

UNITED STATES DISTRICT COURT  
FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA

LOCAL COURT RULES

Effective July 1, 1973

Rules 1 through 7 added effective December 1, 1979

GENERAL RULES OF PRACTICE AND PROCEDURE

RULE 1.01

ADOPTION, SCOPE AND CONSTRUCTION OF RULES

(a) The United States District Court for the Southern District of West Virginia adopts the following Rules for the conduct, government and management of the business, operations, proceedings and other functions and services of the Court. The Court may amend and supplement the Rules from time to time.

(b) These Rules are intended to supplement and complement the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the General Orders in Bankruptcy and other controlling rules of court and statutes in their application and administration in proceedings in this Court.

(c) The Rules shall be applied, construed and enforced so as to avoid inconsistency with other rules of court and statutes governing proceedings, functions and services of this Court. In their application and administration, they shall be construed and employed so as to provide fairness and simplicity in procedure, to avoid technical and unjustifiable delay, and to secure just, expeditious and inexpensive determination of all actions and proceedings.

(d) These rules shall apply to all parties, counsel of record and subject matter of all civil actions filed on and after the effective date hereof; and also shall apply to all parties, counsel of record and subject matter of all civil actions pending before the Court on the effective date hereof, unless a civil action or some phase or part thereof is expressly removed from the operation and effect of these rules by a specific order of the Court.

(e) The presiding judge in any action or proceeding in this Court may, in the interest of orderly, expeditious and efficient administration of justice, allow departures from these Local Court Rules where facts and circumstances appearing of record so warrant.

RULE 1.02

BUSINESS, CONDUCT AND OPERATIONS OF COURT

(a) The principal headquarters of the Court shall be located in the United States Court House, 500 Quarrier Street, Charleston, West Virginia 25301.

(b) There shall be five points of holding Court in the District, located at Beckley, Bluefield, Charleston, Huntington and Lewisburg. (28 U.S.C.A., Section 129). For practical Court administration, counties served by the Lewisburg point of holding Court will be at times considered within the adjacent Beckley and Bluefield Divisions of the Court. The four administrative Divisions of the Court will be composed of the twenty-four counties in the Southern District of West Virginia as follows:

Division Headquarters

Beckley

Counties Composing Divisions

Fayette, Greenbrier, Wyoming, Pocahontas, Raleigh and Summers

<u>Division Headquarters</u>	<u>Counties Composing Divisions</u>
Bluefield	Mercer, Monroe and McDowell
Charleston	Boone, Braxton, Clay, Jackson, Kanawha, Nicholas, Putnam, Roane and Webster
Huntington	Cabell, Lincoln, Logan, Mason, Mingo and Wayne

(c) The Court shall be deemed to be open and in continuous session in accordance with provisions of 28 U.S.C.A., Section 139; Rule 77(c), Federal Rules of Civil Procedure; Rule 56, Federal Rules of Criminal Procedure; and other controlling rules and statutes. When the Court is not in prearranged and announced sessions at the Beckley, Bluefield, Huntington and Lewisburg points of holding Court, it will be deemed to be in continuous session at the Charleston point of holding Court.

(d) In the absence of any controlling statute or rule, or directive by the Administrative Office of the United States Courts, or agreement by a majority of the Judges of this Court, the Chief Judge of the Court is authorized and empowered to implement and supplement these Rules relating to the business, conduct and operations of the Court.

#### RULE 1.03

#### DOCKET ADMINISTRATION AND DATA

(a) In addition to the requirements and rules prescribed in the Manual of Clerks of the United States District Courts and otherwise by law for administration and management of the policies, practices and procedures in the Clerk's office, the Clerk shall design and develop a docket data system suitable and adaptable to the needs and functions of his office. The system shall be so organized and maintained as to reflect accurately and concisely essential identification data and the developed and current status of each action and proceeding pending in the Court at a given time. At such times and in such form and detail as the Clerk may require, the deputy clerks in charge of the Clerk's office at each point of holding Court within the District shall furnish to the Clerk the data and information required for effective implementation of this Rule. Upon basis of the data and information acquired by the Clerk, he shall move to change, correct and improve methods and procedures in areas and operations where action may be inefficient, slow or ineffective. On the first of each month, he shall inform the Court of the number of civil and the number of criminal actions then pending at each point of holding Court and the number of civil and the number of criminal actions commenced and ended during the previous month. He shall furnish to the Court such other docket data and information as the Court may require and shall from time to time make recommendations to the Court concerning docket conditions at each point of holding Court.

(b) For docket administration and management purposes, the Clerk shall organize his docket data in civil actions in recognition of the following five stages in the development of each pending action:

- (1) Pleading stage
- (2) Deposition and discovery stage
- (3) Pre-trial stage

(4) Trial stage

(5) Disposition stage

(c) The Clerk's docket administration and management in criminal actions shall be consistent with and responsive to the Court's plan for prompt disposition of criminal cases adopted pursuant to Rule 50(b), Federal Rules of Criminal Procedure, effective October 1, 1972, and any amendments thereto.

(d) The Clerk shall develop such data system for matters on appeal and other proceedings not normally on the action docket as may be found feasible and practical.

(e) The Clerk shall keep himself informed of progress and developments in data recording and processing equipment and materials and shall introduce and employ such equipment and materials in the management and operations of his office whenever found practicable so to do.

#### RULE 1.04

#### MARSHAL TO ATTEND COURT SESSIONS

The United States Marshal for this District, or a Deputy United States Marshal designated by him, shall, unless expressly excused by the presiding judge, attend each session of the Court and shall exercise the powers granted to him by provisions of 28 U.S.C. § 569, and provisions of other applicable laws and rules as may be required by the Court.

#### RULE 1.05

#### ATTORNEYS

(a) The bar of this Court shall consist of the attorneys admitted to practice and who continue in good standing as attorneys before the Court.

(b) Any resident of the State of West Virginia who is a member in good standing of the bar of the state and who has been admitted to practice before the Supreme Court of Appeals of the state is eligible for admission as a permanent member of the bar of this Court. Eligible attorneys may be admitted to practice in this Court upon motion of a permanent member of this Court's bar who shall vouch for the applicant and sign the register of attorneys along with the person admitted. If the motion for admission is granted, the applicant shall take the attorney's admission oath or affirmation, shall sign the attorney's register, and shall pay the Clerk of the Court the attorney admission fee as set by the Court.

