(C) If the Defendant property is of such character that there exists a governmental registry of property interests and/or security interests, the Plaintiff must attempt to notify all persons named in the records of each such registry.

(d) Entry of Default and Default Judgment. After the time for filing an answer has expired, the Plaintiff may move for entry of default under Rule 55(a). The Court will enter default upon showing that:

(1) Notice has been given as required by Local Admiralty Rule 102(c)(1);

(2) Notice has been attempted as required by Local Admiralty Rule 102(c)(2), where appropriate;

(3) The time to answer by claimants of ownership to or possession of the property has expired; and

(4) No answer has been filed, or no one has appeared, to defend on behalf of the property.

The Plaintiff may move for judgment under Rule 55(b) at any time after default has been entered.

(e) Procedure for Giving Actual Notice to Mortgagee or Lien Claimant under 46 U.S.C. 31325(d)(1)(B) or (C). In those instances where actual notice is required to be given to a mortgagee or lien claimant under 46 U.S.C. 31325 (d)(1)(B) or (C), or any amendments thereto with respect to the enforcement of preferred ship mortgages and maritime liens, the said notice shall be given by certified mail, return receipt requested, at the address stated in the mortgage or notice of claim of lien, as the case may be, or such other address deemed by counsel in good faith to be better calculated to provide notice to said party.

Civil L.R. 103. Rule D – Possessory, Petitory, and Partition Actions

Return Date. In a possessory action under Rule D, a Judicial Officer may order that the statement of right or interest and answer be filed on a date earlier than twenty-one (21) days after arrest. The order may also set the date for expedited hearing of the action.

Civil L.R. 104. Rule E – Actions *In Rem* and *Quasi In Rem*: General Provisions

(a) Itemized Demand for Judgment. The demand for judgment in every complaint filed under Rule B or Rule C shall allege the dollar amount of the debt or damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of damage. The amount of the special bond posted under Rule E(5)(a) may be based upon these allegations.

(b) Salvage Action Complaints. In an action for a salvage reward, the complaint shall allege the dollar value of the vessel, cargo, freight, and other property salved, and the dollar amount of the reward claimed.

(c) Verification of Pleadings. Every complaint in Rule B, C, and D actions shall be verified upon oath or solemn affirmation, or in the form provided by 28 U.S.C. § 1746, by a party or by an authorized officer of a corporate party. If no party or authorized corporate officer is present within the District, verification of a complaint may be made by an agent, attorney in fact, or attorney of record, who shall state the sources of the knowledge, information, and belief contained in the complaint; declare that the document verified is true to the best of his or

her knowledge, information, and belief; state why verification is not made by the party or an authorized corporate officer; and state that the affiant is authorized so to verify. A verification not made by a party or authorized corporate officer will be deemed to have been made by the party as if verified personally. If the verification was not made by a party or authorized corporate officer, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized corporate officer, which shall be procured by commission or as otherwise ordered.

(d) Review by Judicial Officer. Unless otherwise required by the Judicial Officer, the review of complaints and papers called for by Rules B(1) and C(3) does not require the affiant party or attorney to be present. The applicant for review shall include a form of order to the Clerk which, upon signature by the Judicial Officer, will direct the arrest, attachment, or garnishment sought by the applicant. In exigent circumstances, the certification of the Plaintiff, or his/her attorney, under Rules B and C shall consist of an affidavit or a declaration pursuant to 28 U.S.C. § 1746 describing in detail the facts that establish the exigent circumstances.

(e) Return of Service. The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the Marshal. A person specially appointed by the Court under Rule B or C, who has served process of maritime attachment and garnishment or a warrant of arrest that seized property, shall promptly file a verified return showing the name of the individual on whom the process or warrant was served, the identity of the person or entity on whom service was made, the documents served, the manner in which service was completed (e.g., personal delivery), and the address, date, and time of service.

(f) Property in Possession of United States Officer. When the property to be attached or arrested is in the custody of an employee or officer of the United States, the Marshal shall deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee, if present, and, otherwise, to the custodian of the property. The Marshal will instruct the officer or employee or custodian to retain custody of the property until ordered to do otherwise by a Judicial Officer.

(g) Security for Costs. In an action under the Supplemental Rules, a party may move, upon notice to all parties, for an order to compel an adverse party to post security for costs with the Clerk pursuant to Rule E(2)(b). Unless otherwise ordered, the amount of security shall be $500.00. The party so ordered shall post the security within seven (7) days after the order is entered. A party who fails to post security when due may not participate further in the

proceedings except by order of Court. A party may move for an order increasing the amount of security for costs.

(h) Adversary Hearing. The adversary hearing following arrest or attachment or garnishment that is called for in Rule E(4)(f) shall be conducted by a Judicial Officer promptly. The person(s) requesting the hearing shall notify all persons known to have an interest in the property of the time and place of the hearing.

(i) Appraisal. An order for appraisal of property so that security may be given or altered may be entered upon motion. If the parties do not agree in writing upon an appraiser, a Judicial Officer will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall give one (1) business day's notice of the time and place of making the appraisal to counsel of record. The appraiser shall promptly file the appraisal with the Clerk and serve it upon counsel of record. The moving party normally will pay the appraiser's fee, but it is a taxable cost of the action.

(j) Security Deposit for Seizure of Vessels. The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall deposit with the Marshal such sums as may be required by the Marshal to cover the expenses of the Marshal including, but not limited to, dockage, keepers, maintenance, and insurance. The Marshal is not required to execute process until the deposit is made. The party shall advance additional sums from time to time, at the Marshal's request, to cover estimated expenses. A party who fails to advance such additional sums may not participate further in the proceedings except by order of the Court. The Marshal may, upon notice to all parties, petition the Court for an order to release the vessel if additional sums are not advanced within seven (7) days after the request.

(k) Intervenors' Claims.

(1) Presentation of Claim. When a vessel or other property has been arrested, attached, or garnished, and is in the hands of the Marshal or substitute custodian, anyone having a claim against the vessel or property is required to present the claim by filing an intervening complaint and obtain a warrant of arrest, and not by filing an original complaint, unless otherwise ordered by a Judicial Officer. No formal motion is required. The intervening party shall serve a copy of the intervening complaint and warrant of arrest upon all parties to the action and shall forthwith deliver a conformed copy of the complaint and warrant of arrest to the Marshal, who shall deliver the copies to the vessel or custodian of the property. Intervenors shall thereafter

be subject to the rights and obligations of parties, and the vessel or property shall stand arrested, attached, or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the Marshal for seizure of a vessel as required by Local Admiralty Rule 104(j).

(2) Sharing Marshal's Fees and Expenses. An intervenor shall owe a debt to any party who has previously advanced funds to cover the expenses of the Marshal, enforceable on motion, consisting of the intervenor's share of the Marshal's fees and expenses in the proportion that the intervenor's claim bears to the sum of all the claims. If a party Plaintiff permits the vacation of an arrest, attachment, or garnishment, the remaining Plaintiffs will share the responsibility to the Marshal for fees and expenses in proportion to the remaining claims and for the duration of the Marshal's custody because of each claim.

(l) Custody of Property.

(1) Safekeeping of Property. When a vessel or other property is brought into the Marshal's custody by arrest or attachment, the Marshal shall arrange for adequate safekeeping, which may include the placing of keepers on or near the vessel. A substitute custodian, in place of the Marshal, may be appointed by order of the Court. Any application for appointment of a substitute custodian must show the name of the proposed custodian, the location of the vessel during the period of custody, and the proposed insurance coverage. Notice of the application to appoint a substitute custodian, if made concurrent with the application for arrest or attachment, need only be given to the Marshal.

(2) Insurance. The Marshal may procure insurance to protect the Marshal, keepers, and substitute custodians from liabilities assumed in arresting and holding the vessel, cargo, or other property, in performing protective services, and in maintaining the Court's custody. The party who applies for arrest or attachment shall reimburse the Marshal for premiums paid for the insurance and shall be an added insured on the policy. The party who applies for removal of the vessel, cargo, or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the Marshal therefor. The premiums charged for the liability insurance are taxable as administrative costs while the vessel, cargo, or other property is in the custody of the Court.

(3) Cargo Handling, Repairs, and Movement of the Vessel.

(A) Following arrest or attachment of a vessel, cargo handling shall be permitted to commence or continue unless otherwise ordered by the Court.

No repairs to or movement of the vessel shall take place without order of the Court. The applicant for an order shall give notice to the Marshal and to all parties of record.

(B) If an applicant shows adequate insurance to indemnify the Marshal for liability, the Court may order the Marshal to permit repairs or movement of the vessel, cargo, or other property. The costs and expenses of such activities shall be borne as ordered by the Court. Any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the Marshal, keeper, or substitute custodian, and to all parties of record. The Judicial Officer will require that adequate insurance on the property will be maintained by the successor to the Marshal, before issuing the order to change arrangements.

(4) Claims by Suppliers for Payment of Charges. A person who has furnished supplies or services to a vessel, cargo, or other property while in custody of the Court, who has not been paid, and who claims the right to payment as an expense of administration, shall submit an invoice to the Clerk in the form of a verified claim at any time before the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim on the Marshal, substitute custodian if one has been appointed, and all parties of record. The Court may consider the claims individually or schedule a single hearing for all claims.

(m) Sale of Property.

(1) Notice. Unless otherwise ordered, upon good cause shown, or as provided by law, notice of sale of property in an action *in rem* shall be published in a newspaper of general circulation in the District one (1) time a week for two (2) consecutive weeks with the last date of publication not less than seven (7) days immediately preceding the sale. The Marshal shall file with the Clerk a copy of the notice as it was published. The notice of sale shall state the last date on which claims can be filed against the vessel or property or proceeds of sale of same, as provided in Local Admiralty Rule 104(k)(1).

(2) Payment of Bid. These provisions apply unless otherwise ordered in the order of sale:

(A) The person whose bid is accepted shall immediately pay the Clerk the full purchase price if the bid is $1,000.00 or less;

(B) If the bid exceeds $1,000.00, the bidder shall immediately pay the Clerk a deposit of at least $1,000.00 or ten percent (10%) of the bid, whichever is greater, and shall pay the balance within three (3) business days;

(C) If an objection to the sale is filed within the period set forth in Local Admiralty Rule 104(m)(6), the bidder is excused from paying the balance of the purchase price until five (5) days after the sale is confirmed; and

(D) Payment shall be made in cash, by certified check, cashier's check, or wire transfer.

(3) Late Payment. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall pay the Marshal the cost of keeping the property from the due date of the bid amount until the balance is paid, and the Marshal may refuse to release the property until this charge is paid.

(4) Default. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall be in default, upon order of the Court entered in response to an appropriate motion, and the Judicial Officer may accept the second highest bid or may arrange a new sale. The defaulting bidder's deposit shall be forfeited and applied to any additional costs incurred by the Marshal because of the default, and the balance shall be retained in the registry of the Court awaiting an order.

(5) Report of Sale by Marshal. At the conclusion of the sale, the Marshal shall forthwith file a written report with the Court setting forth the notice given; the fact of the sale; the date of the sale; the names, addresses, and bid amounts of the bidders; the price obtained; and any other pertinent information.

(6) Time and Procedure for Objection to Sale. An interested person may object to the sale by filing a written objection with the Clerk within three (3) business days following the sale, serving the objection on all parties of record, the successful bidder, and the Marshal, and depositing a sum with the Marshal that is sufficient to pay the expense of keeping the property for at least seven (7) days. Payment to the Marshal of such sum shall be by certified check or cashier's check. The Court shall hold a hearing on the confirmation of the sale.

