

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

LOCAL RULES AMENDMENTS EFFECTIVE DECEMBER 1, 2009

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RULE 4.1 SERVICE OF PROCESS--DISMISSAL FOR FAILURE TO MAKE SERVICE

(a) Any summons not returned with proof that it was served within one hundred twenty (120) days of the filing of the complaint is deemed to be unserved for the purpose of Fed. R. Civ. P. 4(m).

(b) Counsel and parties appearing pro se who seek to show good cause for the failure to make service within the 120 day period prescribed by Fed. R. Civ. P. 4(m) shall do so by filing a motion for enlargement of time under Fed. R. Civ. P. 6(b), together with a supporting affidavit. If on the 14th day following the expiration of the 120 day period good cause has not been shown as provided herein, the clerk shall forthwith automatically enter an order of dismissal for failure to effect service of process, without awaiting any further order of the court. The clerk shall furnish a copy of this local rule to counsel or pro se plaintiffs, together with the summons, and delivery of this copy by the clerk will constitute the notice required by Rule 4(m) Federal Rules of Civil Procedure. Such notice shall constitute the notice required by Fed. R. Civ. P. 4(m). No further notice need be given by the court.

(c) In those cases where the Federal Rules of Civil Procedure authorize service of process to be made in accordance with state practice, it shall be the duty of counsel for the party seeking such service to furnish to the Clerk of Court forms of all necessary orders and sufficient copies of all papers to comply with the requirements of the state practice, together with specific instructions for the making of such service, if such service is to be made by the United States marshal.

Effective September 1, 1990; amended effective January 2, 1995; December 1, 2009.

RULE 5.1 FORM AND FILING OF PAPERS

(a) Form and Signing of Papers.

(1) The provisions of the Federal Rules of Civil Procedure pertaining to the form and signing of pleadings, motions, and other papers shall be applicable to all papers filed in any proceeding in this court. The board of bar overseers registration number of each attorney signing such documents, except the United States Attorney and his staff, shall be inscribed below the signature.

(2) All papers filed in the court shall be adapted for flat filing, be filed on 8 ½" x 11" paper without backers and be bound firmly by staple or some such other means (excluding paper or binder clip or rubber band). All papers, except discovery requests and responses, shall be double-spaced except for the identification of counsel, title of the case, footnotes, quotations and exhibits. Discovery requests and responses shall be single-spaced. Except for complaints and notices of appeal, papers that do not conform to the requirements of this subsection shall be returned by the clerk.

(b) Time and Place of Filing. Except as noted in Rule 33-36(f), the original of all papers required to be served under Fed. R. Civ. P. 5(d) shall, unless otherwise submitted to the court, be filed in the office of the clerk within seven (7) days after service has been made.

(c) Requests for Special Action. When any pleading or other paper filed in the court includes a request for special process or relief, or any other request such that, if granted, the court will proceed other than in the ordinary course, the request shall, unless it is noted on the category sheet [*see* Rule 40.1(a)(1)], be noted on the first page to the right of or immediately beneath the caption.

(d) Additional Copies. Whenever, because of the nature of a proceeding, such as a proceeding before a three-judge district court under 28 U.S.C. § 2284, additional copies of a paper required to be filed are necessary either for the use of the court or to enable the clerk to carry out his duties, it is the responsibility of the party filing or having filed the paper to provide the necessary copies.

(e) Removal of Papers. Except as otherwise provided, papers filed in the office of the clerk shall not be removed from the office except by a judge, official, or employee of the court using the papers in official capacity, or by order of the court. All other persons removing papers from the office of the clerk shall prepare, sign and furnish to the clerk a descriptive receipt therefor in a form satisfactory to the clerk.

Effective September 1, 1990; amended effective December 1, 2009.

RULE 5.4 FILING AND SERVICE BY ELECTRONIC MEANS

(A) Electronic Filing Generally. Unless exempt or otherwise ordered by the court, all pleadings and other papers submitted to the court must be filed, signed, and verified by electronic means as provided herein.

(B) ECF Administrative Procedures. Subject to the supervision of the court, the clerk will maintain Electronic Case Filing (ECF) Administrative Procedures, including procedures for the registration of attorneys and other authorized users and for distribution of passwords to permit electronic filing. All electronic filings must be made in accordance with the ECF Administrative Procedures. The ECF Administrative Procedures will be generally available to the public and shall be posted on the court's web site.

(C) Service of Pleadings. Unless exempt or otherwise ordered by the court, all pleadings and other papers must be served on other parties by electronic means. Transmission of the Notice of Electronic Filing (NEF) through the court's transmission facilities will constitute service of the filed document upon a registered ECF user. Any pleading or other paper served by electronic means must bear a certificate of service in accordance with Local Rule 5.2(b).

(D) Deadlines. Although the ECF system is generally available 24 hours a day for electronic filing, that availability will not alter filing deadlines, whether set by rule, court order, or stipulation. All electronic transmissions of documents must be completed prior to 6:00 p.m. to be considered timely filed that day.

(E) Civil Case Opening Documents. Civil case opening documents, such as a complaint (or petition or notice of removal), summons, civil action cover sheet, or category sheet, must be filed and served in paper format, not electronically. Emergency motions and supporting materials presented contemporaneously with civil case opening documents may be filed and served initially in paper format and not electronically. Unless exempt or otherwise ordered by the court, at the time a civil case is opened, the filing party must also file a disk with the clerk's office containing in PDF format the opening documents and any emergency motions and supporting papers not filed electronically.

(F) State Court Record in Removal Proceedings. Within 28 days after filing a notice of removal in a civil action, a party removing an action under 28 U.S.C. §§ 1441-52 must file certified or attested copies of all docket entries, records, and proceedings in the state court in paper format. Unless exempt or otherwise ordered by the court, the removing party must also file a disk with the clerk's office containing the state court record in PDF format.

(G) Exemptions.

(1) *Documents That Should Not Be Filed Electronically.* The following types of documents must not be filed electronically, and will not be scanned into the ECF system by the clerk's office:

- (a) sealed documents;
- (b) ex parte motions;
- (c) documents generated as part of an alternative dispute resolution (ADR) process;
- (d) the administrative record in social security and other administrative proceedings;
- (e) the state court record in proceedings under 28 U.S.C. § 2254; and

(f) such other types of documents as the clerk may direct in the ECF Administrative Procedures.

(2) *Documents That Need Not Be Filed Electronically.* The following types of documents need not be filed electronically, but may be scanned into the ECF system by a filing party or the clerk's office:

- (a) handwritten pleadings;
- (b) documents filed by pro se litigants who are incarcerated or who are not registered ECF users;
- (c) indictments, informations, criminal complaints, and the criminal JS45 form;
- (d) affidavits for search or arrest warrants and related documents;
- (e) documents received from another court under Fed. R. Crim. P. 20 or 40;
- (f) appearance bonds;
- (g) any document in a criminal case containing the original signature of a defendant, such as a waiver of indictment or a plea agreement;
- (h) petitions for violations of supervised release;
- (i) executed service of process documents under Rule 4; and
- (j) such other types of documents as the clerk may direct in the ECF Administrative Procedures.

Effective January 1, 2006, amended effective January 1, 2009; December 1, 2009.

RULE 7.1 MOTION PRACTICE

(a) Control of Motion Practice.