(c) Any nonresident or visiting attorney, not a member of the bar of this Court, who is a member in good standing of the bar of the Supreme Court of the United States, or of the bar of the highest court of any state in the United States, or of the bar of the District of Columbia, shall be permitted to appear in a particular case in association with a member or members of the bar of this Court as herein provided. Such visiting attorney shall file with the Clerk of this Court, at or before the time of his initial appearance in the case or proceedings or with his initial pleading tendered for filing in the matter, a statement identifying by exact name and address the bar of which he is a member in good standing and designating some member of the bar of this Court, having an office for the transaction of business in this Judicial District, upon whom pleadings, notices and other papers may be served in accordance with the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and other court rules applicable in this District. The member of the bar of this Court so designated shall consent to such designation and shall

endorse all pleadings thereafter filed by him and the visiting attorney in the cause. Any pleading filed by a visiting attorney without complying with this rule may, after 15 days' written notice mailed to him at his address as then known to the Clerk of this Court, be stricken from the record. Upon compliance with this rule and introduction of the visiting attorney to the Court by the sponsoring member of this Court's bar, the sponsoring attorney may, by and with the consent of the Court, be excused from further attendance during the proceedings and the visiting attorney may be permitted to continue and appear for the purposes of the particular case without further enrollment in this Court.

(d) Every litigant in civil and criminal actions and other proceedings in this Court, except parties appearing pro se, shall be represented by a member of the bar of this Court as herein provided. Although the United States Attorney may be associated with other government attorneys in litigation before the Court involving federal government agency matters, the United States Attorney, in addition to other such counsel, shall sign all pleadings, notices and other papers that may be served by the United States in the litigation, and all pleadings, notices and other papers may be served on the United States Attorney in accordance with the service requirements of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure. Parties appearing pro se shall, at their first appearance, file with the Clerk of the Court their complete names and addresses whereby pleadings, notices and other papers may be served upon them in accordance with requirements of applicable rules of procedure.

(e) No attorney who has entered his appearance in any civil or criminal action shall withdraw his appearance, or have it stricken from the record, except by leave of the Court entered of record.

(f) In all proceedings in open Court, all oral statements and communications by attorneys to the Court shall be clearly and audibly made from a standing position. Only one attorney for each party may participate in examination and cross-examination of a witness. With the Court's permission the attorney may approach the testifying witness for presenting, inquiring about, or examining the witness with reference to an exhibit.

(g) The verification or notarization of any pleadings, documents or other papers, to be filed in proceedings or litigation in this Court, by an attorney or by any member of the attorney's law firm is looked upon with disfavor and is to be discouraged and avoided. Exceptional circumstances made clear to the Court may justify departures from the provisions of this paragraph. Tolerated departures from the provisions of this paragraph will not void or impair the efficacy of any pleading, document or paper to the detriment of litigants in this Court.

(h) The Code of Professional Responsibility of the American Bar Association and the Code of Professional Responsibility as adopted and promulgated by the Supreme Court of Appeals of West Virginia are recognized as embodying and providing the basic ethical considerations and disciplinary rules for the conduct of attorneys practicing in all federal and state courts sitting in the State of West Virginia. In all appearances, actions and proceedings in and within the jurisdiction of this Court, attorneys shall conduct themselves in accordance with the ethical considerations and disciplinary rules and orders applicable to and controlling the procedures and the practice of law in this Court.

The American Bar Association's Code of Judicial Conduct is likewise recognized as embodying and providing the basic ethical considerations for the conduct of the judges and all other officers of the Court performing judicial functions and the principles thereof are accepted and shall be observed.

(i) An eligible law student with the written consent of an indigent and his or her attorney of record may appear in this court on behalf of that indigent in any case. An eligible law student with the written consent of the

Attorney General of the State of West Virginia or his or her authorized representative may also appear in this court on behalf of the State of West Virginia in any case. In each case in which an eligible law student appears, the written consent shall be filed with the clerk.

An eligible law student may assist in the preparation of pleadings, briefs, and other documents to be filed in this court, but such pleadings, briefs or documents must be signed by the attorney of record. An eligible law student may also participate in hearings, trials, and other proceedings with leave of court, but only in the presence of the attorney of record. The attorney of record shall assume personal professional responsibility for the law student's work and for supervising the quality of the law student's work. The attorney of record shall be familiar with the case and prepared to supplement or correct any written or oral statement made by the law student.

In order to make an appearance pursuant to this rule, the law student must

(a) Be duly enrolled in a law school approved by the American Bar Association;

(b) Have successfully completed legal studies amounting to at least four (4) semesters, or the equivalent if the school is on some basis other than a semester basis;

(c) Be certified by the dean of his or her law school as being of good character and competent legal ability, which certification shall be filed with the clerk. This certification may be withdrawn by the dean at any time by mailing notice to the clerk without further notice or hearing and without any showing of cause. Unless otherwise withdrawn or terminated, each certification shall remain in effect until the expiration of eighteen months after it has been filed with the clerk or until the law student has been admitted to practice before the bar of this court, whichever is earlier;

(d) Certify in writing that he or she has read and is familiar with the Code of Professional Responsibility of the American Bar Association, which certification shall be filed with the clerk;

(e) Be introduced to the court by an attorney admitted to practice before this court;

(f) Neither ask for nor receive any compensation or remuneration of any kind for his or her services from the person on whose behalf the law student renders services, but this shall not prevent an attorney, legal services program, law school, public defender agency, the State of West Virginia, or the United States from paying compensation to the law student, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require.

(Amendment of subsection (i) effective July 9, 1980.)

#### RULE 1.06

#### ASSIGNMENT OF ACTIONS

(a) The Chief Judge of the District shall be responsible for the assignment and distribution of actions to and among the Judges of the District as the actions are commenced at the several points of holding Court. The Chief Judge may by order delegate this responsibility to another Judge of the District or to the Clerk of the Court under and pursuant to directions and instructions contained in the order. He may reassign and redistribute pending actions from time to time as caseloads and docket conditions at the points of holding Court may warrant.

(b) The judge to whom an action is assigned shall be responsible for its development through all stages until termination, except (1) when the action is reassigned as provided in paragraph (a) of this Rule and (2) when, in the absence of the Judge to whom the action is assigned, necessity arises for interim orders and proceedings in the action requiring attention of a Judge of the Court then present. The Judge to whom the action is assigned shall direct and control calendar arrangements for all pre-trial and trial proceedings therein in a manner consistent with these Rules. Trial Calendar precedence will be given actions entitled thereto by any statute of the United States.

RULE 1.07

TRIAL JURIES

(a) The Court shall conduct the examination of prospective jurors called to serve in civil and criminal actions.

(b) In conducting the examination, the Court shall identify the parties and their respective counsel and briefly outline the nature of the action to be tried. The Court shall interrogate the jurors in order to elicit from them whether they have any prior knowledge of the case and what connections they may have, if any, with the litigants or parties thereto and their attorneys. Inquiries directed to the jurors shall embrace areas and matters designed to discover basis for challenge for cause, to gain knowledge enabling an intelligent exercise of peremptory challenges, and to ascertain whether the jurors are qualified to serve on the cause on trial.