(7) Confirmation of Sale. If no objection to the sale has been timely filed, the sale shall be confirmed by order of the Court no sooner than five (5) days

after the sale and no later than seven (7) days after the sale. The Marshal shall transfer title to the purchaser upon the order of the Court.

(8) Disposition of Deposits.

(A) If the objection is sustained, sums deposited by the successful bidder will be returned to the bidder forthwith. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the Marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.

(B) If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed, and any balance remaining will be returned to the objector forthwith.

Civil L.R. 105. Rule F – Limitation of Liability

(a) Security for Costs. Unless otherwise ordered, the amount of security for costs under Rule F(1) shall be $1,000.00, and security for costs may be combined with security for value and interest, unless otherwise ordered.

(b) Order of Proof at Trial. In an action where vessel interests seek to limit their liability, the damage claimants shall offer their proof first, whether the right to limit arises as a claim or as a defense.

PART C: CRIMINAL RULES

I. SCOPE OF RULES

Criminal L.R. 1. Scope of Rules

In this District, the Criminal Rules set forth in Part C govern criminal and petty offense proceedings as defined in 18 U.S.C. § 19.

II. PRELIMINARY PROCEEDINGS [Reserved]

III. THE GRAND JURY; THE INDICTMENT; AND THE INFORMATION

Criminal L.R. 6. Grand Jury Materials

(a) Restrictions on Disclosure of Grand Jury Materials. Grand jury materials disclosed to the defense under Fed. R. Crim. P. 6(e)(3)(E) must not be

disseminated in any way, other than in open Court, by the Defendant or by defense counsel except to the Defendant, to defense counsel, and to those lawyers, support staff, or investigators assisting counsel directly, or to a witness to the extent that the materials consist of the witness' own prior testimony. Use of grand jury materials disclosed under this Rule must be limited to the proceeding for which they were disclosed. This Rule does not prevent the government from seeking further restrictions by Court order on the use or dissemination of such materials.

(b) Dissemination or Use of Grand Jury Materials. Any person who obtains grand jury materials pursuant to Criminal Local Rule 6(a) is prohibited from otherwise disseminating or using the materials except by further order of the Court.

Criminal L.R. 7. Superseding Indictment or Information

When a superseding indictment or information is filed, the government must simultaneously file a brief statement describing the differences between the original and superseding charges.

Criminal L.R. 9. Delivery to Marshal of Warrant or Summons

The original of any warrant (except a search warrant) or summons issued in this District must be delivered to the Marshal. A copy of the indictment, information, complaint, "Petition for Warrant," "Summons for Offender Under Supervision," or "Petition for Action on Conditions of Pretrial Release" to which the warrant or summons relates must accompany the warrant or summons. Upon request, the Marshal may provide another agency with a copy of a warrant clearly marked "copy."

(a) Issuance of Electronic Warrant and Summons Authorized. The Clerk is authorized to sign, seal, and issue warrants and summonses electronically. Warrants and summonses may not, however, be served electronically.

IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

Criminal L.R. 12. Motions; Evidentiary Hearings

(a) Motions.

(1) Absent a Court order, all motions raising any issue described in Fed. R. Crim. P. 12(b)(3) must be filed within fourteen (14) days after arraignment on an indictment. Every motion must state the statute, rule, or legal or

equitable principle pursuant to which it is made and may be accompanied by a supporting memorandum, affidavits, or other documents.

(2) Unless excused by the Court in an individual case, a motion to continue the trial setting of a criminal case must state facts demonstrating that the ends of justice served by a continuance outweigh the best interests of the public and the Defendant in a speedy trial, see 18 U.S.C. § 3161(h)(7)(A), or that for some other reason the continuance will not violate the Speedy Trial Act. Unless excused by the Court in an individual case, if the Defendant is the moving party, the motion must be accompanied by the Defendant's affidavit or declaration, see 28 U.S.C. § 1746, stating that the Defendant:

(A) Was advised by the defense attorney of the reasons for seeking a continuance;

(B) Understands that the time requested in the extension may be excluded from any calculation of time under the Speedy Trial Act, 18 U.S.C. §§ 3161-3174; and

(C) With this understanding and knowledge, agrees to the filing of the motion.

(3) Absent a Court order, the non-movant has seven (7) days from the date the motion is served to file a memorandum or other materials in response to any such motion.

(4) Absent a Court order, the movant has seven (7) days from the date the response is served to file any reply.

(5) Any time between the arraignment and the date set by pretrial scheduling order for filing pretrial motions must be deemed excluded from the speedy trial deadline under 18 U.S.C. § 3161(h)(7)(B)(ii), upon a specific finding and order by the Judge under 18 U.S.C. § 3161(h)(7)(A).

(b) Evidentiary Hearing. If a motion seeks an evidentiary hearing, the movant must provide in the motion a short, plain statement of the principal legal issue or issues at stake and specific grounds for relief in the motion and, after a conference with the non-movant, provide a description of the material disputed facts that the movant claims require an evidentiary hearing. The movant also must provide an estimate of the time necessary for the hearing. The non-movant may file a response opposing an evidentiary hearing within seven (7) days after service of a movant's motion seeking an evidentiary hearing. The non-movant's response must include a short, plain statement of why that party believes that an evidentiary hearing is unnecessary.

Criminal L.R. 12.4. Disclosure Statements

(a) Required Information.

(1) Non-governmental Parties and Amici. To enable the Court to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or an amicus curiae must file a Disclosure Statement that:

(A) States the full name of every party or amicus the attorney represents in the action; and

(B) If such party or amicus is a corporation:

(i) Identifies any parent corporation and any publicly held corporation owning ten percent (10%) or more of its stock; or

(ii) States there is no such corporation; and

(C) States the names of all law firms whose attorneys will appear, or are expected to appear, for the party in this Court.

(2) Organizational Victims. The government is required to file a Disclosure Statement in those actions where it is alleged that an organization is a victim of the criminal conduct that is charged. The Disclosure Statement shall provide the following information:

(A) The full name of every organizational victim that has been identified; and

(B) If such victim is a corporation:

(i) Identify any parent corporation and any publicly held corporation owning ten percent (10%) or more of its stock; or

(ii) State there is no such corporation.

(b) Filing. A non-governmental party or amici must file the Disclosure Statement at the time of the first appearance of the party or amicus. The government must file its Disclosure Statement, when required, within fourteen (14) days after the indictment or information is filed. All parties and amicus must promptly file a supplemental statement if any required information changes.

(c) Form. The form of the Disclosure Statement is set forth in the Appendix of Forms attached to these Rules.

Criminal L.R. 12.5. Notice of Entrapment Defense

If a Defendant intends to rely upon the defense of entrapment at the time of the alleged crime, he/she shall, within the time provided for the filing of pretrial motions or at such later time as ordered by the Court, notify the attorney for the government in writing of such intention and file a copy of such notice with the Clerk. If there is a failure to comply with the requirements of this Rule, entrapment may not be raised as a defense. The Court may, for cause shown, allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

Criminal L.R. 13. Reassignment of Related Criminal Cases

(a) Conditions for Reassignment. A criminal case may be reassigned to another Judge if it is found to be related to a lower-numbered (or earlier-filed) criminal case assigned to that Judge and each of the following criteria is met:

(1) All Defendants in each of the cases are the same, or, if the Defendants are not all the same, the cases are based upon the same set of facts, events, or offenses;

(2) Both cases are pending in this District;

(3) The handling of both cases by the same Judge is likely to result in the overall saving of judicial resources; and

(4) Neither case has progressed to the point where reassigning a case would likely delay substantially the proceedings in either case, or the Court finds that the assignment of the cases to the same Judge would promote consistency in resolution of the cases or otherwise be in the interest of justice.

(b) Motion to Reassign. A motion for reassignment based on relatedness may be filed by any party to a case. The motion must be filed with, and will be decided by, the Judge to whom the lowest-numbered case of the claimed related set is assigned for trial or other final disposition. If the set includes both felony cases and one or more misdemeanors assigned to a Magistrate Judge, then the motion must be filed with, and will be decided by, the District Judge assigned to the lowest-numbered felony case in the set. Copies of the motion must be served on all parties for all of the affected cases. The motion must:

(1) Set forth the points of commonality of the cases in sufficient detail to indicate that the cases are related within the meaning of subsection (a); and

(2) Indicate the extent to which the conditions required by subsection (a) will be met if the cases are found to be related.

Absent a Court order, any objection to the motion must be filed within seven (7) days of the filing of the motion.

(c) Order. The Judge must enter an order finding whether or not the cases are related, and, if they are, whether the higher-numbered case or cases should be reassigned. Where the Judge finds that reassignment should occur, the Clerk must reassign the higher-numbered case or cases to the Judge deciding the motion and to whom the lowest-numbered case is assigned.

(d) Scope of Reassignment Order. An order under this Rule reassigning cases as related does not constitute a joinder order under Fed. R. Crim. P. 13.

Criminal L.R. 16. Discovery and Inspection

(a) Policy. It is the Court's policy to rely on the standard discovery procedure set forth in this Rule as the sole means of the exchange of discovery in criminal actions except in extraordinary circumstances. This Rule is intended to promote the efficient exchange of discovery without altering the rights and obligations of the parties, while at the same time eliminating the routine filing of perfunctory and duplicative discovery motions.

(b) Initial Disclosures.

(1) Disclosure by the Government. At arraignment, or on a date otherwise set by the Court for good cause shown, the government shall tender to Defendant the following:

(A) Fed. R. Crim. P. 16(a) Information. All discoverable information within the scope of Rule 16(a) of the Federal Rules of Criminal Procedure, together with a notice pursuant to Fed. R. Crim. P. 12(b)(4)(A) of the government's intent to use this evidence;

(B) *Brady* Material. All information and material known to the government which may be favorable to the Defendant on the issues of guilt or punishment, without regard to materiality, within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963);

(C) *Giglio* Material. The existence and substance of any payments, promises of immunity, leniency, preferential treatment, or other inducements made to prospective witnesses, within the scope of *United States v. Giglio*, 405 U.S. 150 (1972);

(D) Testifying Informant's Convictions. A record of prior convictions of any alleged informant who will testify for the government at trial;

(E) Defendant's Identification. If a line-up, show-up, photo spread, or similar procedure was used in attempting to identify the Defendant, the exact procedure and participants shall be described and the results, together with any pictures and photographs, shall be disclosed;

(F) Inspection of Vehicles, Vessels, or Aircraft. If any vehicle, vessel, or aircraft was allegedly utilized in the commission of any offenses charged, the government shall permit the Defendant's counsel and an expert selected by the defense to inspect it, if it is in the custody of any governmental authority;

(G) Defendant's Latent Prints. If latent fingerprints, or prints of any type, have been identified by a government expert as those of the Defendant, copies thereof shall be provided;

(H) Fed. R. Evid. 404(b). The government shall advise the Defendant of its intention to introduce evidence in its case in chief at trial, pursuant to Rule 404(b) of the Federal Rules of Evidence; and

(I) Electronic Surveillance Information. If the Defendant was an "aggrieved person" as defined in 18 U.S.C. § 2510(11), the government shall so advise the Defendant and set forth the detailed circumstances thereof.

(2) Obligations of the Government.

(A) The government shall anticipate the need for, and arrange for the transcription of, the grand jury testimony of all witnesses who will testify in the government's case in chief, if subject to Fed. R. Crim. P. 26.2 and 18 U.S.C. § 3500. Jencks Act materials and witnesses' statements shall be provided as required by Fed. R. Crim. P. 26.2 and 18 U.S.C. § 3500. However, the government and, where applicable, the Defendant are requested to make such materials and statements available to the other party sufficiently in advance of trial as to avoid any delays or interruptions.