(1) *Plan for the Disposition of Motions.* At the earliest practicable time, the judicial officer shall establish a framework for the disposition of motions, which, at the discretion of the judicial officer, may include specific deadlines or general time guidelines for filing motions. This framework may be amended from time to time by the judicial officer as required by the progress of the case.

(2) *Motion Practice.* No motion shall be filed unless counsel certify that they have conferred and have attempted in good faith to resolve or narrow the issue.

(3) *Unresolved Motions.* The court shall rule on motions as soon as practicable, having in mind the reporting requirements set forth in the Civil Justice Reform Act.

(b) Submission of Motion and Opposition to Motion.

(1) *Submission of Motion.* A party filing a motion shall at the same time file a memorandum of reasons, including citation of supporting authorities, why the motion should be granted. Affidavits and other documents setting forth or evidencing facts on which the motion is based shall be filed with the motion.

(2) *Submission of Opposition to a Motion.* A party opposing a motion, shall file an opposition within 14 days after the motion is served, unless (1) the motion is for summary judgment, in which case the opposition shall be filed within 21 days after the motion is served, or (2) another period is fixed by rule or statute, or by order of the court. A party opposing a motion shall file, in the same (rather than a separate), document a memorandum of reasons, including citation of supporting authorities, why the motion should not be granted. Affidavits and other documents setting forth or evidencing facts on which the opposition is based shall be filed with the opposition. The fourteen day period is intended to include the period specified by the civil rules for mailing time and provide for a uniform period regardless of the use of the mails.

(3) *Additional Papers.* All other papers not filed as indicated in subsections (b)(1) and (2), whether in the form of a reply brief or otherwise, may be submitted only with leave of court.

(4) *Length of Memoranda.* Memoranda supporting or opposing allowance of motions shall not, without leave of court, exceed twenty (20) pages, double-spaced.

(c) **Service.** All papers filed pursuant to section (b) shall be served unless the moving party indicates in writing on the face of the motion that ex parte consideration is requested. Motions filed “ex parte” and related papers need not be served until the motion has been ruled upon or the court orders that service be made.

(d) **Request for Hearing.** Any party making or opposing a motion who believes that oral argument may assist the court and wishes to be heard shall include a request for oral argument in a separate paragraph of the motion or opposition. The request should be set off with a centered caption, “REQUEST FOR ORAL ARGUMENT.”

(e) **Hearing.** If the court concludes that there should be a hearing on a motion, the motion will be set down for hearing at such time as the court determines.

(f) Decision of Motion Without Hearing. Motions that are not set down for hearing as provided in subsection (e) will be decided on the papers submitted after an opposition to the motion has been filed, or, if no opposition is filed, after the time for filing an opposition has elapsed.

Effective September 1, 1990; amended effective October 1, 1992; December 1, 2009.

RULE 15.1 ADDITION OF NEW PARTIES

(a) Amendments Adding Parties. Amendments adding parties shall be sought as soon as an attorney reasonably can be expected to have become aware of the identity of the proposed new party.

(b) Service on New Party. A party moving to amend a pleading to add a new party shall serve, in the manner contemplated by Fed. R. Civ. P. 5(b), the motion to amend upon the proposed new party at least 14 days in advance of filing the motion, together with a separate document stating the date on which the motion will be filed. A motion to amend a pleading to add a new party shall be accompanied by a certificate stating that it has been served in advance on the new party as required by this rule.

Adopted effective October 1, 1992; amended effective January 2, 1995; December 1, 2009.

RULE 16.1 EARLY ASSESSMENT OF CASES

(a) Scheduling Conference in Civil Cases. In every civil action, except in categories of actions exempted by LR 16.2 as inappropriate for scheduling procedures, the judge or, in the interests of the efficient administration of justice, a designated magistrate judge shall convene a scheduling conference as soon as practicable, but in any event within ninety (90) days after the appearance of a defendant and within one hundred twenty (120) days after the complaint has been served on a defendant. In cases removed to this court from a state court or transferred from any other federal court, the judge or designated magistrate judge shall convene a scheduling conference within sixty (60) days after removal or transfer.

(b) Obligation of Counsel to Confer. Unless otherwise ordered by the judge, counsel for the parties must, pursuant to Fed. R. Civ. P. 26(f), confer at least 21 days before the date for the scheduling conference for the purpose of:

- (1) preparing an agenda of matters to be discussed at the scheduling conference,
- (2) preparing a proposed pretrial schedule for the case that includes a plan for discovery, and
- (3) considering whether they will consent to trial by magistrate judge.

(c) Settlement Proposals. Unless otherwise ordered by the judge, the plaintiff shall present written settlement proposals to all defendants no later than 14 days before the date for the scheduling conference. Defense counsel shall have conferred with their clients on the subject of settlement before the scheduling conference and be prepared to respond to the proposals at the scheduling conference.

(d) Joint Statement. Unless otherwise ordered by the judge, the parties are required to file, no later than seven (7) days before the scheduling conference and after consideration of the topics contemplated by Fed. R. Civ. P. 16(b) & (c) and 26(f), a joint statement containing a proposed pretrial schedule, which shall include:

- (1) a joint discovery plan scheduling the time and length for all discovery events, that shall
 - (a) conform to the obligation to limit discovery set forth in Fed. R. Civ. P. 26(b), and
 - (b) take into account the desirability of conducting phased discovery in which the first phase is limited to developing information needed for a realistic assessment of the case and, if the case does not terminate, the second phase is directed at information needed to prepare for trial; and
- (2) a proposed schedule for the filing of motions; and
- (3) certifications signed by counsel and by an authorized representative of each party affirming that each party and that party's counsel have conferred:
 - (a) with a view to establishing a budget for the costs of conducting the full course--and various alternative courses--of the litigation; and
 - (b) to consider the resolution of the litigation through the use of alternative dispute

resolution programs such as those outlined in LR 16.4.

To the extent that all parties are able to reach agreement on a proposed pretrial schedule, they shall so indicate. To the extent that the parties differ on what the pretrial schedule should be, they shall set forth separately the items on which they differ and indicate the nature of that difference. The purpose of the parties' proposed pretrial schedule or schedules shall be to advise the judge of the parties' best estimates of the amounts of time they will need to accomplish specified pretrial steps. The parties' proposed agenda for the scheduling conference, and their proposed pretrial schedule or schedules, shall be considered by the judge as advisory only.

(e) Conduct of Scheduling Conference. At or following the scheduling conference, the judge shall make an early determination of whether the case is "complex" or otherwise appropriate for careful and deliberate monitoring in an individualized and case-specific manner. The judge shall consider assigning any case so categorized to a case management conference or series of conferences under LR 16.3. The factors to be considered by the judge in making this decision include:

- (1) the complexity of the case (the number of parties, claims, and defenses raised, the legal difficulty of the issues presented, and the factual difficulty of the subject matter);
- (2) the amount of time reasonably needed by the litigants and their attorneys to prepare the case for trial;
- (3) the judicial and other resources required and available for the preparation and disposition of the case;
- (4) whether the case belongs to those categories of cases that:
 - (a) involve little or no discovery,
 - (b) ordinarily require little or no additional judicial intervention, or
 - (c) generally fall into identifiable and easily managed patterns;
- (5) the extent to which individualized and case-specific treatment will promote the goal of reducing cost and delay in civil litigation; and
- (6) whether the public interest requires that the case receive intense judicial attention.