(c) The Court may consult with the attorneys in the case at trial who may request or suggest other areas of juror interrogation. To the extent deemed proper, the Court may thereupon supplement or conclude its examination of the jurors.

(d) Names of jurors drawn for jury service from the Court's qualified jury wheel may be disclosed only in accordance with the Court's Jury Selection Plan, approved and made effective December 22, 1968, and as may be modified. Jury lists, prepared by the Clerk, shall be made available to attorneys and litigants as provided in the Jury Selection Plan.

(e) In civil actions in which trial by jury has been demanded pursuant to Rule 38, Federal Rules of Civil Procedure, the jury shall consist of six jurors, plus such number of alternate jurors as the Court may determine necessary.

(Amendment of subsection (e) effective April 1, 1974.)

RULE 1.08

PERSONS AT COUNSEL TABLE

In the trial of any action

(a) Having several party litigants, counsel will confer in advance with the Court concerning limitations on and determination of the number of parties who may be seated at counsel table;

(b) Wherein any expert witnesses will testify, counsel may have at counsel table a non-lawyer consultant or advisor representative of his client for consultation during examination and cross-examination of the expert witnesses; and,

(c) Wherein non-expert witnesses will be called to testify concerning

complicated and unusual factual situations and circumstances, counsel may have at counsel table an expert consultant or advisor representative of his client for consultation during examination and cross-examination of such witnesses.

RULE 1.09

SEQUESTRATION OF WITNESSES

On motion of any party to pending litigation, or on the Court's own motion, witnesses in any action or proceedings may be separated or sequestered and excluded from the courtroom during the trial or hearing. Each witness and the party by whom he is to be called and the attorney for such party shall be responsible for maintenance of the integrity of the exclusion order. Disregard of the Rule may, in varying circumstances, in the discretion of the Court, disqualify the witness from testifying, warrant a contempt citation, cause a continuance of the litigation, prompt a reprimand by the Court, or justify invocation of other corrective measures.

RULE 1.10

ARGUMENTS TO JURY

(a) In all trials, civil and criminal, the right to open and close the argument shall belong to the party who has the burden of proof, without regard to whether the defendant offers evidence. Where each of the parties has the burden of proof on one or more issues, the Court, in its discretion, shall determine the order of arguments. In actions involving several litigants and unusual procedures, the Court, after conferring with attorneys for the litigants, shall determine the order of arguments in a manner appearing just and proper. Arguments shall be subject to such time limitations as may be determined and imposed by the Court, giving due consideration to the length of the trial, the number of witnesses and exhibits, the complexity and involvement of issues, and the nature of the litigation.

(b) The opening argument of plaintiff before the jury shall be a fair statement of plaintiff's cause and shall consume at least one-half of the entire time allotted to plaintiff's counsel for argument of plaintiff's cause. In the event that one-half of such allotted time is not consumed in the opening argument, one-half thereof shall nevertheless be charged by the Court to Plaintiff's opening argument.

After plaintiff's opening argument, counsel for defendant may elect to argue the cause or may decline to present arguments. If counsel for defendant elects not to present arguments, the cause will be submitted without further argument by plaintiff and defendant.

RULE 1.11

INSTRUCTIONS TO JURORS

In all actions tried to a jury, the instructions or points which either party desires embraced in the Court's charge to the jury shall be furnished to the Court in writing before the jury arguments begin, but, in the Court's discretion, the parties may be required to furnish such instructional materials to the Court at an earlier time.

RULE 1.12

REMOVAL OF PAPERS FROM CUSTODY OF CLERK

Papers on file in the office of the Clerk of this Court shall be produced pursuant to subpoena from a court of competent jurisdiction directing their production.

The Clerk, in his discretion, may permit temporary removal of papers from his office by the Referee in Bankruptcy, a United States Magistrate, and a Master in matters pertinent to their official duties in this Court.

Otherwise papers may be removed from the files of the Clerk only upon order of the Court.

Whenever papers are so withdrawn from the Clerk's office, the person receiving them shall leave with the Clerk a signed receipt identifying the papers taken.

RULE 1.13

COURT LIBRARY

Attorneys, and such other persons as may be authorized by the Court, may use the Court's library books in the library. Under no circumstances may books be removed from the Court's immediate premises. Persons using books under this rule shall be responsible for their well being, care and preservation and their return to their proper places in the library where same are kept, all in keeping with good library practices.

RULE 1.14

APPROVAL OF BONDS BY THE CLERK

Except in criminal cases, or where another procedure is prescribed by law, the Clerk may approve bonds without an order of Court if (1) the amount of the bond has been fixed by a judge, by court rule or by statute and (2) the bond is secured by (a) the deposit of cash or obligations of the United States, or (b) the guaranty of a corporate surety holding a certificate or authority from the Secretary of the Treasury, or (c) the guaranty of a qualified property owner when such guaranty is accompanied by an acceptable certificate of justification.

RULE 1.15

CLERK'S CUSTODY AND DISPOSITION OF EXHIBITS

(a) All models, diagrams, exhibits, depositions and other material admitted in evidence or filed in any proceeding shall be placed in the custody of the Clerk, unless otherwise ordered by the Court.

(b) (1) Upon motion with notice to adverse parties, all models, diagrams, exhibits, depositions or other material placed in the custody of the Clerk shall be removed by the party offering such evidence, or filing such materials, except as otherwise directed by the Court, within 30 days after judgment becomes final. At the time of removal, a detailed receipt shall be given to the Clerk and filed in the case jacket.

(2) If the party offering, or filing, models, diagrams, exhibits, depositions or other material fails to remove such materials as provided

herein, the Clerk shall write the attorney of record, or if none, the party offering the evidence, calling attention to the provisions of this rule. If after the mailing of such notice the materials have not been removed within 30 days, they may be destroyed by the Clerk.

RULE 1.16

PHOTOGRAPHING AND BROADCASTING OF COURT PROCEEDINGS

The taking of photographs in the courtroom, or in the corridors immediately adjacent thereto, during the progress of judicial proceedings, or during any recess thereof, and the transmitting or sound-recording of such proceedings for broadcasting by radio or television, shall not be permitted. Upon prior approval by the Court, proceedings, other than judicial proceedings, designed and conducted as ceremonies, such as administering oaths of office to appointed officials of the Court, presentation of portraits, naturalization proceedings, and similar ceremonial occasions, may be photographed in or broadcast from the courtroom, under the supervision of the supervision of the Court.

The marshal may impound camera, recording, broadcasting and other related equipment, materials and paraphernalia when brought into the courtroom or the corridors immediately adjacent thereto in a manner that is contrary to this rule, and such impounded equipment shall then be held by the marshal subject to future action by the Court. Upon such impoundment of such equipment the marshal shall forthwith report the same to the Court in order that an appropriate hearing can be had at the earliest possible time.