(B) The government shall advise all government agents and officers involved in the action to preserve all rough notes.

(C) The identification and production of all discoverable evidence or information is the personal responsibility of each Assistant United States Attorney assigned to the action and may not be delegated without the express permission of the Court.

(3) Disclosures to U. S. Probation. At arraignment, or on a date otherwise set by the Court upon good cause shown, the government shall tender to the U. S. Probation Office all essential information needed by U. S. Probation to accurately calculate the sentencing guideline range for the Defendant, including, but not limited to: information regarding the nature of the offense; the nature of the victim and the injury sustained by the victim; Defendant's role in the offense; whether Defendant obstructed justice in the commission of the crime; Defendant's criminal history; and any information regarding Defendant's status as a career offender/armed career criminal. In addition, in order to comply with the requirements of the Anti-Terrorism Act, the government shall produce to the U. S. Probation Office information regarding the victims of Defendant's alleged criminal activity, including, but not limited to, identifying each victim by name, address, and phone number, and the nature and extent of said victim's loss or injury.

(4) Disclosures by the Defendant. If Defendant accepts or requests disclosure of discoverable information, pursuant to Fed. R. Crim. P. 16(a)(1)(C), (D), or (E), Defendant, on or before a date set by the Court, shall provide to the government all discoverable information within the scope of Fed. R. Crim. P. 16(b).

(c) Supplementation. The provisions of Fed. R. Crim. P. 16(c) are applicable. It shall be the duty of counsel for all parties to immediately reveal to opposing counsel all newly discovered information, evidence, or other material within the scope of this Rule, and there is a continuing duty upon each attorney to disclose expeditiously.

(d) Motions for Discovery. No attorney shall file a discovery motion without first conferring with opposing counsel, and no motion will be considered by the Court unless it is accompanied by a certification of such conference and a statement of the moving party's good faith efforts to resolve the subject matter of the motion by agreement with opposing counsel. The statement must recite the date and time of the conference or conferences and the names of all parties participating. No discovery motions shall be filed for information or material within the scope of this Rule unless it is a motion to compel, a motion for protective order, or a motion for an order modifying discovery. See Fed. R. Crim. P. 16(d). Discovery requests made pursuant to Fed. R. Crim. P. 16 and this Local Rule require no action on the part of this Court and should not be

filed unless the party making the request desires to preserve the discovery matter for appeal.

(e) Post-Conviction Disclosures. Within three (3) days of conviction, the government shall provide to the Defendant any additional information that has been provided to the Probation Office in compliance with paragraph (b)(3) of this Rule. Any supplementation of the information provided to the Probation Office shall also be given to the Defendant.

Criminal L.R. 17.1. Pretrial Conferences

(a) In any case that is unusually complex, by reason of the number of parties, the novelty of legal or factual issues presented, the volume of discovery materials, or other factors peculiar to that case, the government must notify the Clerk when the indictment or information is filed that the case is appropriate for a pretrial scheduling conference pursuant to Fed. R. Crim. P. 17.1. If the government has not suggested a pretrial scheduling conference, the defense may do so at the initial appearance or arraignment.

(b) A pretrial scheduling conference pursuant to this Rule and Fed. R. Crim. P. 17.1 may be set by the Judge conducting the arraignment, by the Judge assigned to pretrial proceedings, or by the Judge assigned to preside over the trial of the case. At a pretrial scheduling conference, the Court may set deadlines for filing pretrial motions, briefing, discovery and disclosure by all parties, hearings, trial, or any other dates that will further the ends of justice.

V. VENUE [Reserved]

VI. TRIAL [Reserved]

VII. POST-CONVICTION PROCEDURES

Criminal L.R. 32. Sentencing and Judgment

(a) Time of Sentencing. The sentencing hearing shall be scheduled no earlier than seventy-five (75) days following entry of a guilty plea or *nolo contendere* plea or a verdict of guilty, except as otherwise agreed to by the parties or ordered by the Court.

(b) Presentence Report. Prior to sentencing, the United States Probation Office (Probation Office) shall prepare a Presentence Investigation Report (PSR) in compliance with Fed. R. Crim. P. 32. In order to provide adequate time for the Probation Office to prepare the PSR, to disclose the PSR to the parties, to review and respond to the presentence submissions filed by the parties, and to

comply with such other and further procedures contemplated by the Sentencing Guidelines and this Criminal Local Rule, the Probation Office and counsel for the parties shall cooperate to complete the following mandatory steps in the sentencing process:

(1) They shall ensure that a copy of any plea agreement, including the government's position with regard to whether the Defendant should receive the benefit of timely acceptance of responsibility, is provided to the Probation Office and the Court no later than the date of the guilty plea;

(2) The PSR, including guideline calculations, shall be completed and posted to CM/ECF for retrieval by the parties at least thirty-five (35) days prior to the scheduled sentencing hearing, unless the period is waived by the Defendant or the Court orders otherwise. It shall be the responsibility of counsel for the parties to contact the Clerk for assistance in obtaining access to CM/ECF should a problem arise in retrieving the PSR. It shall be defense counsel's responsibility to discuss the contents of the PSR with the Defendant prior to filing his or her position with respect to sentencing factors. The PSR shall be disclosed only to defense counsel, for disclosure to the Defendant, and the attorney for the government;

(3) If a party reasonably disputes sentencing factors or facts material to sentencing, or seeks the inclusion of factors or facts material to sentencing in the PSR, it is the obligation of the complaining party to seek administrative resolution of such factors or facts through contact with opposing counsel and the Probation Office prior to filing their positions with respect to sentencing factors. Disputed factors or facts material to sentencing should be resolved, if possible and practicable, through informal procedures, including telephone conferences. A more formal presentence conference, to be attended by both parties and to be coordinated by the Probation Office, is mandatory if disputed factors or facts cannot be resolved informally and, in the opinion of the Probation Office, such a conference is necessary and might be productive in resolving disputed factors or facts;

(4) Fourteen (14) days before the sentencing hearing, counsel for the Defendant and the government shall each file a written pleading entitled, "Position of the (United States) (Defendant) with Respect to Sentencing Factors." This pleading either should state that the party adopts the PSR or should detail the party's position as to any disputed factors or facts, including application of the guidelines or any alleged inaccuracies, and should cite the numbered paragraph(s) in the PSR in which the facts or factors are located. In the event a Defendant challenges one of the factual bases for his or her sentence as set forth in the PSR, the burden to establish the disputed fact remains on the United States, but when any party disputes factors or facts in

the PSR, their pleading should state what evidence, including written submission(s) or witness(es), if any, the aggrieved party wishes to present at the sentencing hearing. This pleading must also include a written statement certifying that the party has conferred with opposing counsel and the Probation Office in a good faith effort to resolve any disputed matters;

(5) Counsel for the parties shall confer no later than ten (10) days prior to the scheduled sentencing hearing with respect to the anticipated length of the hearing and the number of witnesses to be called. If either party reasonably anticipates that the sentencing hearing will exceed thirty (30) minutes, that party shall file a notice no later than seven (7) days prior to the sentencing hearing. The notice shall advise the Court of the number of witnesses to be called and the estimated time required for the sentencing hearing;

(6) The Probation Office shall file under seal the PSR, including guideline computations, an addendum indicating any unresolved factual disputes or objections by the parties with respect to the application of the guidelines or alleged inaccuracies in the PSR, and the sentencing recommendation. The Probation Office shall also file under seal any revisions to the PSR and the addendum for retrieval by the parties. This information is to be produced for review by the sentencing Judge no later than seven (7) days before the sentencing hearing; and

(7) The presentation during the sentencing hearing will pertain only to those factors or facts important to the sentencing determination, or pertaining to any alleged inaccuracies in the PSR as set out in the pleading entitled "Position of the (United States) (Defendant) with Respect to Sentencing Factors." Except with regard to any objections made under Local Criminal Rule 32(b)(4) that have not been resolved, the report of the PSR shall be accepted as accurate. The Court, however, for good cause shown, may allow a new objection to be raised at any time before the imposition of sentence.

(c) Motions for Downward Departure. Any motion for downward departure pursuant to U.S.S.G. § 5K1.1 shall be filed no later than twenty-four (24) hours before the sentencing hearing. The motion should state the amount of recommended departure from the guideline range.

(d) Confidentiality of Presentence Reports. Confidential records of this Court maintained by the Probation Office, including presentence investigation reports and probation supervision records, may not be disclosed except upon written petition to the Court establishing with particularity the need for specified information contained in such records. No disclosure shall be made except upon Court order. This Rule must not be construed to deny the subject of

any presentence report, and/or the subject's counsel, the right to review such presentence report without consent of the Court.

(e) The contents of a presentence report that must be disclosed pursuant to Fed. R. Crim. P 32(e) shall not include the probation officer's recommendation on the sentence.

VIII. SUPPLEMENTARY AND SPECIAL PROCEEDINGS [Reserved]

IX. GENERAL PROVISIONS

Criminal L.R. 44. Obligations of Retained and Appointed Counsel

(a) Retained Counsel.

(1) Financial Arrangements; Notice When Arrangements Are Unsatisfactory. Retained criminal defense attorneys are expected to make financial arrangements satisfactory to themselves and sufficient to provide for representation of their client until the conclusion of the client's action. Unless the Court, within fourteen (14) days after arraignment, is notified in writing of counsel's withdrawal because of Defendant's failure to make satisfactory arrangements, the Court will expect counsel to represent the Defendant through the conclusion of the client's action, as defined in subsection (a)(2) herein. Failure of a Defendant to pay sums owed for attorney's fees or failure of counsel to collect the sum sufficient to compensate for all the services usually required of defense counsel will normally not constitute good cause for withdrawal after said fourteen-day period has expired.

(2) Conclusion of Client's Action. Unless otherwise ordered by the Court, the conclusion of the client's action occurs when the client is acquitted, sentenced, or the action is dismissed. In the event that a Defendant is convicted, retained counsel shall advise the Defendant of his/her right to appeal and of his/her right to counsel on appeal. If requested to do so by the Defendant, counsel shall file a timely notice of appeal. If the Defendant does not seek an appeal, counsel shall file a statement, signed by both attorney and client, that he/she has informed the Defendant of his/her right to appeal and his/her right to obtain counsel on appeal but that the Defendant has advised him/her that he/she does not seek an appeal. Upon the filing of this statement of non-appeal, the attorney's responsibility to represent the client will terminate. Representation by retained counsel in other proceedings shall terminate when the purpose of the representation is accomplished or when terminated by Court order.

(b) Appointed Counsel.

(1) Duties. Counsel appointed under the Criminal Justice Act Plan participate in the Plan in fulfillment of their professional responsibilities as officers of the Court, and the limited amount of compensation accruing in no respect diminishes that responsibility. Appointed counsel shall continue to serve until his/her representation is terminated as provided by the Plan or by Court order. Appointed counsel shall report to the Court any change in his/her client's financial status, that comes to his/her attention, where it appears that the client is able to finance all or a part of the reasonable attorney's fees.

(2) Termination of Appointment. In the event that a Defendant is convicted, counsel appointed under the Criminal Justice Act Plan shall advise the defendant of his/her right to appeal and of his/her right to counsel on appeal. If requested to do so by the Defendant, counsel shall file a timely notice of appeal, and he/she shall continue to represent the Defendant unless he/she is relieved of that responsibility by Court order. If the Defendant does not request that an appeal be filed, counsel shall file a statement, signed by both attorney and client, that the client has been informed of his/her right to appeal and his/her right to obtain counsel on appeal but has chosen not to appeal. Once the notice of non-appeal is filed, the appointment shall terminate. Representation by appointed counsel in other proceedings shall terminate when the purpose of the appointment is accomplished or when terminated by Court order.