In other respects, the scheduling conference shall be conducted according to the provisions for a pretrial conference under Federal Rule of Civil Procedure 16 and for a case management conference under LR 16.3.

(f) Scheduling Orders. Following the conference, the judge shall enter a scheduling order that will govern the pretrial phase of the case. Unless the judge determines otherwise, the scheduling order shall include specific deadlines or general time frameworks for:

- (1) amendments to the pleadings;

- (2) service of, and compliance with, written discovery requests;
- (3) the completion of depositions, including, if applicable, the terms for taking and using videotape depositions;
- (4) the identification of trial experts;
- (5) the sequence of disclosure of information regarding experts contemplated by Fed. R. Civ. P. 26(b);
- (6) the filing of motions;
- (7) a settlement conference, to be attended by trial counsel and, in the discretion of the judge, their clients;
- (8) one or more case management conferences and/or the final pretrial conference;
- (9) a final pretrial conference, which shall occur within eighteen months after the filing of the complaint;
- (10) the joinder of any additional parties;
- (11) any other procedural matter that the judge determines is appropriate for the fair and efficient management of the litigation.

(g) Modification of Scheduling Order. The scheduling order shall specify that its provisions, including any deadlines, having been established with the participation of all parties, can be modified only by order of the judge, or the magistrate judge if so authorized by the judge, and only upon a showing of good cause supported by affidavits, other evidentiary materials, or references to pertinent portions of the record.

(h) Definition of Judge. As used in this rule, “judge” refers to the United States District Judge to whom the case is assigned or to the United States Magistrate Judge who has been assigned the case pursuant to 28 U.S.C. § 636(c), if the Magistrate Judge has been assigned the case prior to the convening of the scheduling conference mandated by this rule.

Adopted effective October 1, 1992; amended effective January 2, 1995; December 10, 1996; December 4, 2000; January 2, 2001; December 1, 2009.

RULE 16.3 CASE MANAGEMENT CONFERENCES

(a) Conduct of Case Management Conferences. Case management conferences shall be presided over by a judicial officer who, in furtherance of the scheduling order required by LR 16.1(f) may:

- (1) explore the possibility of settlement;
- (2) identify or formulate (or order the attorneys to formulate) the principal issues in contention;
- (3) prepare (or order the attorneys to prepare) a specific discovery schedule and discovery plan that, if the presiding judicial officer deems appropriate, might:
 - (a) identify and limit the volume of discovery available in order to avoid unnecessary or unduly burdensome or expensive discovery;
 - (b) sequence discovery into two or more stages; and
 - (c) include time limits set for the completion of discovery;
- (4) establish deadlines for filing motions and a time framework for their disposition;
- (5) provide for the “phased resolution” or “bifurcation of issues for trial” consistent with Federal Rule 42(b); and
- (6) explore any other matter that the judicial officer determines is appropriate for the fair and efficient management of the litigation.

(b) Obligation of Counsel to Confer. The judicial officer may require counsel for the parties to confer before the case management conference for the purpose of preparing a joint statement containing:

- (1) an agenda of matters that one or more parties believe should be addressed at the conference; and
- (2) a report advising the judicial officer whether the case is progressing within the allotted time limits and in accord with the specified pretrial steps.

This statement is to be filed with the court no later than seven (7) days before the case management conference.

(c) Additional Case Management Conferences. Nothing in this rule shall be construed to prevent the convening of additional case management conferences by the judicial officer as may be thought appropriate in the circumstances of the particular case. In any event, a conference should not terminate without the parties being instructed as to when and for what purpose they are to return to the court.

Adopted effective October 1, 1992, amended effective December 1, 2009.

RULE 16.5 FINAL PRETRIAL CONFERENCE

(a) Schedule of Conference. The judicial officer to whom the case is assigned for trial may set a new date for the final pretrial conference if that judicial officer determines that resolution of the case through settlement or some other form of alternative dispute resolution is imminent.

(b) Representation by Counsel; Settlement. Unless excused by the judicial officer to whom the case is assigned for trial, each party shall be represented at the final pretrial conference by counsel who will conduct the trial. Counsel shall have full authority from their clients with respect to settlement and shall be prepared to advise that judicial officer as to the prospects of settlement.

(c) Disclosures Preliminary to the Pretrial Conference. As provided in LR 26.4(a), the disclosure regarding experts required by Fed. R. Civ. P. 26(a)(2) shall be made at least 90 days before the final pretrial conference. No later than 28 days before the date of the pretrial conference the parties shall make the pretrial disclosures required by Fed. R. Civ. P. 26(a)(3). Any objections to the use of the evidence identified in the pretrial disclosure required by Fed. R. Civ. P. 26(a)(3) shall be made before counsel confer regarding the pretrial memorandum, shall be a subject of their conference and shall not be filed with the court unless the objections cannot be resolved. Filing of such objections shall be made pursuant to subsection (d)(12) of this rule.

(d) Obligation of Counsel to Confer and Prepare Pretrial Memorandum. Unless otherwise ordered by the judicial officer to whom the case is assigned for trial, counsel for the parties shall confer no later than 14 days before the date of the final pretrial conference for the purpose of jointly preparing a pretrial memorandum for submission to the judicial officer. Unless otherwise ordered by the judicial officer to whom the case is assigned for trial, the parties are required to file, no later than seven (7) days prior to the pretrial conference, a joint pretrial memorandum which shall set forth:

(1) a concise summary of the evidence that will be offered by:

- (a) plaintiff;
- (b) defendant; and
- (c) other parties;

with respect to both liability and damages (including special damages, if any);

(2) the facts established by pleadings or by stipulations or admissions of counsel;

(3) contested issues of fact;

(4) any jurisdictional questions;

(5) any questions raised by pending motions;

(6) issues of law, including evidentiary questions, together with supporting authority;

(7) any requested amendments to the pleadings;

(8) any additional matters to aid in the disposition of the action;

(9) the probable length of the trial;

(10) the names, addresses and telephone numbers of witnesses to be called (expert and others) and whether the testimony of any such witness is intended to be presented by deposition;

(11) the proposed exhibits; and

(12) the parties' respective positions on any remaining objections to the evidence identified in the pretrial disclosure required by Fed. R. Civ. P. 26(a)(3).

(e) Conduct of Conference. The agenda of the final pretrial conference, when possible and appropriate, shall include:

(1) a final and binding definition of the issues to be tried;

(2) the disclosure of expected and potential witnesses and the substance of their testimony;

(3) the exchange of all proposed exhibits;

(4) a pretrial ruling on objections to evidence;

(5) the elimination of unnecessary or redundant proof, including the limitation of expert witnesses;

(6) a consideration of the bifurcation of the issues to be tried;

(7) the establishment of time limits and any other restrictions on the trial;

(8) a consideration of methods for expediting jury selection;

(9) a consideration of means for enhancing jury comprehension and simplifying and expediting the trial;

(10) a consideration of the feasibility of presenting direct testimony by written statement;

(11) the exploration of possible agreement among the parties on various issues and encouragement of a stipulation from the parties, when that will serve the ends of justice, including:

(a) that direct testimony of some or all witnesses will be taken in narrative or affidavit form, with right of cross-examination reserved;

(b) that evidence in affidavit form will be read to the jury by the witnesses, or by counsel or another reader with court approval; and

(c) that time limits shorter than those set forth in Rule 43.1 be used for trial; and

(12) a consideration of any other means to facilitate and expedite trial.