RULE 1.17

RESTRICTIVE RULES ON SPECIAL PROCEEDINGS AND REPORTS

In addition to all other restrictive rules relating to release of information incident to judicial proceedings, the Court may impose additional and more restrictive rules on and controls over the release or disclosure of information incident to juvenile proceedings, reports by Bar committees and hearings on attorney conduct and discipline, and studies and reports of legislative, administrative, investigative and other agencies and bodies within the Court's authority, responsibilities and services.

RULE 1.18

CONTACTS WITH JURORS

After conclusion of a trial, no party, his agent or his attorney shall communicate or attempt to communicate concerning the jury's deliberations or verdict with any member or members of the petit jury before which the case was tried without first obtaining an order of the Court granting permission to do so, said order not to be granted by the Court except for good cause shown and after the opposing parties in the litigation involved have had an opportunity to be heard thereon.

RULE 1.19

JUDGMENT ORDERS AND OTHER PAPERS FOR COURT'S SIGNATURE

Except for good cause shown, no judgment, decree, order, or other instrument shall be presented to the Court for entry unless such instrument has been inspected by all parties to the action affected thereby, either appearing pro se or by counsel, and bears the signature of the party or parties presenting the instrument for entry and some clear indication thereon to the Court that all other interested parties to the action have seen the instrument or know of the presentation thereof for entry. However, this Rule shall not apply to orders drawn or prepared by the Court. When an attorney responsible for the preparation and presentation of an order in any litigation unreasonably delays or withholds presentation thereof, the Court, upon notice to attorneys of record in the litigation, may proceed promptly to enter such order or orders as may be appropriate. All judgments, decrees and orders shall be executed in duplicate and filed with the Clerk of the Court.

CIVIL PROCEDURE RULES

RULE 2.01

FILING OF PAPERS

With the exception of papers filed with a Judge of the Court, as provided in Rule 5(e), Federal Rules of Civil Procedure, the original of all proceedings in this Court shall be filed at the Clerk's office at the point of holding Court in which the particular actions or proceedings are properly docketed. In emergency situations, due to travel conditions, time limitations or other factors, filings may be made at any time of the Court Clerk's offices maintained and kept open in which event the papers so filed shall be forwarded by the receiving Clerk's office to the Clerk's office at the point of holding Court in which the particular actions or proceedings are to be docketed and heard.

RULE 2.02

SECURITY FOR COSTS

Except as otherwise provided by statute or court rule, litigants, resident and non-resident, shall not be required as a matter of course to give security for costs in this Court.

In any case, for good cause, the Court, on its own motion or on the motion of a party litigant, may require security for costs. The motion of a party litigant shall state in sufficient detail the circumstances warranting the motion for security for costs. The Court, in its discretion, may require supporting verification of the circumstances, and, if the motion is granted, shall determine the amount and form of security required.

RULE 2.04

PAYMENT OF COSTS AND SECURITY FOR COSTS IN ACTIONS BY POOR PERSONS

At the time application is made under 28 U.S.C., § 1915, for leave to commence any civil action without being required to prepay fees and costs or

to give security therefor, the applicant, as a part of his affidavit, shall stipulate that the recovery, if any, secured or effected in the action shall be paid into the hands of the Clerk of the Court, who shall pay therefrom all unpaid costs taxed against plaintiff and remit the balance to the plaintiff or to his attorney.

RULE 2.04

ORDERS AND JUDGMENTS BY CLERK OF COURT

In addition to the judgments which may be entered by the Clerk of the Court pursuant to Rules 55(a), 55(b)(1) and 58, and consistent with provisions of Rule 77(c), Federal Rules of Civil Procedure, the Clerk is authorized to grant and enter the following orders and judgments without further direction by the Court, but his action may be suspended, altered or rescinded by the Court for cause shown:

- (1) Consent orders for the substitution of attorneys, but not for withdrawal of an attorney from a case without clear and express provision for other attorney representation of the party or parties concerned.
- (2) Consent orders extending for not more than 30 days the time within which to answer or otherwise plead, answer interrogatories submitted under Rule 33, Federal Rules of Civil Procedure, or requests for admission as provided for in Rule 36, Federal Rules of Civil Procedure. Matters in bankruptcy and those matters set forth in Rule 6(b), Federal Rules of Civil Procedure, are not included in this authorization.
- (3) Consent orders extending for not more than 30 days the time to file the record on appeal and to docket the appeal in the appellate court, except in criminal cases.
- (4) Consent orders dismissing an action, except in bankruptcy proceedings and in causes to which Rule 23(c) and Rule 66, Federal Rules of Civil Procedure, apply.

RULE 2.05

MOTIONS IN CIVIL ACTIONS

Unless otherwise provided by statute, a controlling rule, or order of the Court, all motions in civil actions shall be in accordance with provisions of Rule 7(b), shall be served and filed in accordance with Rule 5, shall be consistent with the time requirements of Rule 6, shall comply with the form requirements of Rule 10, and shall be signed as required by Rule 11, Federal Rules of Civil Procedure. Oral arguments on motions may be had on the written request and proper showing of any party to the cause, timely made, or upon order of the Court.

RULE 2.06

PRE-TRIAL PROCEEDINGS IN CIVIL ACTIONS

Consistent with provisions of Rule 16, Federal Rules of Civil Procedure, the Court may, in its discretion, direct the attorneys for the parties to appear for a pre-trial conference to consider such matters as may be deemed appropriate in the development of any action and advancing it for trial or other disposition.

For each party at least one attorney who will participate in the trial

will attend and participate in the conference.

At the conclusion of the conference the Court may prepare an order defining the issues and directing the subsequent course of the action, or the Court may direct counsel to do so.

At the conclusion of the conference the Court may prepare an order defining the issues and directing the subsequent course of the action, or the Court may direct counsel to do so.

The pre-trial order, whether prepared by the Court or counsel, shall conform to the following general format and shall contain:

1. A brief prefatory statement of the case.
2. The facts and statutes relied upon for federal jurisdiction.
3. The essential facts, in brief and concise language, which the plaintiff expects to prove to justify a recovery.
4. The essential facts, in brief and concise language, which the defendant expects to prove to defeat a recovery.
5. A statement of all contested issues of law requiring court ruling before trial.
6. The ultimate issues of law and fact to be tried.
7. A stipulation of all undisputed facts or admitted facts.
8. In every action wherein pertinent and applicable, a stipulation as to the admission of uncontroverted (a) exhibits, (b) special damages, (c) age and life and work life expectancy of the claimant, and (d) any other matters which counsel may be able to agree upon.
9. List of all witnesses to be offered at trial by either party and their known addresses.
10. Any schedule which the Court may set up at the conference for (a) completion of discovery, (b) termination of settlement negotiations, (c) presenting pre-trial order, (d) submitting requests for the charge, and (e) doing any other matter or thing.
11. And any other matters which counsel may deem proper and necessary for incorporation in the pre-trial order in view of the particular facts and circumstances of the case or as the Court may direct.