(c) Guidelines as to Maximum Compensation. The Clerk shall maintain a schedule of guidelines for maximum compensation to be allowed by the Court, not to exceed that provided in 18 U.S.C. § 3006A.

(d) Authorization for Expert or Other Services. Prior Court authorization is required before obtaining services or incurring any expense such as reporter transcripts, interpreter, investigator, psychiatrist, or other expert services. Counsel should be aware of the maximum fees authorized for expert services in 18 U.S.C. § 3006A(e)(3). The appropriate forms for obtaining authorization for expert services are available from the Clerk.

Criminal L.R. 46. Bonds and Other Sureties

(a) General Requirements. Unless a Judge supervising a criminal action under 18 U.S.C. § 3142 expressly directs otherwise, the principal obligor and one or more sureties qualified as provided in this Rule must execute every bond, recognizance, or other undertaking required by law or Court order in any proceeding.

(b) Unacceptable Sureties. An attorney in a case, the attorney's spouse or employee, a party to a case, and the party's spouse may not act as a surety on a bond or other undertaking in a criminal case.

(c) Corporate Surety. A corporate surety upon any undertaking in which the United States is the oblige must be qualified under 31 U.S.C. §§ 9301–9309 and approved by the Secretary of the Treasury of the United States. The parties may consult with the Clerk to confirm that a surety is qualified. In all other instances, a corporate surety qualified to write bonds in the State of Alabama is an acceptable surety. In all cases, a Power of Attorney showing the authority of the agent signing the bond must be attached to the bond.

(d) Personal Surety. Persons competent to convey real estate who own land in the State of Alabama of an unencumbered value of at least the stated penalty of the bond may obtain consideration for qualification as a surety by attaching an acknowledged justification showing:

(1) A legal description of the real estate;

(2) A complete list of all encumbrances and liens on the real estate;

(3) The real estate's market value based on recent sales of like property;

(4) A waiver of inchoate right of any character and certification that the real estate is not exempt from execution; and

(5) Certification of the aggregate amount of the penalties of any other subsisting undertakings assured by the bondsman as of that date.

The Judge before whom the proceeding is pending will approve or disapprove the surety after reviewing the justification and certifications.

Criminal L.R. 46.1. Appeal of Release or Detention Orders

(a) Review of Another Court's Order. When a Judge of another District has entered a detention order in a criminal case pending in this Court, the Magistrate Judge in this District to whom the case has been referred or assigned reviews the detention order under 18 U.S.C. § 3145(b).

(b) Motion to Reopen Proceeding. When a Magistrate Judge enters a detention or release order after a hearing held under 18 U.S.C. § 3142(f), a motion to "reopen" the proceeding under § 3142(f) is considered as a motion for the same Magistrate Judge to review the matter of detention or release.

(c) Appeal of Detention Order. When reviewing a Magistrate Judge's order of detention or release, a District Judge may hear and consider additional evidence not considered by the Magistrate Judge if that evidence was not available to be presented to the Magistrate Judge at the hearing held under 18 U.S.C. § 3142(f) or for other good cause shown. In the alternative, the District Judge may remand the matter to the Magistrate Judge to reopen the hearing. Unless additional evidence is received on review, the District Judge reviews an order of release or detention de novo on the record made before the Magistrate Judge.

Criminal L.R. 49.2. Sealed Hearings

(a) Sealed Hearings. A party seeking a sealed hearing must move the Court in writing prior to the hearing, or orally at the hearing, when a written motion is not practicable. The Court may seal the hearing in accordance with applicable law. Any written motion and supporting documentation filed pursuant to this Rule must comply with General Local Rule 5.2.

(b) Docket Entry for Sealing Hearing. Whenever the Court orders that a hearing be conducted under seal as provided in subsection (a), the Court, upon a finding of good cause, may order that the docket entry for that hearing state only "SEALED," and that it be accessible only to the Court and the parties directly involved in the hearing.

Criminal L.R. 58. Misdemeanors and Other Offenses

(a) Generally.

(1) In proceedings upon which no indictment is necessary, see Fed. R. Crim.P. 7(a)(2), deadlines in these Local Rules that commence with arraignment on an indictment instead commence with the entry of a not guilty plea on the trial docket. See Fed. R. Crim. P. 58(b)(1).

(2) Except as provided in paragraph (a)(3), the Defendant in an action on an infraction, as defined in 18 U.S.C. § 19, and listed specifically in a schedule published by order of the Court pursuant to this Rule, may pay the collateral fixed on the citation or complaint, if any, in lieu of appearance, and by doing so authorizes the termination of proceedings and a default judgment in the amount of the sum fixed, pursuant to Fed. R. Crim. P. 58(d). The voluntary forfeiture of collateral under this Rule must be treated as a finding of guilt on the infraction charged in the citation or complaint. Government counsel and the Clerk then may execute such judgment without further notice to the Defendant. If a person charged with an infraction under this Rule fails to

post and forfeit collateral, any punishment authorized by law may be imposed upon a finding of guilt.

(3) This rule does not preclude the arrest or detention of any person accused of an infraction, as defined by 18 U.S.C. § 19, or requiring the person accused to appear in person before a Judge, to the extent allowed by law.

(b) Trial of Misdemeanors.

(1) Generally, all misdemeanor cases are randomly assigned to the Magistrate Judges in this District, who are authorized to conduct any or all proceedings in such matters. All petty offense cases on the District's docket for a particular month are assigned to the Magistrate Judge who is serving on criminal duty for that month. If proceedings in a petty offense case continue past that duty month, further proceedings on the case are presided over by the duty Magistrate Judge for the month in which the proceedings continue, unless otherwise ordered by the Magistrate Judge who originally presided over the matter.

(2) In all such cases in which the consent of the Defendant is required, the Magistrate Judge must explain to Defendant that the person has a right to trial, judgment, and sentencing by a District Judge, and that the person may have a right to trial by jury before a District Judge or Magistrate Judge. The Magistrate Judge must not try the case unless the Defendant consents to be tried before the Magistrate Judge, specifically waiving a trial, judgment, and sentencing by a District Judge. If the Defendant elects to be tried before a District Judge, the Magistrate Judge must return the case to the Clerk, who must randomly reassign the case to a District Judge.

PART D. APPENDIX OF FORMS

COURT FORMS

United States District Court
Southern District of Alabama

CIVIL

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

_____	:	
Plaintiff,	:	
vs.	:	Civil Action No. _____
	:	
_____	:	
Defendant(s)	:	

COMPLAINT

1. Plaintiff resides at _____

2. Name(s) of defendant(s) _____

3. Location of principal office(s) of the named defendant(s) _____

_____

_____

4. Nature of business of defendant(s) _____

_____

5. Approximate number of individuals employed by defendant(s) _____

6. The acts complained of in this suit concern:

   (A) _____ Failure to employ me.

   (B) _____ Termination of my employment.

   (C) _____ Failure to promote me.

   (D) _____ Other acts as specified below: _____

_____

_____

_____

7. Plaintiff is:

(A) _____ Presently employed by the defendant.

(B) _____ Not presently employed by the defendant.

The dates of employment were _____

(1) _____ Plaintiff was discharged.

(2) _____ Plaintiff was laid off.

(3) _____ Plaintiff left the job voluntarily.

8. Defendant(s) discriminated against me on account of my:

(A) _____ Race _____ Sex

_____ Color _____ National Origin

_____ Religion

Therefore, I am bringing this action for employment discrimination pursuant to Title VII of the Civil Rights Act of 1964, specifically, 42 U.S.C. § 2000e-5.

(B) _____ Physical disability

_____ Mental disability

Therefore, I am bringing this action pursuant to the American with Disabilities Act, specifically, 42 U.S.C. § 12117.

(C) _____ Age

Therefore, I am bringing this action pursuant to the Age Discrimination in Employment Act of 1967, specifically, 29 U.S.C. § 626.

9. The name(s), race, sex, and the position or title of the individual(s) who allegedly discriminated against me during the period of my employment with the defendant company is (are) _____

10. The alleged discrimination occurred on or about _____

11. The nature of my complaint, i.e., the manner in which the individual(s) named above

discriminated against me in terms of the conditions of my employment, is as follows: _____

_____

_____

_____

_____

_____

_____

_____

12. The alleged illegal activity took place at _____

_____

13. I filed charges with the Equal Employment Opportunity Commission regarding alleged discriminatory conduct by defendant(s) on or about _____ I have attached a copy of the Notice-of-Right-to-Sue letter issued by the Equal Employment Opportunity Commission. This letter was received by me on _____

14. I seek the following relief:

(A) _____ Recovery of back pay.

(B) _____ Reinstatement to my former job, and any other relief as may be appropriate, including injunctive orders, damages, costs and attorney's fees.

Date: _____

_____
Signature of Plaintiff

_____

_____
Address of Plaintiff

(____)_____
Telephone Number of Plaintiff

UNITED STATES DISTRICT COURT

_____ District of _____

Plaintiff
V.

Defendant

NOTICE, CONSENT, AND ORDER OF REFERENCE — EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

Case Number:

NOTICE OF AVAILABILITY OF A UNITED STATES MAGISTRATE JUDGE TO EXERCISE JURISDICTION

In accordance with the provisions of 28 U.S.C. §636(c), and Fed.R.Civ.P. 73, you are notified that a United States magistrate judge of this district court is available to conduct any or all proceedings in this case including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of this district court.

CONSENT TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

In accordance with provisions of 28 U.S.C. §636(c) and Fed.R.Civ.P. 73, the parties in this case consent to have a United States magistrate judge conduct any and all proceedings in this case, including the trial, order the entry of a final judgment, and conduct all post-judgment proceedings.

Party Represented	Signatures*	Date

*Signatures may be electronically affixed (i.e. s/Judith Attorney) and, with consent so stated after the signature, counsel may electronically sign for other counsel (i.e. s/John Attorney, by consent).

ORDER OF REFERENCE

IT IS ORDERED that this case be referred to _____ United States Magistrate Judge, to conduct all proceedings and order the entry of judgment in accordance with 28 U.S.C. §636(c) and Fed.R.Civ.P. 73.

_____ Date

_____ United States District Judge

NOTE: EFILE THIS FORM WITH THE CLERK OF THE COURT ONLY IF ALL PARTIES HAVE CONSENTED TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE AND SIGNED THIS FORM AS SET OUT ABOVE.

Print | Save As... | Export as FDF | Retrieve FDF File | Reset

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
DIVISION

_____ Plaintiff,	)	
vs.	)	Case No. _____
_____ Defendant.	)	

DISCLOSURE STATEMENT

COMES NOW _____, a Defendant in the above-captioned matter, and in accordance with the order of this Court, making the following disclosure concerning parent companies, subsidiaries, partners, limited liability entity members and managers, trustees, affiliates, or similarly related individuals or entities reportable under the provisions of the S.D. Ala. CivLR 7.1:

- ☐ This party is an individual, or
- ☐ This party is a governmental entity, or
- ☐ There are no entities to be reported, or
- ☐ The following entities and their relationship to the party are hereby reported:

Reportable Entity	Relationship to Party
_____	_____
_____	_____
_____	_____

_____
Date

_____
Counsel Signature

_____
Counsel for (print names of all parties)

_____
Address, City, State Zip Code

_____
Telephone Number

CERTIFICATE OF SERVICE

I,_____, do hereby certify that a true and correct copy of the foregoing has been furnished by _____(manner of service, i.e., U.S. Mail, electronic mail, etc.) on this _____ day of _____ 20____, to:

_____

_____

_____

_____

_____

_____

_____ _____

Date Signature

Local Form For Report of Parties' Planning Meeting

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

_____,	:	
Plaintiff,	:	
vs.	:	CIVIL ACTION _____
_____,	:	
Defendant.	:	

REPORT OF PARTIES' PLANNING MEETING

Pursuant to Fed.R.Civ.P. 26(f), a meeting was held on (date) at (place) and was attended by:
(name) for plaintiff(s)
(name) for defendant(s) (party name)
(name) for defendant(s) (party name)

The parties [request] [do not request] a conference with the court before entry of thescheduling order.