(f) Trial Brief. A trial brief, including requests for rulings or instructions, shall be filed by each party seven (7) days before the commencement of trial. Each party may supplement these requests at the trial if the evidence develops otherwise than as anticipated.

Adopted effective October 1, 1992; amended effective January 2, 1995; December 1, 2009.

RULE 26.2 SEQUENCES OF DISCOVERY

(a) Automatic Required Disclosure. Unless otherwise ordered by the judge, or by the United States Magistrate Judge who has been assigned the case pursuant to 28 U.S.C. § 636(c), disclosure required by Fed. R. Civ. P. 26(a)(1) should be made as soon as practicable and in any event must be made at or within 14 days after the meeting required by Fed. R. Civ. P. 26(f) and LR 16.1(b). Unless otherwise ordered by such a judicial officer, before a party may initiate discovery, that party must provide to other parties disclosure of the information and materials called for by Fed. R. Civ. P. 26(a)(1).

(b) Further Discovery. Should a party exhaust the opportunities for any type of discovery events under LR 26.1(c), any requests that such party may make for additional interrogatories, depositions, admissions or the production of documents beyond that allowed pursuant to LR 26.1(c) shall be by discovery motion. All requests for additional discovery events, extensions of deadlines, for the completion of discovery or for postponement of the trial must be signed by the attorney and the party making the request.

(c) Certification of Discovery Motions. The judicial officer shall not consider any discovery motion that is not accompanied by a certification, as required by LR 7.1(a)(2) and LR 37.1(b), that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion. In evaluating any discovery motion, the judicial officer may consider the desirability of conducting phased discovery, as contemplated by LR 26.3.

(d) Removed and Transferred Actions. In all actions removed to this court or transferred to this court from another federal court, the submission required by subdivision (a) shall be made as prescribed in that subdivision, and if discovery was initiated before the action being removed or transferred to this court, then the submission required by subdivision (a) shall be made within 21 days of the date of removal or transfer.

Adopted effective October 1, 1992; amended effective January 2, 1995; December 10, 1996; December 4, 2000; December 1, 2009.

RULE 35.1 DISCLOSURE OF MEDICAL INFORMATION IN PERSONAL INJURY CASES

(a) Disclosure by Claimants. Fourteen (14) days after an issue is joined by a responsive pleading, a claimant, whether plaintiff, third-party plaintiff, cross-claimant, or counter-claimant, who asserts a claim for personal injuries shall serve defendant, whether the direct defendant, third-party defendant, cross-claim defendant, or counterclaim defendant with

(1) an itemization of all medical expenses incurred before the date of service of the pleading containing the claim for which recovery is sought. If the claimant anticipates that recovery will be sought for future medical expenses, the itemization shall so state, but need not set forth an amount for the anticipated future medical expenses;

(2) a statement that either:

(a) identifies a reasonably convenient location and date, within no more than fourteen (14) days, at which the defendant may inspect and copy, at the defendant's expense, all non-privileged medical records pertaining to the diagnosis, care, or treatment of injuries for which recovery is sought; or

(b) identifies all health care providers from which the claimant has received diagnosis, care, or treatment of injuries for which recovery is sought together with executed releases directed at each provider authorizing disclosure to the defendant or its counsel of all non-privileged medical records in the provider's possession.

(b) Assertion of Privilege. Insofar as medical records are not produced in accordance with subdivision (a)(2) on the ground of privilege, the claimant shall identify the privileged documents and state the privilege pursuant to which they are withheld.

(c) Removed and Transferred Actions. In all actions removed to this court from a state court or transferred to this court from another federal court, claimants seeking recovery for personal injuries shall provide the information and materials described in subdivision (a) within 21 days after the date of removal or transfer.

Adopted effective October 1, 1992; amended effective December 1, 2009.

RULE 36.1 ADMISSIONS

(a) Requests for Admission--Form of Response.

(1) Statements and objections in response to requests for admission served pursuant to Fed. R. Civ. P. 36 shall be made in the order of the requests for admission propounded.

(2) Each answer, statement, or objection shall be preceded by the request for admission to which it responds.

(3) Each objection and the grounds therefor shall be stated separately.

(b) Statements in Response to Requests for Admission Following Objections. When there is objection to a request for admission and it is subsequently determined that the request is proper, the matter, the admission of which is requested, shall be deemed admitted unless within 14 days after such determination such party to whom the request was directed serves a statement denying the matter or setting forth the reasons why that party cannot admit or deny the matter, as provided in Fed. R. Civ. P. 36.

Adopted effective October 1, 1992; amended effective January 2, 1995; December 1, 2009.

RULE 40.2 CONFLICT OF COURT APPEARANCES

(a) Order of Preference and Notice to Clerks. In situations where counsel, including Assistant United States Attorneys, have conflicting court appearances among cases pending before different judges or magistrates of this court, the following order of preference shall apply, except as otherwise provided by law:

(1) Trials shall take precedence over all other hearings, and jury trials shall take precedence over nonjury trials.

(2) Criminal cases shall take precedence over civil cases.

(3) Criminal cases involving defendants who are in custody pending trial in the particular case shall take precedence over other criminal cases.

(4) Among civil cases or among criminal cases not involving defendants in custody, the case having the earliest docket number shall take precedence over the others.

When such conflicts appear, the counsel involved shall notify the deputy clerk assigned to each judge concerned, in writing, not later than seven (7) days after the receipt of the notice or calendar giving rise to such conflict. The notice shall contain the names and docket number of each case, the time of the scheduled hearings in each case, the purpose thereof, and advise which case has precedence and the reason therefor. Upon receipt of such notice and a determination that a conflict in fact exists, the case or cases not having precedence shall be rescheduled.

(b) Substitution of Counsel. Counsel, in lieu of giving a notice of conflict, may elect to have a colleague, including another Assistant United States Attorney, handle the matter for the counsel involved. This shall not apply to any appointed defense counsel in the trial of criminal cases, unless the judicial officer orders otherwise.

(c) Primacy of Speedy Trial Plan. In the event of any conflict between the provisions of this rule and the provisions of the Speedy Trial Plan for the District of Massachusetts, the Speedy Trial Plan shall control.

(d) Scheduling Policy Regarding Superior Court Cases. When counsel have engagement conflicts with respect to cases pending in the Massachusetts Superior Court and The United States District Court for the District of Massachusetts, the following scheduling policy shall apply:

(1) Trials shall take precedence over all other hearings.

(2) Jury trials shall take precedence over nonjury trials.

(3) Criminal cases shall take precedence over civil cases.

(4) Criminal cases involving defendants who are in custody pending trial shall take precedence over other criminal cases.

(5) Among civil cases, or among criminal cases not involving defendants in custody, the case having the earliest docket number shall take precedence over the others, except that a trial setting involving

numerous parties and counsel will ordinarily take precedence over other trials.

Counsel shall notify the presiding Superior Court Justice and U.S. District Judge of the scheduling conflict, in writing, not later than seven (7) days after the receipt of the scheduling order giving rise to the conflict. Counsel's notification shall include: a) the names and docket numbers of each case, b) the date and time of the scheduled proceedings in each case, and c) a brief statement as to which case has precedence under this policy. The case or cases not having precedence shall be rescheduled, unless the presiding Justice and Judge agree otherwise. In the event of any conflict between the provisions of this policy and the provisions of the Speedy Trial Plan for the District of Massachusetts, the Speedy Trial Plan shall have precedence.