Unless otherwise specifically ordered, plaintiff's counsel shall bear the initiative in preparing the pre-trial order and having it approved as to form by defense counsel. Defense counsel shall cooperate fully with plaintiff's counsel in the preparation of the pre-trial order, and shall promptly submit for incorporation in the order the statement of essential facts which he expects to prove at trial. The order shall be presented to the Court, properly endorsed by both counsel, within the time allotted, unless good cause be shown for an extension.

#### RULE 2.07

#### DISMISSAL OF ACTIONS

(a) In any pending civil action, when it appears to the Court that the principal issues have been adjudicated, or have become moot, or that the parties have shown no manifest interest in further prosecution of the action, the Court may direct the Clerk to give written notice, by United States mail, to counsel of record that the action will be dismissed 30 days from and after the date of notice unless good cause for its non-dismissal is shown. In the absence of good cause shown within such period of time, the Court may dismiss the action. The Clerk shall mail an attested copy of any order of dismissal to counsel of record.

(b) This Rule does not in any manner modify or affect provisions for

dismissal of actions under Rule 41, Federal Rules of Civil Procedure, or any other authority of the Court to dismiss actions.

RULE 2.08

DEPOSITONS IN CLERK'S OFFICE

Upon the receipt of depositions at the Clerk's office at any point of holding court, the Clerk shall stamp such deposition "Received," shall note the receipt entry on the action docket sheet, and shall place the deposition in the action file. A copy of each such docket sheet notation shall be transmitted promptly to the Judge's Secretary for record entry and information.

Sealed depositions received in the Clerk's office shall be opened only on order of the Court, except that the Clerk, upon written request of a party to the action or his attorney, may open any deposition so received. When the Clerk so opens a deposition, he shall at that time endorse on the back thereof the date and the name of the party or attorney at whose instance the deposition was opened. In accordance with Rule 30(b), Federal Rules of Civil Procedure, and provisions of other rules and statutes, the Court may enter such orders and direct such action as administration of justice may require and warrant.

RULE 2.09

COMPLEX AND MULTIDISTRICT LITIGATION

Basic management of complex and multidistrict litigation in this Court will be as follows:

(a) Whenever the Court consents to the transfer of a group of actions to this district in order to hold coordinated or consolidated pre-trial proceedings as set forth in 28 U.S.C., § 1407, the group of actions shall be given the composite number previously assigned by the Judicial Panel on Multidistrict Litigation. Individuals actions within the group shall be given specific civil action numbers.

(b) The Clerk shall maintain a multidistrict litigation docket sheet for the group of cases compositely numbered, as well as an individual docket sheet for each separate action. All pleadings, papers, depositions, interrogatories, and other documents and papers relating to the separate actions should be entered on the multidistrict litigation docket sheet as well as on the docket sheet of each separate action to which such documents and papers properly pertain or relate.

(c) The rule requiring residence as a condition to admission to practice before this Court is deemed waived insofar as multidistrict litigation is concerned. Counsel who entered an appearance in the transferor court prior to the transfer need not enter a separate appearance before this Court.

(d) Upon receipt of an order of transfer, attorneys representing litigants in transferred cases shall notify the Clerk of this Court of the names, addresses and telephone numbers of attorneys of record. No litigant may list more than one attorney as its legal representative for purpose of service.

(e) Prior to the initial pre-trial conference, counsel for the plaintiffs and for the defendants shall designate, subject to the approval of the Court, liaison counsel. Liaison counsel shall be authorized to receive notices on behalf of the parties by whom they have been designated. They shall be responsible for the preparation and transmittal of copies of such notices as

they may receive as liaison counsel to each of the attorneys included on the list prepared in accordance with paragraph (d) of this Rule.

(f) Unless the Panel on Multidistrict Litigation or this Court by order specifically otherwise directs for a specific case or group of cases, only the original of all documents shall be filed with the Clerk of this Court; provided, however, upon remand, it shall be the responsibility of the attorneys who filed a given document to furnish an adequate number of copies for transmittal to the transferor court. The Clerk shall notify counsel of the number of copies needed. The copies shall be furnished within fifteen (15) days from the date of notification of remand.

(g) Upon receipt of an order of the Panel transferring or remanding cases, without further order of this Court, the Clerk shall assemble the files, together with their documentation, and shall prepare a complete docket sheet as to each such case, showing thereon each docket entry properly pertaining to the particular case. He shall promptly mail a true copy of the completed docket sheet to the attorneys for all parties to the case and to parties appearing therein pro se, together with notice that any inaccuracies or omissions in the case record be reported promptly to the Clerk. It shall be the responsibilities of the attorneys and any parties appearing pro se to examine the docket sheet to ascertain and verify to their satisfaction whether the case record as assembled by the Clerk accurately contains all proper entries and to advise the Clerk in writing thereon. Upon receipt of such written communications, the Clerk shall reexamine the case record and shall take appropriate action to cure or correct any inaccuracies or omissions therein. If no written advices from attorneys or parties appearing pro se in the case are received within thirty (30) days from the date of the Clerk's notice to them, the case record shall be determined to be complete and accurate. When satisfied that the case record is complete and accurate, the Clerk shall forward it as directed in the Panel's order.

RULE 2.10

NOTICE OF CLAIM OF UNCONSTITUTIONALITY

(a) In order to assist the Court in its statutory duty under 28 U.S.C., § 2403, counsel raising a question of the constitutionality of an Act of Congress affecting the public interest shall promptly advise the Court in writing of such fact.

(b) Upon receipt of such notice the Court shall order the Clerk to make a certificate, in the following form:

"The Attorney General of the United States is hereby notified that the constitutionality of an Act of Congress affecting the public interest (Section . . . . ., Title . . . . ., United States Code) is or is intended to be drawn in question, in an action, suit or proceeding, entitled . . . . . V. . . . . No. . . . ., now pending in the United States District Court for the Southern District of West Virginia, to which action, suit or proceeding neither the United States nor any agency thereof, nor any officer or employee thereof as such officer or employee is a party.

Dated at . . . . ., West Virginia, this . . . . . day of . . . . ., 19 . . . . .

Clerk"

and to forward the same to the Attorney General of the United States and to the United States Attorney for this District.

RULE 2.11

COURT OF THREE JUDGES

The party instituting an action requiring a court of three judges shall advise this Court, in the pleadings or other writing, that such a court is requested and shall specify the particular statute or statutes involved in the action so requiring the three-judge court. In such cases counsel shall furnish the Clerk with three additional copies of all pleadings filed and briefs submitted. The Clerk shall make timely distribution of these documents to the designated judges.