1. Plaintiff's brief narrative statement of the facts and the cause of action stated in each count, and defendant's brief narrative statement of the facts and defenses, including affirmative defenses, stating the theory of each defense. **In other words, the parties are to fully state their present respective positions in plain English, given what they know about the case at this time**. This is not to be simply a restatement of the complaint and answer.

2. This [jury] [non-jury] action should be ready for trial by (date) and at this time is expected to take approximately (length of time in days excluding jury selection).

3. The parties request a pretrial conference in (month and year).

4. Discovery Plan. The parties jointly propose to the court the following discovery plan: [Use separate paragraphs or subparagraphs as necessary if parties disagree.]
Discovery will be needed on the following subjects: (brief description of subjects on which discovery will be needed).
All discovery commenced in time to be completed by (date). [Discovery on (issue for early discovery) to be completed by (date).]

5. Initial Disclosures. The parties [have exchanged] [will exchange by (date)] the information required by Fed.R.Civ.P. 26(a)(1).

6. The parties request until (date) to join additional parties and amend the pleadings.

7. Reports from retained experts under Rule 26(a)(2) due:

from plaintiff(s) by (date).
from defendant(s) by (date).

8. Pretrial Disclosures. Final lists of witnesses and exhibits under Rule 26(a)(3) due by (date).

9. Discovery Limits.
Maximum of ___ interrogatories by each party to any other party. Responses due ___ days after service.
Maximum of ___ depositions by plaintiff(s) and ___ by defendant(s). Each deposition limited to maximum of ___ hours unless extended by agreement of parties.
Maximum of ___ requests for admission by each party to any other party. Responses due ___ days after service.
Maximum of ___ requests for production of documents by each party to any other party. Responses due ___ days after service.

10. All potentially dispositive motions filed by (date).

11. Settlement [is likely] [is unlikely] [cannot be evaluated prior to (date)] [may be enhanced by use of the following alternative dispute resolution procedure: [___].

12. The discovery in this action [will] [will not] include Electronically Stored Information (ESI). In those cases where discovery of ESI is a probability, the parties shall discuss the substantive issues of the existence and location of the ESI, the preservation (including time period) of information, the ease/difficulty and costs of production, a schedule and format for production, and a plan for how to manage privilege and work product protection issues. An ESI production agreement as to how to manage these issues shall be included in the Report. If the parties cannot agree on an ESI production agreement, the disagreements are to be listed in the Report.

13. [Other matters that may be appropriate for inclusion in the Rule 16(b) Order.]

Date: _____

Signature[1]
Name
Counsel for Plaintiff
Address
Telephone Number

Signature[1]
Name
Counsel for Defendant
Address
Telephone Number

[1] Signatures may be electronically affixed (i.e. s/Judith Attorney) and, with consent so stated after the signature, counsel may electronically sign for other counsel (i.e. s/John Attorney, by consent).

UNITED STATES DISTRICT COURT

for the

_____	)	
Plaintiff	)	
v.	)	Civil Action No.
	)	
_____	)	
Defendant	)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 90 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CHARLES R. DIARD, JR., CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Print Save As... Reset

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA

_____ **Plaintiff(s),**	*	
vs.	*	**CASE NO.**_____
_____ **Defendant(s).**	*	

EXHIBITS

	FOR IDENTIFICATION ONLY	ADMITTED IN EVIDENCE

CRIMINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA	*	
vs.	*	CRIMINAL NO.
	*	

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE FOR SELECTION OF THE JURY IN A FELONY CASE

The parties to this action hereby waive their right to proceed before a United States district judge and consent to have a United States magistrate judge conduct voir dire and supervise the selection of the jury in this action. The opportunity to seek de novo review of any decision of the Magistrate Judge made during jury selection to a district judge is also expressly waived. An appeal of jury selection decisions will lie to the court of appeals as it would if made by a district judge.

_____
DEFENDANT Date

_____
COUNSEL FOR DEFENDANT Date

_____
COUNSEL FOR GOVERNMENT Date

ORDER OF REFERENCE

It is hereby ORDERED that this action be referred to U.S. Magistrate Judge _____ for the selection of the jury pursuant to 28 U.S.C. § 636(b)(3) and Local Rule 72.1. See Peretz v. United States, 501 U.S. 923, 111 S.Ct. 2661, 115 L.Ed.2d 808 (1991). Any appeal of a decision of the magistrate judge made during jury selection will lie to the court of appeals as it would if made by a district judge.

DONE this the _____ day of _____, _____.

_____
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA	*	
vs.	*	CR. NO. _____
_____	*	
	*	

NOTICE OF INTENT TO PLEAD GUILTY

Comes now the defendant in the above-styled cause and hereby gives notice of his/her intent to plead guilty to count(s) _____ of the indictment in this cause.

This change of plea is based on plea negotiations with the U.S. Attorney. As a result of these plea negotiations and in exchange for my plea of guilty, the Government has agreed to recommend to the Court the following: _____
_____
_____
_____

However, I understand that pursuant to the provisions of Rule 11(e)(1)(B) F.R.Cr.P., a recommendation of the U.S. Attorney pursuant to this plea agreement is not binding upon the Court. I further understand that if my plea of guilty is offered based upon a recommendation of the U.S. Attorney, I will have no right to withdraw my plea of guilty if the Court elects not to accept the recommendation of the U.S. Attorney.

I further understand that I am scheduled to enter my plea on _____ 20____ at _____ a.m./ p.m. before United States District Judge _____.

Date: _____

_____
Defendant

_____
Attorney for the Defendant

_____
Attorney for the Government

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
_____DIVISION

UNITED STATES OF AMERICA	*	
	*	
VS.	*	**CR. ACTION NO. _____**
	*	
_____	*	
Defendant's Name	*	

CERTIFICATION REGARDING THE PRELIMINARY GUIDELINE CALCULATIONS OF THE PROBATION OFFICER

The Court, during the arraignment hearing, directed the United States Probation Officer to prepare preliminary calculations, consistent with United States Sentencing Guidelines, as an aide to the parties' efforts to determine the range of possible sentences that could be imposed should the defendant be found guilty on any pending charge. It was intended that the Court, the defendant, defendant's attorney and the Assistant United States Attorney, would have had an opportunity to examine the report on preliminary calculations prior to the pretrial conference. It was also recognized that the calculations would be based on the Probation Officer's review of the relevant information available to the Probation Officer at the time his report is completed and filed.

The Probation Officer in this action has completed the preliminary guideline calculations and they have been shared with the parties. After receipt and review of these preliminary calculations, counsel certifies to the following:

1. A copy of the Probation Officer's report containing the preliminary guideline calculations has been shown to the defendant and we discussed the guideline calculations contained in the report;

2. I have provided the defendant with an independent assessment of the preliminary guideline calculations contained in the report;

3. The defendant has been given an opportunity to ask questions regarding the preliminary guideline calculations and I have responded to those questions; and

4. The defendant was advised that the preliminary guideline calculations contained in the report are based on the Probation Officer's review of the relevant information available to him/her at the time the report was completed and filed, and that the United States Sentencing Guidelines are advisory and do not bind the Court. Furthermore, the defendant was also advised that the preliminary guideline calculations might be different from the final calculations in the event he/she is found guilty on any pending charge and a presentencing report is ordered.

I certify under the penalty of perjury that the foregoing is true and correct on this the _____ day of _____, 2014.

_____
Attorney's Signature

_____
Attorney's Name Printed

Attorney for Defendant _____

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
_____ DIVISION

UNITED STATES OF AMERICA	*	
	*	
VS.	*	**CR. ACTION NO. _____**
	*	
_____	*	
	*	
Defendant.	*	

WAIVER OF RIGHT TO A SPEEDY TRIAL

I understand that I have the right to have my trial commence within the time required by the Speedy Trial Act, 18 U.S.C. § § 3161-3174, but have elected to have that time period extended.

I, being fully advised of my rights regarding a speedy trial, knowingly, intelligently and voluntarily waive (GIVE UP) my right to a speedy trial. This decision has been made after I:

(A) was advised by my attorney of the reasons for seeking a continuance;

(B) became aware that the time requested in the extension may be excluded from any calculation of time under the Speedy Trial Act; and

(C) with full understanding and knowledge, have agreed to the extension of time that has been requested.

I certify under the penalty of perjury that the foregoing is true and correct on this the _____ day of _____, 2014.

_____
DEFENDANT'S NAME

APPROVED BY:

_____
ATTORNEY'S NAME
ATTORNEY FOR DEFENDANT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

_____	)	
	)	
vs.	)	Criminal Action No._____
	)	
_____	)	

CRIMINAL DISCLOSURE STATEMENT

Pursuant to Criminal Local Rule 12.4 of the Southern District of Alabama and to enable Judges and Magistrate Judges to evaluate possible disqualification or recusal, the undersigned counsel for

_____

certifies as follows:

(1) Non-governmental Parties and Amici Curiae.

A. state the full name of every party or amicus the attorney represents in the action; and

B. if such party or amicus is a corporation:

i. identify any parent corporation and any publicly held corporation owning 10% or more of its stock; or

ii. state there is no such corporation; and

C. state the names of all law firms whose attorneys will appear, or are expected to appear, for the party in this Court.

_____

_____

_____

_____

_____.

(2) Organizational Victims.

A. state the full name of every victim that has been identified; and

B. if such victim is a corporation:

i. identify any parent corporation and any publicly held corporation owning 10% or more of its stock; or

ii. state there is no such corporation.

_____

_____

_____

_____

_____.

_____ _____

Date Signature of Attorney

PRISONER

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA

PRISONER COMPLAINT [FOR INMATE ACTION] UNDER 42 U.S.C. § 1983

_____
Name under which you were convicted

_____
Your prison number

CIVIL ACTION NO. _____
(To be supplied by Clerk of Court)

vs.

_____
Name of Defendant(s)

_____
Place of Confinement and Address

INSTRUCTIONS - READ CAREFULLY

A. Complaint Form. You must file your original complaint and a copy for each named Defendant. Your complaint must be clearly handwritten or typewritten. Do not use the back of a page. Your complaint must be signed by you; no notary is required. Any false statement of material fact may serve as the basis for prosecution for perjury.

B. Proper Court. Your complaint can only be brought in this Court if a defendant is located in the Southern District of Alabama and the rest of the defendants are located in Alabama or if your claim arose in this district. The Southern District of Alabama is comprised of the following counties: Baldwin, Clarke, Choctaw, Conecuh, Dallas, Escambia, Hale, Marengo, Mobile, Monroe, Perry, Washington, and Wilcox.

C. Separate Case. It is necessary to file a separate complaint form for each claim unless the claims are related to the same incident or issue.

D. Defendants. The persons who are listed as defendants in section III of the complaint are deemed by the Court to be the only defendants to this action. A defendant's present address must be provided. The Court is unable to serve process without the present address being furnished. The first defendant listed in section III should be the defendant that you list in the style of your case on your complaint form and motion to proceed without prepayment of fees and costs, if applicable, and any other pleading filed with the Court.