Effective September 1, 1990; amended effective January 2, 1995; December 1, 2009.

RULE 41.1 DISMISSAL FOR WANT OF PROSECUTION

(a)(1) Whenever in any civil action the clerk shall ascertain that no proceeding has been docketed therein for a period of one (1) year, he shall then mail notice to all persons who have entered an appearance in such a case that, subject to the provisions of subsection (a)(3), the case will be dismissed without further notice 28 days after the sending of the notice.

(2) After the 28th day following the sending of the notice, without order of the court the clerk shall, subject to the provisions of subsection (a)(3), enter an order of dismissal for all cases on the list. It shall not be necessary for the clerk to send additional notice of the dismissal to any counsel or party.

(3) A case shall not be dismissed for lack of prosecution if within 28 days of the sending of notice an explanation for the lack of proceedings is filed and the judge to whom the case is assigned orders that it not be dismissed.

(b)(1) Additionally, each judge may from time to time give notice of not less than 21 days of hearing on a dismissal calendar for actions or proceedings assigned to that judge that appear not to have been diligently prosecuted. Unless otherwise ordered by the assigned judge, each party shall, not less than 14 days prior to the noticed hearing date, serve and file a certificate describing the status of the action or proceeding and showing that good cause exists for the court to retain the case on the docket. Nothing in this rule precludes the filing of a motion for dismissal under Rule 41(b) of the Federal Rules of Civil Procedure.

(2) Failure on the part of the plaintiff to file the required statement or his failure to appear at the scheduled hearing shall be grounds for the dismissal of the action.

(c) The dismissal of a case pursuant to this rule shall not operate as an adjudication on the merits unless the court on motion of a party directs otherwise.

Effective September 1, 1990; amended effective December 1, 2009.

RULE 43.1 TRIAL

(a) Time Limits for Evidentiary Hearing.

(1) Absent agreement of the parties as to the time limits for the trial acceptable to the judicial officer, the judicial officer may order a presumptive limit of a specified number of hours. This time shall be allocated equally between opposing parties, or groups of aligned parties, unless otherwise ordered for good cause.

(2) A request for added time will be allowed only for good cause. In determining whether to grant a motion for an increased allotment of time, the court will take into account:

(a) whether or not the moving party has

(1) used the time since the commencement of trial in a reasonable and proper way, and

(2) complied with all orders regulating the trial;

(b) the moving party's explanation as to the way in which the requested added time would be used and why it is essential to assure a fair trial; and

(c) any other relevant and material facts the moving party may wish to present in support of the motion.

The court will be receptive to motions for reducing or increasing the allotted time to assure that the distribution is fair among the parties and adequate for developing the evidence.

(b) Evidence at the Evidentiary Hearing.

(1) Each party shall give advance notice to the judicial officer and the other parties, before jury selection, of the identity of all witnesses whose testimony it may offer during trial, whether by affidavit, deposition, or oral testimony.

(2) Not later than seven (7) days before it seeks to use the testimony of any witness, or on shorter notice for good cause shown, a party shall advise the judicial officer and all other parties of its intent to use the testimony of the witness on a specified day.

(3) Except for good cause shown, no party shall be allowed to:

(a) use the testimony of a witness other than the witnesses already listed on the filing with the court before trial commences; or

(b) introduce documentary evidence, during direct examination, other than those exhibits already listed with the judicial officer and furnished to the other parties before trial commences.

Adopted effective October 1, 1992; amended effective December 1, 2009.

RULE 56.1 MOTIONS FOR SUMMARY JUDGMENT

Motions for summary judgment shall include a concise statement of the material facts of record as to which the moving party contends there is no genuine issue to be tried, with page references to affidavits, depositions and other documentation. Failure to include such a statement constitutes grounds for denial of the motion. Opposition to motions for summary judgment must be filed, unless the court orders otherwise, within 21 days after the motion is served. A party opposing the motion shall include a concise statement of the material facts of record as to which it is contended that there exists a genuine issue to be tried, with page references to affidavits, depositions and other documentation. Copies of all referenced documentation shall be filed as exhibits to the motion or opposition. Material facts of record set forth in the statement required to be served by the moving party will be deemed for purposes of the motion to be admitted by opposing parties unless controverted by the statement required to be served by opposing parties. Unless the court orders otherwise, the moving party may file a reply within 14 days after the response is served.

Effective September 1, 1990, amended effective December 1, 2009.

RULE 68.2 SETTLEMENT

When a case is settled, the parties shall file in the office of the clerk a signed agreement for judgment or stipulation for dismissal, as appropriate, within 28 days, unless the court otherwise orders.

Effective September 1, 1990; amended effective December 1, 2009.

RULE 81.1 REMOVAL

(a) Within 28 days after filing a notice for removal of an action from a state court to this court pursuant to 28 U.S.C. § 1446, the party filing the notice shall file certified or attested copies of all records and proceedings in the state court and a certified or attested copy of all docket entries in the state court.

(b) If the clerk of this court has not received the papers required to be filed under section (a) within 42 days of the filing of the notice for removal, the case shall be remanded to the state court from which it was removed, unless this court directs otherwise.

(c) When a case is remanded to a state court, the clerk shall mail certified copies of the docket and order of remand, together with the remainder of the original file, to the clerk of the state court.

Effective September 1, 1990; amended effective December 1, 2009.

RULE 83.5.1 BAR OF THE DISTRICT COURT

(a) Admission to the District Bar.

(1) An attorney is qualified for admission to the district bar of this district if the attorney (i) is currently in good standing as an attorney admitted to practice before the Supreme Judicial Court of Massachusetts; (ii) has satisfied the examination requirements as defined by the District Committee on Admissions relating to familiarity with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, principles of federal jurisdiction and venue, and rules relating to professional responsibility; and (iii) has filed a certificate in a form approved by the District Committee on Admissions attesting to familiarity with the local rules of this district. For so long as the Rules of the Board of Bar Examiners of the Commonwealth of Massachusetts include for examination the subjects named in this rule, proof of good standing as an attorney admitted to practice before the Supreme Judicial Court of Massachusetts satisfies the examination requirement set out in this rule. An attorney admitted to practice in this court before the effective date of this rule and in good standing upon that date is a member of this district bar as of that date without further action on the attorney's part.

(2) All applicants for admission to practice before this court shall complete, verify, and file an application on an official form provided by the clerk.

(3) The clerk shall examine the application and if it is in order transmit it to the United States Attorney.

(4) Within 21 days after the application is transmitted to the United States Attorney, if concluding on the basis of the information contained in the application that the application should be granted, the United States Attorney shall return the application to the clerk with written approval. The clerk shall place the name of the applicant on the list for the first available admissions ceremony.

(5) The United States Attorney, if concluding on the basis of the information contained in the application or otherwise that the application should not be granted, shall return the application to the clerk with written objection. The clerk shall deny the application without prejudice and send notice of the denial together with a copy of the United States Attorney's objection to the applicant.

(6) Any applicant denied admission may ask the court by motion to approve the application. The motion shall be presented to the Miscellaneous Business Docket (MBD) judge, who may rule on the motion ex parte, invite a response from the United States Attorney and the clerk, or schedule the matter for hearing. If the court approves the application, the clerk shall proceed as under subsection (a)(4).