RULE 2.12

OPENING STATEMENTS IN CIVIL ACTIONS

At the commencement of the trial of civil actions, the party upon whom rests the burden of proof may state, without argument, his cause of action and the evidence by which he expects to sustain his claim. The adverse party may then state, without argument, his defense and the evidence by which he expects to sustain his position. If the trial is to the jury, the opening statement shall be made immediately after the jury is impaneled. If the trial is to the Court, the opening statement shall be made immediately after the case is called for trial. Opening statements shall be subject to such time limitations as may be imposed by the Court.

In actions involving several litigants and unusual procedures, the Court, after conferring with attorneys for the litigants, shall direct the order and time of the opening statements in a manner appearing just and appropriate.

RULE 2.13

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

In any civil action, where findings of fact and conclusions of law are required, the Court may require from either or both parties, before or after the announcement of its decision, proposed findings of fact and conclusions of law, for the assistance of the Court, but, unless adopted by the Court, such proposed findings of fact and conclusions of law shall not form any part of the record of the action.

RULE 2.14

FEEES AND COSTS

Fees and costs shall be taxed and paid in accordance with provisions of 28 U.S.C., §§ 1911-1929, and other controlling statutes and rules.

(a) If costs are awarded by the Court, the reasonable premiums or expense paid on any bond or other security given by the prevailing party shall be taxed as part of the costs.

(b) The prevailing party shall prepare a bill of costs as soon as possible after entry of the final judgment, on the form supplied by the Clerk. The bill of costs shall contain an itemized schedule of the costs, and a statement signed by counsel for the prevailing party that the schedule is correct and the charges were actually and necessarily incurred. The original of the bill of costs shall be filed with the Clerk and a copy served on counsel

for the adverse party.

(c) (1) If an adverse party makes specific objections to any item of costs filed by the prevailing party, the Clerk shall set the matter for hearing.

(2) If either party is dissatisfied with the ruling of the Clerk, such action may be reviewed by the Court upon motion duly made in writing within five days after the action of the Clerk.

RULE 2.15

CONTEMPT

(a) A proceeding to adjudicate a person in civil contempt of court, including a case provided for in Rule 37(b)(2)(iv), Federal Rules of Civil Procedure, shall be commenced by the service of a notice of motion or order to show cause. The affidavit upon which notice of motion or order to show cause is based shall set out with particularity the misconduct complained of, the claim, if any, for damages occasioned thereby, and such evidence as to the amount of damages as may be available to the moving party. A reasonable counsel fee, necessitated by the contempt proceeding, may be included as an item of damage. Where the alleged contemnor has appeared in the action by an attorney, the notice of motion or order to show cause and the papers upon which it is based may be served upon his attorney; otherwise, service shall be made personally, in the manner provided for by the Federal Rules of Civil Procedure for the service of a summons. If an order to show cause is sought, such order may upon necessity shown therefor, embody a direction to the United States Marshal to arrest the alleged contemnor and hold him on bail in an amount fixed by the order, conditioned for his appearance at the hearing, and further conditioned that the alleged contemnor will hold himself thereafter amenable to all orders of the Court for his surrender.

(b) If the alleged contemnor puts in issue his alleged misconduct or the damages thereby occasioned, he shall, upon demand therefor, be entitled to have oral evidence taken thereon, either before the Court or before a master appointed by the Court. When by law such alleged contemnor is entitled to a trial by jury, he shall make written demand therefor on or before the return day or adjourned day of the application; otherwise he will be deemed to have waived a trial by jury.

(c) In the event the alleged contemnor is found to be in contempt of Court, an order shall be made and entered (1) reciting or referring to the verdict or findings of fact upon which the adjudication is based; (2) setting forth the amount of the damages to which the complainant is entitled; (3) fixing the fine, if any, imposed by the Court, which fine shall include the damages found, and naming the person to whom such fine shall be payable; (4) stating any other conditions, the performance whereof will operate to purge the contempt; and (5) directing the arrest of the contemnor by the United States Marshal and his confinement until the performance of the condition fixed in the order and the payment of the fine, or until the contemnor be otherwise discharged pursuant to law. Unless the order otherwise specifies, the place of confinement shall be in the county jail of the county wherein the Court is then sitting. No party shall be required to pay or to advance to the marshal any expenses for the upkeep of the prisoner. A certified copy of the order committing the contemnor shall be sufficient warrant to the marshal for the arrest and confinement of such contemnor. The aggrieved party shall also have the same remedies against the property of the contemnor as if the order awarding the judgment and/or fine were a

final judgment.

(d) In the event the alleged contemnor shall be found not guilty of the charges made against him, he shall be discharged from the proceeding and, in the discretion of the Court, may have judgment against the complainant for his costs and disbursements and a reasonable counsel fee.

Editor's note.--Rule 37(b) (2) (iv), referred to in (a) above was amended effective July 1, 1970. There is no longer any provision similar to former subdivision (iv).

RULE 2.16

LAND CONDEMNATION ACTIONS: MANNER OF FILING,  
DOCKETING, RECORDING AND REPORTING SAME

The guidelines for filing, docketing, recording and reporting land condemnation proceedings approved by the Judicial Conference of the United States at its March 6-7, 1975 Session are approved for use in this jurisdiction and are hereby adopted. Effective July 1, 1975, the Clerk is directed to implement the following guidelines:

GUIDELINE 1

For each tract, economic unit or ownership for which the just compensation is required to be separately determined in a total lump sum, there shall be a separate civil action file opened by the Clerk, which shall be given a serial number, as given all other civil actions. For each such civil action a separate J.S.5 card shall be prepared on filing and a separate J.S.6 card prepared on closing of each such separate civil actions. The condemnor's counsel shall make the initial determination of each tract, economic unit or ownership for which just compensation is required to be separately determined in a lump sum, subject to review by the Court after filing.

GUIDELINE 2

The file in the civil action containing the first complaint filed under a single declaration of taking shall be designated as the Master File for all the civil actions based upon the single declaration of taking. The numerical designation as the Master File shall be shown by adding as a suffix to the civil action serial number the symbol MF . . . . . (In the blank shall be inserted a code number or numbers, selected by the condemnor, designating the project or projects and the number assigned the declaration of taking with which the property concerned is connected.) The single declaration of taking shall be filed in the Master File only. In all other civil actions for condemnation of property which is the subject of the declaration of taking, an appropriate reference to the Master File number in a standard form of complaint shall be deemed to incorporate in the cause the declaration of taking by reference, and shall be a sufficient filing of the declaration of taking referred to.

For example, assuming that the civil action serial number assigned to the first complaint under a single declaration of taking is C.A. 72-20,000, that the project number selected by the condemnor is 500 and the declaration of taking is the first in the project, the Master File Number would be C.A. 72-20,000-MF 500-1.