E. Pleading the Complaint. Your complaint should not contain legal arguments, case law or statutory citations. You are required to provide facts. Your complaint shall be a short and plain statement of your claim and shall provide fair notice to each defendant of the claim against that defendant and of the factual grounds upon which the claim rests.

F. Fees. This complaint cannot be properly filed unless it is accompanied by the $350.00 filing fee or a motion to proceed without prepayment of fees if you are unable to afford the filing fee and other costs associated with prosecuting this action.

If you are unable to pay the filing fee and service costs for this action, you may ask the Court to let you proceed without prepayment of fees and costs. A blank motion for this purpose is included.

If you wish to proceed without prepayment of fees and costs, you must complete and mail to the Clerk of Court a copy of the "Motion to Proceed Without Prepayment of Fees" mailed to you with this complaint. This motion will be returned to you without action unless you have an authorized officer at the jail or prison complete the financial statement mailed to you with this form.

Even if the Court authorizes you to proceed without prepayment of filing fees, you are obligated to pay the full $350.00. If you have the ability to pay a partial filing fee when your complaint is filed, you will be required to pay an amount, based on your assets, of up to the greater of 20 percent of your average monthly balance in your prison account or your average monthly balance for six months immediately preceding the filing of your complaint. Thereafter, your prison account will be garnished at the rate of 20 percent of your monthly income until the filing fee is paid.

G. Form of Pleadings. All pleadings and other papers filed must be on 8 1/2" x 11" paper, legibly handwritten or typewritten. Every document filed after the complaint must have the style of the case and the docket number. Every pleading must be signed by you and must contain your address and telephone number, if any; otherwise, the pleading will be stricken. See Fed. R. Civ. P. 11(a). No notary is required.

H. Certificate of Service. Each pleading filed after the complaint must contain a certificate of service indicating that the pleading has been served on the opposing parties and the date that it was sent. A pleading will be stricken if it does not contain this certificate of service. See Fed. R. Civ. P. 5.

I. Copies. This Court will not make copies of your complaint or pleadings unless you prepay the required per page copying fee.

J. Form of Pleadings. Do not write letters to the Court. All pleadings and documents should be sent to the Clerk of the Court, and not to a magistrate judge or a district judge.

K. No Evidence. No evidence shall be sent to the Court for filing or storing.

I. PREVIOUS LAWSUITS.

A. Have you filed any other lawsuits in state or federal court dealing with the same or similar facts involved in this action:

Yes ☐ No ☐

B. Have you filed other lawsuits in state or federal court relating to your imprisonment:

Yes ☐ No ☐

C. If your answer to questions A or B above is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using this same outline.)

1. Parties to this previous lawsuit:

Plaintiffs: _____

_____

Defendants: _____

_____

2. Court (if federal court, name the district; if state court, name the county): _____
_____

3. Docket Number: _____

4. Were you granted the opportunity to proceed without payment of filing fees?
Yes ☐ No ☐

5. Name of judge to whom the case was assigned: _____

6. If your case is no longer pending and has been dismissed, state the reason given by the Court as to why your case was dismissed, i.e., frivolous, malicious, failed to state a claim, defendants were immune, etc.

_____

_____

_____

7. Approximate date of filing lawsuit: _____

8. Approximate date of ruling by court: _____

II. <u>YOUR PRESENT COMPLAINT</u>.

A. Place or institution where action complained of occurred:_____

B. Date it occurred: _____

C. Is there a prisoner grievance procedure in this institution? _____

D. Did you present the facts relating to your complaint in the state prisoner grievance procedure?
Yes ☐ No ☐

E. If your answer is YES:

1. What steps did you take? _____

2. What was the result? _____

F. If your answer is NO, explain why not: _____

G. Your claim (<u>briefly</u> explain your claim: what, when, where, who; do not cite cases; you may, without leave of Court, add up to five (5) additional pages if necessary):

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

III. PARTIES.

A. Plaintiff (Your name/AIS): _____

Your present address: _____

B. Defendant(s):

1. Defendant (full name) _____ is employed as _____ at _____.

His/her present address is _____.

(a) Claim against this defendant: _____

_____.

(b) Supporting facts (Include date/location of incident):

_____
_____
_____

2. Defendant (full name) _____ is employed as _____

at _____.

His/her present address is _____.

(a) Claim against this defendant: _____
_____.

(b) Supporting facts (Include date/location of incident):

_____
_____
_____

3. Defendant (full name) _____ is employed as _____

at _____.

His/her present address is _____.

(a) Claim against this defendant: _____
_____.

(b) Supporting facts (Include date/location of incident):

_____

_____

_____

C. Additional Defendants: (If there are additional defendants, you may list them on separate pages using the same outline above).

IV. A. You must answer the following questions:

1. State the conviction(s) for which you are presently incarcerated: _____
_____.

2. When were you convicted? _____

3. What is the term of your sentence? _____

4. When did you start serving this sentence? _____

5. Do you have any other convictions which form the basis of a future sentence?
Yes ☐ No ☐

If so, complete the following:

(a) Date of conviction: _____

(b) Term of sentence: _____

6. What is your expected end of sentence (E.O.S.) date? _____

B. If this present lawsuit concerns your criminal conviction or sentence, state whether your conviction has been:

	Conviction	Sentence
Reversed	yes ☐ no ☐	yes ☐ no ☐
Expunged	yes ☐ no ☐	yes ☐ no ☐
Invalidated	yes ☐ no ☐	yes ☐ no ☐

Writ of habeas corpus granted yes ☐ no ☐ yes ☐ no ☐

C. If you answered yes to any of the questions, state the Court or entity that relieved you from your conviction or sentence and the date: _____

_____

V. State briefly exactly what you want the Court to do for you if you win (make no legal argument, cite no cases or statutes):

_____

_____

VI. AFFIRMATION. By my signature below, I swear or affirm under penalty of perjury that the facts set out in this complaint are true and correct.

_____ Date

_____ (Signature of Plaintiff Under Penalty of Perjury)

_____ Current Mailing Address

_____

_____ Telephone Number

PLAINTIFF SHALL IMMEDIATELY ADVISE THE COURT IN WRITING OF ANY CHANGE IN HIS ADDRESS, E.G., RELEASED, TRANSFERRED, MOVED, ETC. FAILURE TO NOTIFY THE COURT OF A NEW ADDRESS WILL RESULT IN THE DISMISSAL OF THIS ACTION FOR FAILURE TO PROSECUTE AND TO OBEY THE COURT'S ORDER.

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA

Name _____

Prison Number _____

Place of Confinement _____

Action No. _____
(To be supplied by Clerk of U. S. District Court)

_____(PETITIONER)
(Full name under which you were convicted)

v.

_____(RESPONDENT)
(Name of Warden, Superintendent, Jailor, or authorized person having custody of petitioner)

PETITION FOR WRIT OF HABEAS CORPUS BY A
PERSON IN STATE CUSTODY

Instructions - Read Carefully

(1) This petition must be legibly handwritten or typewritten, and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

(2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) Upon receipt of a fee of $5, your petition will be filed if it is in proper order.

(4) If you do not have the necessary filing fee, you may request permission to proceed in forma pauperis, in which event you must complete the "Motion to Proceed Without Prepayment of Fees and Costs" form mailed to you with this form, and have an authorized officer at the jail or prison complete the attached financial statement. The completed forms must be returned to the federal court clerk in Mobile.

Even if the court authorizes you to proceed without prepayment of filing fees, you are obligated to pay the full $5.00. If you have the ability to pay a partial filing fee when your complaint is filed, you will be

required to pay an amount, based on your assets, of up to the greater of 20% of your average monthly balance in your prison account, or your average monthly balance for six months immediately preceding the filing of your petition. Thereafter, your prison account will be garnished at the rate of 20% of your monthly income until the filing fee is paid.

(5) Only convictions entered by one court at the same time may be challenged in a single petition. If you seek to challenge convictions entered by different courts in the same state or in different states, you must file separate petitions as to each court.

(6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.

(7) When the petition is fully completed, the original and two copies must be mailed to the Clerk of the United States District Court whose address is 113 Saint Joseph Street, Mobile, Alabama 36602.

(8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

(9) You must immediately advise the Court of any change in your address, e.g., if you are released, transferred, moved, etc. Failure to notify the Court of your new address will result in the dismissal of this petition for failure to prosecute and to obey the Court's order.

PETITION

1. Name and location of court which entered the judgment of conviction under attack: Circuit Court of

_____ County, Alabama; Case Number _____;

Judge _____. Other court, and case number, if not Circuit Court:

_____.

2. Date of judgment of conviction _____

3. Length of sentence _____

4. Nature of offense involved (all counts) _____

_____

_____

_____

5. What was your plea? (Check one)

(a) Not guilty _____

(b) Guilty _____

(c) Nolo contendere _____

6. Kind of trial: (Check one)

(a) Jury _____

(b) Judge only _____

7. Did you testify at the trial? Yes _____ No _____

8. Did you appeal from the judgment of conviction? Yes _____ No _____

9. If you did not appeal, explain briefly why you did not: _____

_____

_____

10. If you did appeal, answer the following:

(a) Name of court _____

(b) Result _____

(c) Date of result _____

(d) Did you file a petition for rehearing? Yes _____ No _____; if yes, what was the result?

_____

_____

When did the court rule on your petition? _____

(e) Did you file a petition for certiorari? Yes _____ No _____; if yes, what was the result?

_____

_____

When did the court rule on your petition? _____

11. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions (Rule 20, Rule 32, Error Coram Nobis, Habeas Corpus), applications, or motions with respect to this judgment in any state court?

Yes _____ No _____

12. If your answer to 11. was "yes," give the following information:

(a)(1) Name of court _____ Date filed _____

(2) Nature of proceeding (Rule 32, Rule 20, etc.) _____

_____

(3) Grounds raised _____

_____

_____

_____

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____ No _____

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion, give the same information:

(1) Name of court _____ Date filed _____

(2) Nature of proceeding _____

(3) Grounds raised _____

_____

_____

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____ No _____

(5) Result _____

(6) Date of result _____

(c) As to any third petition, application or motion, give the same information:

(1) Name of court _____ Date filed _____

(2) Nature of proceeding _____

(3) Grounds raised _____

_____

_____

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____ No _____

(5) Result _____

(6) Date of result _____

(d) Did you appeal the result of action taken on any petition, application or motion to the highest state court having jurisdiction?

(1) First petition, etc. Yes _____ No _____

Date filed _____ Result _____

Date of result _____

(2) Second petition, etc. Yes _____ No _____

Date filed _____ Result _____

Date of result _____

(3) Third petition, etc. Yes _____ No _____

Date filed _____ Result _____

Date of result _____

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

_____

_____

_____

13. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

Caution: In order to proceed in the federal court, you must first exhaust your state court remedies as to each ground on which you request action by the federal court. Also, if you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.

(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

(e) Conviction obtained by a violation of the privilege against self-incrimination.

(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(g) Conviction obtained by a violation of the protection against double jeopardy.

(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.

(I) Denial of effective assistance of counsel.

(j) Denial of right of appeal.