(7) Approved applicants must appear at an admissions ceremony and make the following oath or affirmation before the judge presiding over the admissions ceremony:

I solemnly swear (affirm) that I shall conduct myself as a member of the bar of the United States District Court for the District of Massachusetts uprightly and according to the law.

Approved applicants shall be admitted to the district bar of this district upon signing the register of attorneys and paying to the "Clerk, United States District Court" the approved attorney admission fee.

(b) Student Practice Rule.

(1) A senior law student in a law school who has successfully completed a course for credit or who is enrolled in a course for credit in evidence or trial practice, with the written recommendation of the dean of such school of the law student's character, legal ability, and training, may appear without compensation (i) on behalf of the government or any governmental agency, if the conduct of the case is under the supervision of a member of the district bar; (ii) on behalf of indigent defendants in criminal proceedings, if the defendant consents (as provided in subsection (b)(6)) and if the conduct of the case is under the supervision of a member of the district bar assigned by the court or employed by a nonprofit program of legal aid, legal assistance or defense, or a law school clinical instruction program; and (iii) on behalf of indigent parties in civil proceedings, if the party consents (as provided in subsection (b)(6)), and if the conduct of the case is under the supervision of a member of the district bar assigned by the court or employed by a nonprofit program of legal aid, legal assistance or defense, or a law school clinical instruction program.

(2) A student may not appear in a criminal proceeding, either for the defense or for the prosecution, unless the dean's recommendation indicates that the student, in addition to satisfying all other requisites of this rule, has also successfully completed for credit a course in criminal procedure.

(3) The expression "supervision" shall be construed to require the attendance in court of the supervising member of the district bar. The term "senior law student" shall mean a student who has completed successfully the next-to-the-last year of law school study.

(4) The written recommendation described in subsection (b)(1) shall be filed with the Clerk of Court and shall be in effect, unless withdrawn earlier, until the date of the student's graduation from law school.

(5) A student who has begun the next-to-the-last year of law study in a law school, qualified and supervised as provided in subsections (b)(1), (3) and (4), may appear in civil proceedings under the same conditions as a senior law student, if the written approval referred to in subsections (b)(1) and (4) states that the law student is currently participating in a law school clinical instruction program.

(6) Before acting or appearing for any client, the student shall : (i) file with the clerk a certificate stating that the student has read and will abide by the standards of professional conduct set out in Rules 3:07 and 3:08 of the Rules of the Supreme Judicial Court of Massachusetts and is familiar with the local rules of this district; (ii) disclose to the client the student's status as a law student; (iii) obtain from the client a signed document in which the client acknowledges having been informed of the student's status and authorizes the named student to appear for and represent the client in the litigation or proceedings identified in the document; (iv) have the document approved by the supervising attorney; and (v) file the document and the written appearance of the supervising attorney with the Clerk of Court.

(7) The rules of law and of evidence relating to communications between attorney and client shall govern communications made or received by any student acting under the provisions of this rule.

(8) A student acting under this rule shall comply with the standards of professional conduct set out in Rules 3:07 and 3:08 of the Rules of the Supreme Judicial Court of Massachusetts. Failure of an attorney supervising students to provide proper training or supervision may be grounds for disciplinary action or revocation or restriction of the attorney's authority to supervise students.

(9) The expression "without compensation" used in this rule shall not be construed to prohibit the

receipt of a fixed compensation paid regularly by a governmental agency or legal assistance program or law school clinical instruction program acting as the employer of a law student. It shall, however, be construed to prohibit the receipt of a fee by a law student from a client for work on a particular case.

Effective September 1, 1990; amended effective December 1, 2009.

RULE 83.6 RULES OF DISCIPLINARY ENFORCEMENT

(1) Attorneys Convicted of Crimes.

(A) Upon the filing with this court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the court has been convicted in any court of the United States, or of any state, the District of Columbia, territory, commonwealth, or possession of the United States of a serious crime as hereinafter defined, the court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, or nolo contendere, or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the court may set aside such order when it appears in the interest of justice to do so.

(B) The term "serious crime" shall include any felony and any lesser crime, a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt of a conspiracy or solicitation of another to commit a "serious crime."

(C) A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.

(D) Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the court shall, in addition to suspending that attorney in accordance with the provisions of this rule, also refer the matter to counsel for the institution of a disciplinary proceeding before the court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

(E) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime," the court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the court; provided, however, that the court may in its discretion make no reference with respect to convictions for minor offenses.

(F) An attorney suspended under the provisions of this rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

(2) Discipline Imposed By Other Courts.

(A) Any attorney admitted to practice before this court shall, upon being subject to public discipline by any other court of the United States, or by a court of any state, the District of Columbia, territory, commonwealth, or possession of the United States, promptly inform the clerk of this court of such action.

(B) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an

attorney admitted to practice before this court has been disciplined by another court, this court shall forthwith issue a notice directed to the attorney containing:

(i) a copy of the judgment or order from the other court; and

(ii) an order to show cause directing that the attorney inform this court within 28 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in subsection (2)(D) hereof that the imposition of the identical discipline by this court would be unwarranted and the reasons therefor. The order shall state that a hearing on such a claim may be had if requested within 14 days after service of the order; otherwise the matter will be determined on the papers without hearing.

(C) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this court shall be deferred until such stay expires.

(D) Upon the expiration of 28 days from service of the notice issued pursuant to the provisions of subsection (2)(B), or any longer period needed for a hearing and consideration by the court, this court shall impose the identical discipline unless the respondent-attorney demonstrates, or this court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

(i) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(ii) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this court could not, consistent with its duty, accept as final the conclusion on that subject; or

(iii) that the imposition of the same discipline by this court would result in grave injustice; or

(iv) that the misconduct established is deemed by this court to warrant substantially different discipline. Where this court determines that any of said elements exist, it shall enter such other order as it deems appropriate.

(E) In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this court.

(F) This court may at any stage appoint counsel to prosecute the disciplinary proceedings.

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

(A) Any attorney admitted to practice before this court who shall be disbarred on consent or resign from the bar of any other court of the United States, or from the bar of any state, the District of Columbia, territory, commonwealth, or possession of the United States while an investigation into allegations of misconduct is pending, shall, upon the filing with this court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this court and be stricken from the roll of attorneys admitted to practice before this court.

(B) Any attorney admitted to practice before this court shall, upon being disbarred on consent or

resigning from the bar of any other court of the United States, or from the bar of any state, the District of Columbia, territory, commonwealth, or possession of the United States while an investigation into allegations of misconduct is pending, promptly inform the clerk of this court of such disbarment on consent or resignation.

(4) Standards for Professional Conduct.

(A) For misconduct defined in these rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this court may be disbarred, suspended from practice before this court, reprimanded or subjected to such other disciplinary action as the circumstances may warrant.

(B) Acts or omissions by an attorney admitted to practice before this court pursuant to this Rule 83.6, or appearing and practicing before this court pursuant to Rule 83.7, individually or in concert with any other person or persons, that violate the ethical requirements and rules concerning the practice of law of the Commonwealth of Massachusetts, shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The ethical requirements and rules concerning the practice of law mean those canons and rules adopted by the Supreme Judicial Court of Massachusetts, embodied in Rules 3:05, 3:07 and 3:08 of said court, as they may be amended from time to time by said court, except as otherwise provided by specific rule of this court after consideration of comments by representatives of bar associations within the Commonwealth.