GUIDELINE 3

For the civil action designated as the Master File there should be a separate complaint. At the option of the condemnor this complaint and exhibits shall (1) describe all owners, and other parties affected and all properties that are the subject of the declaration of taking, or (2) describe only the owner or owners of the first property of properties in the declaration of taking for which the issue of just compensation is separately determinable.

GUIDELINE 4

In order to reduce administrative, clerical and secretarial work a standard form of complaint (printed, photocopied, mimeographed or otherwise produced in numbers) may be used for each civil action for which the issue of just compensation is required to be determined in a single lump sum. In the body of the complaint it shall not be necessary to designate the owner or owners of the property concerned or other parties affected by the civil action. The names of the owners, and other parties affected, and the description of the property concerned in the civil action may be set forth in an exhibit or exhibits incorporated by reference in the standard form of complaint and attached thereto.

GUIDELINE 5

In any notice or process required or permitted by law or by the Rules of Civil Procedure (including but not limited to process under Rule 71A(d), F.R.Civ. P.) the condemnor, at its option, may combine in a single notice or process in as many separate civil actions as it may choose in the interests of economy and efficiency.

GUIDELINE 6

A district court should adopt a local rule or general order to the effect that the filing of a declaration of taking in the Master File constitutes a filing of the same in each of the actions to which it relates.\*

(Added effective July 1, 1975)

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\*An essential element of the Master File system is that the filing of the declaration of taking in the Master File shall constitute a filing of the same in each of the separate actions to which the Master File relates. This is of particular significance because the Declaration of Taking Act, 40 U.S.C. § 258a, specifies filing of the declaration of taking "in the cause." If the filing of the declaration of taking is defective, the vesting of the title to the subject property in the United States under the Act is jeopardized. To ensure that the filing of a pleading in the Master File will legally constitute a filing in the several related actions, it is considered necessary that each district court as part of the implementation of this system, adopt a local rule of procedure giving the desired effect to the filing of pleadings in the Master File. The following language for such a rule is suggested:

Where the United States files separate condemnation actions and a single declaration of taking relating to those separate actions, the Clerk is authorized to establish a Master File in which the declaration of taking may be filed, and the filing of the declaration of taking therein shall constitute a filing of the same in each of the actions to which it relates.

RULE 2.17

COMPLAINTS FILED PURSUANT TO SOCIAL SECURITY ACT

Complaints filed in civil cases, pursuant to section 205(g) of the Social Security Act, 42 U.S.C. § 405(g) for benefits under Titles II, XVI and XVIII of the Social Security Act, as well as Part B, Title IV of the Federal Coal Mine Health and Safety Act of 1969, shall contain, in addition to what is required under Rule 8(a) F.R.C.P., the following information:

1. In cases involving claims for retirement, survivors, disability, health insurance and black lung benefits, the Social Security number of the worker on whose wage record the application for benefits was filed (who may or may not be the plaintiff).

2. In cases involving claims for supplemental security income benefits, the Social Security number of the plaintiff.

(Added effective July 15, 1976.)

RULE 2.18

REVIEW UNDER 42 U.S.C. 405(g)

(a) The time within which the Secretary of Health, Education, and Welfare has to answer or otherwise respond to complaints filed pursuant to 42 U.S.C., 405(g) for benefits under Titles II, XVI, and XVIII of the Social Security Act, as well as Part B, Title IV of the Federal Coal Mine Health and Safety Act of 1969, shall be 120 days from the date of service of process.

(b) The Court, upon good cause shown by either party, may either decrease or enlarge the number of days provided for in paragraph (a) hereof; provided, however, that the number of days may not be decreased below that number provided for in the Federal Rules of Civil Procedure.

(Added effective September 29, 1977.)

CRIMINAL PROCEDURE RULES

RULE 3.01

APPLICABILITY OF GENERAL RULES

In all criminal proceedings, the General Rules of this Court shall be followed insofar as they are applicable. General Rules, Rule 1.01.

In addition to all other rules applicable and controlling in criminal proceedings, attention is directed to Rules of Procedure for the Trial of Minor Offenses before United States Magistrates, as promulgated by order of the Supreme Court of the United States on January 27, 1971, and any orders supplemental thereto. 18 U.S.C.A., following Federal Rules of Criminal Procedure; 51 Federal Rules Decisions 199, 201 206 (1971). The Court has prepared and adopted a Plan pursuant to Rule 50(b), Federal Rules of Criminal Procedure, as amended, relating to prompt disposition of criminal cases. The plan shall be considered with and as a part of these Rules. Copies of the Plan will be available in the Clerk's office.

RULE 3.02

CRIMINAL JUSTICE ACT PLAN

The Court has adopted a Criminal Justice Act Plan pursuant to provisions of the Criminal Justice Act of 1964, as amended (18 U.S.C., § 3006A). The Plan shall be considered with and as a part of these Rules. Copies of the Plan will be available in the Clerk's office.

RULE 3.03

TRIAL PUBLICITY

Disciplinary Rule 7-107 of the Codes of Professional Responsibility, referenced in Rule 1.05(h) of these Rules, prescribes basic principles of attorney conduct incident to trial publicity. The conduct of attorneys in all criminal matters and proceedings shall be governed accordingly, subject always to provisions and requirements of any statutes, rules and orders applicable to and controlling procedures and the practice of law in this Court.

RULE 3.04

MAGISTRATE'S WARRANT IN REMOVAL PROCEEDINGS

Consistent with provisions of 28 U.S.C., § 636(b), and with provisions of Rule 40(b)(5), Federal Rules of Criminal Procedure, as amended, a United States Magistrate of the Court is authorized to issue warrants of removal under Rule 40(b)(3), Federal Rules of Criminal Procedure.

RULE 3.05

NOTICE OF ARRAIGNMENTS, PLEAS AND MOTIONS TO DISMISS

(a) It shall be the duty of the United States Attorney to give to the defendant timely notice of defendant's arraignment on and plea to the indictment. A copy of said notice shall be given at the same time to defendant's attorney, if his name and address are known to the United States Attorney. When the indictment is based on substantially the same facts as formed the basis for an earlier complaint before a United States Magistrate, the United States Attorney shall give notice of the arraignment and plea to the attorney, if any, who appeared on defendant's behalf before the Magistrate.

The United States Attorney shall prepare and transmit to the Clerk a suggested calendar of arraignments and pleas in ample time to permit adjustment of the Court's calendar to accommodate the proceedings thereon. When the United States Attorney has knowledge that a defendant is without counsel, he shall note the fact on his suggested calendar of arraignments and pleas so that early consideration may be given to provision of counsel pursuant to the Criminal Justice Act of 1964, as amended, and other requirements of law.

(b) The United States Attorney shall serve on defendant's attorney notice of any motion to dismiss a United States Magistrate's complaint against defendant.