A. Ground one: _____

_____

1. Supporting FACTS (tell your story briefly without citing cases or law): _____

_____

_____

2. Did you raise this claim before the state courts on:

Direct appeal: Yes _____ No _____

Rule 20/32 Petition: Yes _____ No _____

Error Coram Nobis: Yes _____ No _____

State Habeas Corpus: Yes _____ No _____

3. If you did not raise this claim before the state courts, tell why you did not: _____

_____

_____

_____

B. Ground two: _____

_____

1. Supporting FACTS (tell your story briefly without citing cases or law): _____

_____

_____

2. Did you raise this claim before the state courts on:

Direct appeal: Yes _____ No _____

Rule 20/32 Petition: Yes _____ No _____

Error Coram Nobis: Yes _____ No _____

State Habeas Corpus: Yes _____ No _____

3. If you did not raise this claim before the state courts, tell why you did not: _____

_____

_____

_____

C. Ground three _____

_____

1. Supporting FACTS (tell your story briefly without citing cases or law): _____

_____

_____

2. Did you raise this claim before the state courts on:

Direct appeal: Yes _____ No _____

Rule 20/32 Petition: Yes _____ No _____

Error Coram Nobis: Yes _____ No _____

State Habeas Corpus: Yes _____ No _____

3. If you did not raise this claim before the state courts, tell why you did not: _____

_____

_____

_____

D. Ground four: _____

_____

1. Supporting FACTS (tell your story briefly without citing cases or law): _____

_____

_____

2. Did you raise this claim before the state courts on:

Direct appeal: Yes _____ No _____

Rule 20/32 Petition: Yes _____ No _____

Error Coram Nobis: Yes _____ No _____

State Habeas Corpus: Yes _____ No _____

3. If you did not raise this claim before the state courts, tell why you did not: _____

_____

_____

_____

14. A. Have any of the grounds listed in this present habeas corpus petition ever been raised by you in any other federal habeas corpus petition? Yes _____ No _____.

If yes, which grounds? _____

_____

State the name and case number of your previous federal habeas corpus petition: _____

_____

B. Have you previously filed a habeas corpus petition attacking this present conviction in this or any other federal court? Yes _____ No _____. If yes, state the name and case number of your previous federal habeas corpus petition: _____

_____

_____

15. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes _____ No _____. If yes, name the court:_____

_____

and state the name and case number of the petition or appeal: _____

16. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____

_____

(b) At arraignment and plea _____

_____

(c) At trial _____

_____

(d) At sentencing _____

_____

(e) On appeal _____

_____

(f) In any post-conviction proceeding _____

_____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

_____

17. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes _____ No _____

18. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes _____ No _____

(a) If so, give name and location of court which imposed sentence to be served in the future:

_____

_____

(b) And give date and length of sentence to be served in the future: _____

_____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes _____ No _____

19. TIMELINESS OF PETITION: This petition is subject to a one-year statute of limitations contained in The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2244(d):

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of –

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

If your judgment of conviction became final over one year ago, you must explain, in the space provided below, why the one-year statute of limitations contained in 28 U.S.C. § 2244(d) does not bar your petition.

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

_____
Signature of Attorney (if any)

_____
Typed or printed name of attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed and delivered to custodial authorities for mailing on _____

_____.
(date)

_____
Signature of Petitioner

_____
Current mailing address

_____

_____

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Instructions

1. **Who Should Use This Form**. You should use this form if
   - you are a federal prisoner and you wish to challenge the way your sentence is being carried out *(for example, you claim that the Bureau of Prisons miscalculated your sentence or failed to properly award good time credits)*;
   - you are in federal or state custody because of something other than a judgment of conviction *(for example, you are in pretrial detention or are awaiting extradition)*; or
   - you are alleging that you are illegally detained in immigration custody.

2. **Who Should Not Use This Form**. You should not use this form if
   - you are challenging the validity of a federal judgment of conviction and sentence *(these challenges are generally raised in a motion under 28 U.S.C. § 2255)*;
   - you are challenging the validity of a state judgment of conviction and sentence *(these challenges are generally raised in a petition under 28 U.S.C. § 2254)*; or
   - you are challenging a final order of removal in an immigration case *(these challenges are generally raised in a petition for review directly with a United States Court of Appeals).*

3. **Preparing the Petition**. The petition must be typed or neatly written, and you must sign and date it under penalty of perjury. **A false statement may lead to prosecution.**

   All questions must be answered clearly and concisely in the space on the form. If needed, you may attach additional pages or file a memorandum in support of the petition. If you attach additional pages, number the pages and identify which section of the petition is being continued. Note that some courts have page limitations. All filings must be submitted on paper sized 8½ by 11 inches. **Do not use the back of any page.**

4. **Supporting Documents**. In addition to your petition, you must send to the court a copy of the decisions you are challenging and a copy of any briefs or administrative remedy forms filed in your case.

5. **Required Filing Fee**. You must include the $5 filing fee required by 28 U.S.C. § 1914(a). If you are unable to pay the filing fee, you must ask the court for permission to proceed in forma pauperis – that is, as a person who cannot pay the filing fee – by submitting the documents that the court requires.

6. **Submitting Documents to the Court**. Mail your petition and ____ copies to the clerk of the United States District Court for the district and division in which you are confined. For a list of districts and divisions, see 28 U.S.C. §§ 81-131. All copies must be identical to the original. Copies may be legibly handwritten.

   If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.

7. **Change of Address**. You must immediately notify the court in writing of any change of address. If you do not, the court may dismiss your case.

UNITED STATES DISTRICT COURT

for the

_____ *Petitioner*	)	
v.	)	Case No. _____ *(Supplied by Clerk of Court)*
_____ *Respondent* *(name of warden or authorized person having custody of petitioner)*	)	

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: _____
   (b) Other names you have used: _____
2. Place of confinement:
   (a) Name of institution: _____
   (b) Address: _____
   _____
   (c) Your identification number: _____
3. Are you currently being held on orders by:
   ❒ Federal authorities ❒ State authorities ❒ Other - explain:
   _____
4. Are you currently:
   ❒ A pretrial detainee (waiting for trial on criminal charges)
   ❒ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
   If you are currently serving a sentence, provide:
   (a) Name and location of court that sentenced you: _____
   _____
   (b) Docket number of criminal case: _____
   (c) Date of sentencing: _____
   ❒ Being held on an immigration charge
   ❒ Other *(explain)*: _____
   _____
   _____

Decision or Action You Are Challenging

5. What are you challenging in this petition:

❒ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

❒ Pretrial detention

❒ Immigration detention

❒ Detainer

❒ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)

❒ Disciplinary proceedings

❒ Other *(explain)*: _____

_____

_____

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: _____

_____

(b) Docket number, case number, or opinion number: _____

(c) Decision or action you are challenging *(for disciplinary proceedings, specify the penalties imposed)*:

_____

_____

_____

(d) Date of the decision or action: _____

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

❒ Yes ❒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

_____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

_____

_____

_____

(b) If you answered "No," explain why you did not appeal:

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

❒ Yes ❒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not file a second appeal:

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

❒ Yes ❒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not file a third appeal:

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

❒ Yes ❒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

❒ Yes ❒ No

If "Yes," provide:

(1) Name of court:

(2) Case number:

(3) Date of filing:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

❒ Yes ❒ No

If "Yes," provide:

(1) Name of court:

(2) Case number:

(3) Date of filing:

(4) Result:

(5) Date of result:

(6) Issues raised:

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: _____

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

❒ Yes ❒ No

If "Yes," provide:

(a) Date you were taken into immigration custody: _____

(b) Date of the removal or reinstatement order: _____

(c) Did you file an appeal with the Board of Immigration Appeals?

❒ Yes ❒ No

If "Yes," provide:

(1) Date of filing: _____

(2) Case number: _____

(3) Result: _____

(4) Date of result: _____

(5) Issues raised: _____

(d) Did you appeal the decision to the United States Court of Appeals?

❒ Yes ❒ No

If "Yes," provide:

(1) Name of court: _____

(2) Date of filing: _____

(3) Case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

❒ Yes ❒ No

If "Yes," provide:

(a) Kind of petition, motion, or application: _____

(b) Name of the authority, agency, or court: _____

(c) Date of filing: _____

(d) Docket number, case number, or opinion number: _____

(e) Result: _____

(f) Date of result: _____

(g) Issues raised: _____

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: _____

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground One in all appeals that were available to you?

❒ Yes ❒ No

GROUND TWO:

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Two in all appeals that were available to you?

❒ Yes ❒ No

GROUND THREE:

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Three in all appeals that were available to you?

❒ Yes ❒ No

GROUND FOUR: _____

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Four in all appeals that were available to you?

❒ Yes ❒ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: _____

Request for Relief

15. State exactly what you want the court to do: _____

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

_____

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: _____ _____

Signature of Petitioner

_____

Signature of Attorney or other authorized person, if any

Print Save As... Reset

Motion to Vacate, Set Aside, or Correct a Sentence By a Person in Federal Custody

(Motion Under 28 U.S.C. § 2255)

Instructions

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.

2. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.

3. Make sure the form is typed or neatly written.

4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.

5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.

6. If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must complete this court's Motion to Proceed Without Prepayment of Fees, which can be requested from the Clerk's Office. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.

7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.

8. When you have completed the form, send the original and two copies to the Clerk of the United States District Court at this address:

   United States District Court for the Southern District of Alabama
   Charles R. Diard, Jr., Clerk
   113 St. Joseph Street, Mobile, Alabama, 36602

9. **<u>CAUTION:</u> You must include in this motion <u>all</u> the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.**

10. **<u>CAPITAL CASES:</u> If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.**

AO 243 (Rev. 10/07)

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT

SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court for the Southern District of Alabama	
Name (under which you were convicted):	Docket or Case No.:
Place of Confinement:	Prisoner No.:
UNITED STATES OF AMERICA V.	Movant (include name under which convicted)

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

   (b) Criminal docket or case number (if you know): _____

2. (a) Date of the judgment of conviction (if you know): _____

   (b) Date of sentencing: _____

3. Length of sentence: _____

4. Nature of crime (all counts):

5. (a) What was your plea? (Check one)

   (1) Not guilty ☐ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐

   (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☐

8. Did you appeal from the judgment of conviction? Yes ☐ No ☐

9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised:

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☐

If "Yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

_____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

(5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE:

_____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

_____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO: _____

_____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

_____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

_____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

_____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

_____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: _____

_____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

_____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

_____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing: _____

(b) At the arraignment and plea: _____

(c) At the trial: _____

(d) At sentencing: _____

(e) On appeal: _____

_____

(f) In any post-conviction proceeding: _____

_____

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☐

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

_____

_____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

---

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

(1) the date on which the judgment of conviction became final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

or any other relief to which movant may be entitled.

_____
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on _____.
(month, date, year)

Executed (signed) on _____ (date).

_____
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

_____
Plaintiff(s)/Petitioner(s)

vs. **CIVIL ACTION NO. _____**
(To be supplied by Clerk of Court)

_____
Defendant(s)/Respondent(s)

MOTION TO PROCEED WITHOUT PREPAYMENT OF FEES

I, _____, a United States citizen, make this Motion to Proceed Without Prepayment of Fees pursuant to Title 28 U.S.C. § 1915 in order to proceed in forma pauperis in this action. I am unable to make prepayment of fees or to give security therefor, and it is my belief that I am entitled to redress. I have not divested myself of any property, monies or any items of value for the purpose of avoiding payment of said fees.