(5) Disciplinary Proceedings.

(A) When misconduct or allegations of misconduct that, if substantiated, would warrant discipline as to an attorney admitted to practice before this court, is brought to the attention of a judicial officer, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these rules, the judicial officer may refer the matter to counsel for investigation, the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

(B) Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent-attorney because sufficient evidence is not present, or because there is pending another proceeding against the respondent-attorney, the disposition of which in the judgment of counsel should be awaited before further action by this court is considered or for any other valid reason, counsel shall file with the court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise, setting forth the reasons therefor.

(C) To initiate formal disciplinary proceedings, counsel shall obtain an order of this court upon a showing of probable cause, requiring the respondent-attorney to show cause within 28 days after service of that order upon that attorney, personally or by mail, why the attorney should not be disciplined. The order to show cause shall include a certification of all courts before which the respondent-attorney is admitted to practice, as specified in the form appended to these rules.

(D) Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation, the Chief Judge of this court or, in his absence, the next senior district judge shall set the matter for prompt hearing before three (3) judges of this court, provided however that if the disciplinary proceeding is predicated upon the complaint of a judge of this court the complaining judge shall not sit, and if the Chief Judge is the complainant, the member of the court who

is next senior shall assume his responsibilities in the matter. An en banc hearing may be granted on the affirmative vote of five (5) judges. Nothing herein shall prevent the court from using a master for purposes of fact finding and to make recommendations in a suitable case. The respondent-attorney shall execute the certification of all courts before which that respondent-attorney is admitted to practice, and file the certification with the answer.

(6) Disbarment on Consent While Under Disciplinary Investigation or Prosecution.

(A) Any attorney admitted to practice before this court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to this court an affidavit stating that the attorney desires to consent to disbarment and that:

(i) the attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;

(ii) the attorney is aware that there is a presently pending investigation or proceeding involving allegation that there exist grounds for the attorney's discipline, the nature of which the attorney shall specifically set forth;

(iii) the attorney acknowledges that the material facts so alleged are true; and

(iv) the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceedings were prosecuted, the attorney could not successfully defend himself.

(B) Upon receipt of the required affidavit, this court shall enter an order disbaring the attorney.

(C) The order disbaring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this court.

(7) Reinstatement.

(A) *After Disbarment or Suspension.* An attorney who is suspended shall be automatically reinstated at the end of the period of suspension upon the filing with the court of an affidavit of compliance with the provisions of the order. An attorney who is suspended indefinitely or disbarred may not resume practice until reinstated by order of this court. Suspensions may be directed to run concurrently with a suspension mandated by other state or federal courts, in which event the attorney shall be eligible for reinstatement in this court when said suspension expires, and will be automatically reinstated upon filing with this court an affidavit indicating that the period of suspension has run.

(B) *Hearing on Application.* Petitions for reinstatement by a disbarred or indefinitely suspended attorney under this rule shall be filed with the Chief Judge of this court. Upon receipt of the petition, the Chief Judge shall promptly refer the petition to counsel and shall assign the matter for prompt hearing before one or more judges of this court provided, however, that if the disciplinary proceeding was predicated upon the complaint of a judge of this court, the complaining judge shall not sit, and if the Chief Judge is the complainant, the judge next senior shall assume his responsibilities in the matter. The judge or judges

assigned to the matter shall within 28 days after referral schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law before this court and that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

(C) *Duty of Counsel.* In all proceedings upon a petition for reinstatement, cross-examination of the witnesses of the respondent-attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel.

(D) *Conditions of Reinstatement.* If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the 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 judge or judges before whom the matter is heard, upon furnishing 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.

(E) *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.

(8) Attorneys Specially Admitted.

(A) 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 of that attorney arising in the course of or in preparation for such proceeding.

(9) Appointment of Counsel.

(A) Whenever counsel is to be appointed pursuant to these rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this court shall appoint as counsel the disciplinary agency of the highest court of the state or commonwealth in which the attorney is maintaining his principal office, or other disciplinary agency which the court deems suitable, including the United States Attorney for this district. If no such disciplinary agency exists or such disciplinary agency declines appointment, or such appointment is clearly inappropriate, this court shall appoint as counsel one or more members of the bar of this court to investigate allegations of misconduct or to prosecute disciplinary proceedings under these rules, provided, however, that the respondent-attorney may move to disqualify an attorney so appointed who is or has been engaged as an adversary of the respondent-attorney in any matter. Counsel, once appointed, may not resign without permission of this court.

(10) Duties and Powers of the Clerk.

(A) The clerk of this court shall promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice

before this court.

(B) The clerk of this court shall, upon being informed that any attorney admitted to practice before this court has been convicted of any crime or has been subjected to discipline by another court, obtain and file with this court a certified or exemplified copy of such conviction or disciplinary judgment or order.

(C) Whenever it appears that any person who is disbarred or suspended or censured or disbarred on consent by this court is admitted to practice law in any other jurisdiction or before any other court, the clerk of this court may, if necessary to supplement the action taken under subsection (10)(A), so advise the disciplinary authority in such other jurisdiction or such other court.

(11) Jurisdiction.

(A) Nothing contained in these rules shall be construed to deny to the court such powers as are necessary for the court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure.

Effective September 1, 1990; amended effective August 1, 1997; December 1, 2009.

RULE 116.5 STATUS CONFERENCES AND STATUS REPORTS PROCEDURE

(A) Initial Status Conference. Unless all parties advise the Magistrate Judge that such a conference is not necessary, and the Magistrate Judge concurs, on or about the 42nd day following arraignment, the Magistrate Judge shall convene an Initial Status Conference with the attorneys for the parties who will conduct the trial in any felony or Class A misdemeanor case to be decided by a district judge. The discussion at the conference must include the following issues, and any other issues relevant to the progress of the case:

(1) Whether relief should be granted from the otherwise applicable timing requirements imposed by L.R. 116.3.

(2) Whether the defendant requests discovery concerning expert witnesses under Fed. R. Crim. P. 16(a)(1)(E). If the defendant requests the disclosure required by Fed. R. Crim. P. 16(a)(1)(E), what date should be established for response by the government and what date should be established for reciprocal discovery from the defendant concerning expert witnesses required under Fed. R. Crim. P. 16(b)(1)(C).

(3) Whether a party anticipates providing additional discovery as a result of its future receipt of information, documents, or reports of examinations or tests.

(4) Whether a motion date should be established under Fed. R. Crim. P. 12(c).

(5) What periods of excludable delay should be ordered under the Speedy Trial Act at the time of the conference.

(6) Whether a trial is anticipated and, if so, its anticipated length.

(7) What date should be established for the Final Status Conference and/or any Interim Status Conferences.

(B) Scheduling and Status Report

After any Status Conference, the Magistrate Judge shall file for the District Judge who will preside at trial an Interim Status and Scheduling Report which:

(1) Outlines the scheduling and completion of discovery and filing of motions;

(2) Identifies whether the case involves unusual or complex issues by reason of which an early joint conference of the District Judge and Magistrate Judge with all attorneys would be useful;

(3) Identifies any features of the case that may deserve special attention or modification of the standard schedule.

(4) Identifies and orders periods of excludable delay that are applicable at the time of the report.

(5) Identifies and returns the file to the district judge upon an indication that the defendant intends to plead guilty.