I. BRIEF STATEMENT AS TO THE NATURE OF THE ACTION: _____
_____
_____
_____

II. RESIDENCE:
Your address: _____
(Street)
_____
(City) (State) (Zip Code)

III. MARITAL STATUS:
1. **Single _____ Married _____ Separated _____ Divorced _____**
2. **If married, spouse's full name: _____**

IV. DEPENDENTS:
1. **Number: _____**
2. **Relationship to dependent(s): _____**
3. **How much money do you contribute toward your dependents' support on a monthly basis? $ _____**

Revised 4/10/06

V. EMPLOYMENT:

1. **Name of employer:** _____
   a. **Address of employer:** _____
   (Street)
   _____
   (City) (State) (Zip Code)
   b. **How long have you been employed by present employer?**
   Years: _____ **Months** _____
   c. **Income: Monthly $**_____ **or Weekly $**_____
   d. **What is your job title?** _____

2. **If unemployed, date of last employment:** _____
   Amount of salary and wages received per month in last employment: $ _____

3. **Is spouse employed?** _____ **If so, name of employer:** _____
   _____
   a. **Income: Monthly $**_____ **or Weekly $**_____
   b. **What is spouse's job title?** _____

4. **Are you and/or your spouse receiving welfare aid?** _____
   If so, amount: Monthly $_____ **or Weekly $**_____

VI. FINANCIAL STATUS

1. **Owner of real property (excluding ordinary household furnishings and clothing):**
   a. **Description:** _____
   b. **Full Address:** _____
   c. **In whose name:** _____
   d. **Estimated value** - **$** _____
   e. **Total amount owed** - **$** _____
   Owed to: _____ **$** _____
   _____ **$** _____

   f. **Annual income from property** - - - - - - - - - - - - - - - - - - - **$** _____

2. **Other assets/property, such as automobiles, boats, motor homes, court judgments, etc. (If more than two, list information on back):**
   a.

	Asset (1)	Asset (2)
Make & Model:	_____	_____
In whose name registered?	_____	_____
Present Value of Asset:	_____	_____
Amount owed:	_____	_____
Owed to:	_____	_____

   b. **Total cash in banks, savings and loan associations, prisoner accounts,**

financial institutions, other repositories, or anywhere else - $ _____

c. List monies received by you during the last twelve (12) months, or held for you by banks, savings and loan associations, prisoner accounts, other financial institutions, or other sources as indicated below:

Business, profession or other forms of self-employment - $ _____

Rent payments, interest or dividends - - - - - - - - - - - - - - $ _____

Pensions, annuities or life insurance payments - - - - - - - $ _____

Gifts or inheritances - $ _____

Stocks, bonds or notes - $ _____

Tax refunds, Veteran benefits or social security benefits $ _____

Any other sources - $ _____

3. Obligations:

a. Monthly rental on house or apartment - - - - - - - - - - - - $ _____

b. Monthly mortgage payments on house - - - - - - - - - - - - $ _____

4. Other information pertinent to your financial debts and obligations:

(Creditor)	**(Total debt)**	**(Monthly payment)**
(Creditor)	**(Total debt)**	**(Monthly payment)**
(Creditor)	**(Total debt)**	**(Monthly payment)**

5. If you have indicated that you have minimal or no assets or income, please explain how you provide for your basic living needs such as food, clothing and shelter. (*e.g*. food stamps, family assistance or charitable contributions.)

_____

_____

_____

_____

Other (Explain): _____

_____

_____

_____

VII. <u>ALL PLAINTIFFS/PETITIONERS MUST READ AND SIGN</u>:

I UNDERSTAND that any false statement(s) of a material fact contained herein may serve as the basis of prosecution and conviction for perjury or making false statements. FURTHER, I CERTIFY that all questions contained herein have been answered and are true and correct to the best of my knowledge and belief.

_____	_____
DATE	**SIGNATURE OF PLAINTIFF/PETITIONER**
	_____
	ADDRESS
	_____

VIII. <u>FOR PRISONER PLAINTIFFS/PETITIONERS ONLY</u>:

A financial statement containing all transactions in your prisoner account for the six (6) months immediately preceding the filing of the Complaint <u>must</u> accompany this Motion. The financial statement must be in the form of a computer printout or bank ledger card prepared by the institution; a notarized financial statement that you prepare; or a financial statement prepared by an authorized officer of the institution. Failure to provide this financial statement information may result in the dismissal of this action.

The requirement to submit the financial statement addressed above does not negate your responsibility to ensure that the Certificate found below is also properly executed and filed.

I hereby authorize the agency having custody of me to collect from my prison account and forward to the Clerk of the United States District Court payments in accordance with 28 U.S.C. § 1915(b)(2). I understand that even if I am allowed to proceed in forma pauperis or pay a partial filing fee and even if my case is later dismissed for any reason, I am obligated to pay to the Clerk of the Court the full amount of the filing fee ($350.00 for a civil action, $5.00 for a habeas corpus petition, or $455.00 for an appeal).

_____ _____

DATE SIGNATURE OF PLAINTIFF/PETITIONER

CERTIFICATE
(To be completed by the institution of incarceration)

I certify that the applicant named herein has the sum of $_____ on account to his/her credit at _____ (name of institution). I further certify that during the past six months the applicant's average monthly balance was $_____. I further certify that during the past six months the average of monthly deposits to the applicant's account was $_____. (Please attach a certified copy of the applicant's account statement showing transactions for the past six months.)

_____ _____

DATE SIGNATURE OF AUTHORIZED OFFICER

GARNISHMENTS

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

_____,	*	
Plaintiff(s),		
	*	
v.		Civil Action No. _____
	*	
_____,		
Defendant(s)	*	WRIT OF GARNISHMENT
	*	

TO THE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF ALABAMA, OR TO ANY OTHER AUTHORIZED OFFICER, GREETINGS:

You are hereby commanded forthwith to summon _____ as Garnishee in the above-styled cause to appear within thirty (30) days from the date of service of this process, before the United States District Court for the Southern District of Alabama, at Mobile, Alabama, and file a written answer, upon oath:

(1) as to whether you are or were indebted to the defendant at the time you received this process, or when you make your answer, or during the intervening time, and in what sum or sums;
(2) whether you will be indebted to him in the future by existing contract or
(3) whether by existing contract you are liable to him for the delivery of personal property or for the payment of money which may be discharged by the delivery of personal property or which may be payable in personal property; and
(4) whether you have or not in your possession or under your control real or personal property or things in action belonging to the said defendant.

Mailing the notarized answer to the Clerk of the Court constitutes making a proper appearance in the court.

The United States Marshal, or other authorized officer, is hereby commanded to serve a copy of the above Writ of Garnishment on the above-named Garnishee, and make return of this Writ and the execution thereof, according to law.

Issued this the _____ day of _____, 20_____.

CHARLES R. DIARD, JR., CLERK,

By: _____
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

_____, Plaintiff(s),	*	
v.	*	Civil Action No. _____
_____, Defendant(s)	*	**NOTICE TO DEFENDANT OF ISSUANCE OF GARNISHMENT**

TO:

You will please take notice that garnishment was issued in the above-entitled cause against _____ on the _____ day of _____, _____, returnable to the United States District Court for the Southern District of Alabama, at Mobile, Alabama, within thirty (30) days from date of service of process on said Garnishee.

Dated this_____ day of _____, 20___.

CHARLES R. DIARD, JR., CLERK,

By:_____
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

_____,	*	
Plaintiff(s),		
	*	
v.		Civil Action No. _____
	*	
_____,		
Defendant(s)	*	**ANSWER OF GARNISHEE**

Now, on this day comes _____, Garnishee in the above-styled action, and for answer to the writ of Garnishment served upon _____ on the _____ day of _____, 20____, upon oath, says that _____ IS / IS NOT indebted to the above-named Defendant at the time of service of the writ of Garnishment in the above-stated cause, or at the time of making _____ answer hereto; and that _____ WILL / WILL NOT be indebted in the future to the said Defendant by a contract then existing, or at the time of this process; and that _____ HAS / HAS NOT in _____ ___ possession, or under _____ control, personal or real property, or things in action belonging to the said Defendant.

Other (Explain) _____

_____

_____

_____

And Garnishee having fully answered, prays to be discharged WITH / WITH OUT reasonable costs in this behalf expended.

_____
Garnishee or Agent (Signature)

Sworn to and subscribed before me this _____ day of _____, 20___.

_____
Notary Public

INSTRUCTIONS TO GARNISHEE:

1. **AMOUNT GARNISHED**: The principal amount, rate of interest, starting date of interest, and costs are set out in the Writ of Garnishment or Affidavit served upon you. The amount garnished consists of all of these.

2. **AMOUNT WITHHELD**: Under Federal law, 15 U.S.C. §1673(a), you should withhold each pay period:

   (a) 25% of disposable earnings each week, or

   (b) the amount by which disposable earnings for the week exceed thirty times the Federal minimum hourly wage,

   whichever is less.

3. **"DISPOSABLE EARNINGS"** means that part of earnings remaining after deduction of any amount required by law to be withheld (such as, amount of deductions for social security taxes and withholding taxes, but not court-ordered alimony and child support payments which must be included in "disposable earnings"). 15 U.S.C. §1672(b); First National Bank v. Hasty, 415 S.Supp 170 (E.D. Mich, 1976), affirmed 573 F.2d 1310 (6th Cir. 1977).

4. **DISBURSEMENT OF WITHHELD AMOUNTS:** Section 6-10-7, Code of Alabama 1975, provides: "The garnishee shall retain...the wages,...as is necessary to accumulate a sum equal to the amount shown as due by the Court on the writ or levy, at which time the garnishee shall pay same into the Court."

Mail remittances to: Charles R. Diard, Jr., Clerk
United States District Court
113 St. Joseph Street
Mobile, AL 36602

Your check or money order should be made payable to the "Clerk of the U.S. District Court." Indicate on each remittance the name of the case and the Civil Action Number, so that proper credit will be given for the remittance.

5. **NOTE:** If you fail to respond to the summons within thirty (30) days, a judgment may be entered against you for the amount of the claim. 1975 Code of Ala., §§6-6-393 and 457, Federal Rules of Civil Procedure, Rule 69.

Questions: Call this office: (334) 690-2371

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

RIGHT TO CLAIM EXEMPTION FROM GARNISHMENT

A process of garnishment has been delivered to you. This means that a court may order your wages, money in a bank, sums owed to you, or other property belonging to you, to be paid into court to satisfy a judgment against you.

Laws of the State of Alabama and of the United States provide that in some circumstances certain money and property may not be taken to pay certain types of court judgments, because certain money or property may be "exempt" from garnishment. For example, under state law, in some circumstances, up to $3,000.00 in wages, personal property, including money, bank accounts, automobiles, appliances, etc., may be exempt from process of garnishment. Similarly, under federal law, certain benefits and certain welfare payments may be exempt from garnishment.

THESE EXAMPLES ARE FOR PURPOSES OF ILLUSTRATION ONLY.
Whether you will be entitled to claim any exemption from the process of garnishment, and if so, what property may be exempt, will be determined by the facts in your particular case. If you are uncertain as to your possible exemption rights, you should consult a lawyer for advice.

To claim any exemption that may be available to you, you must prepare a "Claim of Exemption" form listing on it all your wages and personal property, have the claim of exemption notarized and file it in the Clerk's Office. Also, it is your responsibility to mail or deliver a copy of the claim to the plaintiff who has a judgment against you. You must indicate on the claim that you file in the Clerk's Office whether you mailed or delivered the copy to the plaintiff and the date on which you mailed or delivered it. The clerk cannot give you legal advice. If you need assistance you should see a lawyer.

If you file a Claim of Exemption, the Plaintiff will have approximately ten (10) days to file a "contest" of your claim. If a contest is filed, a court hearing will be scheduled and you will be notified of the time and place of the hearing. If the Plaintiff does not file a contest, the property claimed by you as exempt will be released from the garnishment.

If you do not file a Claim of Exemption, your property may be turned over to the court and paid to the Plaintiff on the judgment against you.

TO PROTECT YOUR RIGHTS, IT IS IMPORTANT THAT YOU ACT PROMPTLY. IF YOU HAVE ANY QUESTIONS, YOU SHOULD CONSULT A LAWYER.

Charles R. Diard, Jr., Clerk of Court