(C) Final Status Conference. Before the Magistrate Judge issues the Final Status Report required by subdivision (D) of this Local Rule, the Magistrate Judge shall convene a Final Status Conference with the attorneys for the parties who will conduct the trial. Prior to this conference, counsel shall confer and, not later than seven (7) days before the conference, prepare and file a joint memorandum addressing the following issues, and any other issue relevant to the progress of the case, which counsel must be prepared to discuss at the conference:

- (1) Whether there are outstanding discovery issues not yet presented or resolved by the Court;
- (2) Whether a party anticipates providing additional discovery as a result of its future receipt of information, documents, or reports of examinations or tests;
- (3) Whether the defendant intends to raise a defense of insanity or public authority;
- (4) Whether the government has requested notice of alibi by the defendant and, if so, whether the defendant has timely responded;
- (5) Whether the defendant has filed, or intends to file, any motion to sever, dismiss, or suppress, or any other motion requiring a ruling by the District Court before trial;
- (6) Whether a schedule should be set concerning any matter in the case other than trial;
- (7) Whether the parties have discussed the possibility of an early resolution of the case without trial and, if so, the results of that discussion;
- (8) Whether there are periods of excludable delay under the Speedy Trial Act as to which the parties agree, and what they are, and whether there are any disagreements, and what they are, to enable the Magistrate Judge to rule on periods of excludable delay at the Final Status Conference; and
- (9) The estimated length of trial.

(D) Final Status Report. After the Final Discovery Conference, and any continuation of it necessary to assure that the discovery to have been provided prior to the conference is complete, the Magistrate Judge shall file for the District Judge who will preside at trial a Final Status Report that addresses:

- (1) Whether a trial will be necessary;
- (2) Whether all discovery to be provided under this Local Rule before the Initial Pretrial Conference with the trial judge is complete and, if not, why the case should not remain before the Magistrate Judge until discovery is complete;
- (3) Whether the defendant has filed, or intends to file, any motion to sever, dismiss, or suppress and, if so, the briefing schedule established by the Magistrate Judge;
- (4) The total amount of time that has been ordered excluded thus far and the amount of time remaining under the Speedy Trial Act before trial must commence, and whether there are any pending or anticipated motions that will cause additional excludable time for Speedy Trial Act purposes;

(5) The estimated length of trial;

(6) Any other matters relevant to the progress or resolution of the case.

Adopted September 8, 1998; effective December 1, 1998; amended effective December 1, 2009.

RULE 117.1 PRETRIAL CONFERENCES

(A) Initial Pretrial Conference. After receiving the Magistrate Judge's Final Status Report, and at least 28 days before trial, or at the earliest practicable shorter time before trial consistent with the Speedy Trial Act, the judge who will preside at trial must conduct an Initial Pretrial Conference, which counsel who will conduct the trial must attend. At the Initial Pretrial Conference the judge must:

(1) Attempt to determine if the case will be resolved by a guilty plea, a plea of *nolo contendere*, or dismissal.

(2) If necessary, schedule a hearing on any motion to dismiss, suppress, or sever or any other motion requiring pretrial resolution.

(3) Establish a reliable trial date.

(4) Unless the declination procedure provided by L.R. 116.6 has previously been invoked, order the government to disclose to the defendant no later than twenty-one (21) days before the trial date:

(a) The exculpatory information identified in L.R. 116.2.

(b) A general description (including the approximate date, time and place) of any crime, wrong, or act the government proposes to offer pursuant to Fed. R. Evid. 404(b).

(5) Determine whether the parties have furnished statements, as defined by 18 U.S.C. § 3500(e) and Fed. R. Crim. P. 26.2(f), of witnesses they intend to call in their cases-in-chief and, if not, when they propose to do so.

(6) Determine whether any party objects to complying with the presumptive timing directives of L.R. 117.1(A)(8) and (A)(9) for the disclosure of witnesses and identification of exhibits and materials. If any party expresses an objection, the court may decide the issue(s) presented at the Initial Pretrial Conference or may order briefing and/or later argument on such issue(s).

(7) Establish a schedule for the filing and briefing of possible motions in limine and for the filing of proposed voir dire questions, proposed jury instructions, and, if appropriate, trial briefs.

(8) Unless an objection has been made pursuant to L.R. 117.1(A)(6), order that at least seven (7) days before the trial date the government must:

(a) Provide the defendant with the names and addresses of witnesses the government intends to call at trial in its case-in-chief. If the government subsequently forms an intent to call any other witness, the government shall promptly notify the defendant of the name and address of that prospective witness.

(b) Provide the defendant with copies of the exhibits and a premarked list of the exhibits the government intends to offer in its case-in-chief. If the government subsequently decides to offer any additional exhibit in its case-in-chief, the government shall promptly provide the opposing party with a copy of the exhibit and a supplemental exhibit list.

(9) Unless an objection has been made pursuant to L.R. 117.1(A)(6), order that at least three (3) days

before the trial the defendant must provide the government with witness and exhibit identification and materials to the same extent the government is obligated to do so under L.R. 117.1(A)(8).

(10) Determine whether the parties will stipulate to any facts that may not be in dispute.

(11) Establish a date for a Second Pretrial Conference, to be held not more than seven (7) days before the trial date, to resolve any matters that must be decided before trial.

(12) Resolve any issues concerning excludable delay under the Speedy Trial Act.

(B) Special Orders. The judge who will preside at trial may, upon motion of a party or on the judge's own initiative, modify any of the requirements of paragraph (A) of this Local Rule if the judge determines that there are factors in the particular case that make it in the interests of justice to do so.

(C) Subsequent Pretrial Conferences. At least one subsequent Pretrial Conference shall be held unless all parties advise the court that such a conference is not necessary and the judge concurs.

Adopted September 8, 1998; effective December 1, 1998; amended effective December 1, 2009.

RULE 203 BANKRUPTCY APPEALS

(A) The bankruptcy court is authorized and directed to dismiss an appeal filed after the time specified in Bankruptcy Rule 8002 or an appeal in which the appellant has failed to file a designation of the items for the record or a statement of the issues as required by Bankruptcy Rule 8006. The bankruptcy court is also authorized and directed to decide motions to extend the foregoing deadlines and to consolidate appeals which present similar issues from a common record. Bankruptcy court orders entered under this subsection may be reviewed by the district court on motion filed within 14 days of the entry of the order.

(B) The briefing schedule specified by Bankruptcy Rule 8009 may be altered only by order of the district court. If the clerk of the district court does not receive appellants's brief within the time specified by said Rule 8009, he shall forthwith provide the district judge to whom the appeal has been assigned with a proposed order for dismissal of the appeal.

(C) Upon receipt of the district court's opinion disposing of the appeal, the district court clerk shall enter judgment in accordance with Bankruptcy Rule 8016(a) and shall immediately transmit to each party and to the clerk of the bankruptcy court a notice of entry together with a copy of the court's opinion.

(D) The bankruptcy court clerk shall enclose a copy of this rule with the notice of appeal given to each party in accordance with Bankruptcy Rule 8004; provided, however, that failure of the clerk to enclose a copy of this rule shall not suspend its operation.

(E) This rule is not intended to restrict the district court's discretion as to any aspect of any appeal.

Effective September 1, 1990(as Rule 200); amended effective January 2, 1995; December 1, 2009.