(c) No other or further notice of arraignment and plea or motion to dismiss need be given by the Clerk except on order of the Court.

RULE 3.06

OPENING STATEMENTS IN CRIMINAL TRIALS

At the commencement of the trial of a criminal action, particularly in protracted cases involving unusual or complicated facts and issues, the government and the defendant may, without argument, make opening statements as to their theories of the case and the manner in which they expect to offer their evidence. If the trial is to a jury, the opening statements shall be made immediately after the jury is empaneled, and, if the trial is to the Court, the opening statements shall be made immediately after the case is called for trial, but, for good cause shown, the Court, on request of the defense, may defer the opening statement for any defendant until the time in the trial arrives for commencing presentation of such defendant's direct evidence. Opening statements shall be subject to such time limitations as may be imposed by the Court.

If the action involved more than one defendant, the Court, after conferring with the parties to the action, shall determine the order and time of the opening statements in a manner appearing to be just and appropriate.

RULE 3.07

PETITION FOR DISCLOSURE OF PRESENCE OR PROBATION RECORDS

No confidential records of this court maintained by the probation office, including presentence and probation supervision records, shall be sought by any applicant except by written petition to this court establishing with particularity the need for specific information in the records.

When a demand for disclosure of presentence and probation records is made, by way of subpoena or other judicial process, to a probation officer of this court, the probation officer may file a petition seeking instructions from the court with respect to responding to the subpoena.

Whenever a probation officer is subpoenaed for such records, he shall petition this court in writing for authority to release documentary records or produce testimony with respect to such confidential court information. In either event no disclosure shall be made except upon an order issued by this court.

(Added effective June 15, 1979.)

LOCAL RULES OF PRACTICE AND PROCEDURE  
BEFORE UNITED STATES MAGISTRATES

LOCAL RULES OF PRACTICE AND PROCEDURE  
BEFORE UNITED STATES MAGISTRATES

RULE 1

ADOPTION AND SCOPE

(a) The United States District Court for the Southern District of West Virginia adopts the following Rules for the conduct, government and management of the business, operations, proceedings and other functions and services of full-time and part-time United States magistrates (hereinafter, magistrate).

(b) These Rules are intended to supplement and complement the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Rules of Procedure for the Trial of Minor Offenses before United States Magistrates, the Rules Governing § 2254 Cases in the United States District Courts, the Rules Governing § 2255 Proceedings for the United States District Court, Local Rules of Practice and Procedure of this Court, 28 U.S.C. § 636 and other controlling rules of court and statutes in their application and administration in proceedings involving the utilization of magistrates. Where no procedure is especially prescribed by the Rules herein promulgated, the magistrates shall proceed in accordance with the aforementioned Rules of Procedure where applicable or, if no such Rules of Procedure are applicable, in any lawful manner not inconsistent with such Rules of Procedure or with any applicable statute.

(c) These Rules shall govern the procedure and practice of proceedings before magistrates and, to the extent applicable, proceedings before United States District Judges arising from, or in review of, proceedings before magistrates.

RULE 2

DUTIES UNDER 28 U.S.C. § 636(a)

A magistrate is authorized to perform the duties prescribed by 28 U.S.C. § 636(a) and may--

- (1) Exercise all the powers and duties conferred or imposed upon United States commissioners by law or the Federal Rules of Criminal Procedure;
- (2) Administer oaths and affirmations, impose conditions of release under 18 U.S.C. § 3146, and take acknowledgements, affidavits and depositions;
- (3) Try persons accused of minor offenses committed within this district in accordance with 18 U.S.C. § 3401, order a presentence investigation report on any such person who is convicted or pleads guilty or nolo contendere, and sentence such persons;
- (4) Conduct removal proceedings and issue warrants of removal in accordance with Rule 40, Federal Rules of Criminal Procedure;

- (5) Conduct extradition proceedings, in accordance with 18 U.S.C. § 3184; and
- (6) Supervise proceedings conducted pursuant to letters rogatory, in accordance with 28 U.S.C. § 1782.

### RULE 3

#### NONDISPOSITIVE PRETRIAL MATTERS

(a) In accordance with 28 U.S.C. § 636(b)(1)(A), a magistrate may hear and determine any pretrial motion or other pretrial matter, civil or criminal, other than those motions specified in Rule 4 of these Rules.

(b) The magistrate's order shall be filed by the magistrate with the Clerk of the Court. The Clerk of the Court shall cause the order to be entered on the docket and shall mail certified copies of the order to all counsel of record in the matter and any party not represented by counsel of record. The magistrate may, however, direct that service upon counsel of record and any party not represented by counsel of record be made in some manner other than by mail. The magistrate shall also forthwith file a copy of the order with the judge to whom the matter has been assigned.

(c) Any party may appeal from a magistrate's determination made under this Rule within ten (10) days after entry of the magistrate's order, unless a different time is prescribed by the magistrate or a judge. Such party shall file with the Clerk of the Court, and serve all parties, with copies to the judge and magistrate, a written notice of appeal which shall specifically designate the order or part thereof appealed from and the basis for objection thereto. Review of any determination by a magistrate pursuant to this Rule shall be in accordance with the provisions of 28 U.S.C. § 636(b)(1)(A). The presiding judge may also consider at any time any matter decided under this Rule sua sponte.

### RULE 4

#### DISPOSITIVE PRETRIAL MOTIONS AND PRISONER CASES

(a) In accordance with 28 U.S.C. § 636(b)(1)(B), a magistrate may hear, conduct such evidentiary hearings as are necessary or appropriate, and submit to a judge proposed findings of fact and recommendations for the disposition of the following matters:

- (1) Applications for post-trial relief made by individuals convicted of criminal offenses; and
- (2) Prisoner petitions challenging conditions of confinement; and
- (3) Suits for the judicial review of administrative determinations; and
- (4) When a judge of the Court so designates, the following motions:
  - (i) For injunctive relief (including temporary restraining orders and preliminary injunctions); and
  - (ii) For judgment on pleadings; and
  - (iii) For summary judgment; and
  - (iv) To dismiss or quash an indictment or information made by a defendant; and
  - (v) To suppress evidence in a criminal case; and
  - (vi) To dismiss or permit the maintenance of a class action; and

(vii) To dismiss for failure to state a claim upon which relief may be granted; and

(viii) To involuntarily dismiss an action.

(b) The magistrate's report or proposed findings of fact and recommendations shall be filed by the magistrate with the Clerk of the Court. The Clerk of the Court shall cause the report or proposed findings of fact and recommendations to be entered on the docket and shall mail certified copies of the report or proposed findings of fact and recommendations to all counsel of record in the matter and any party not represented by counsel of record. The magistrate may, however, direct that service upon counsel of record and any party not represented by counsel of record be made in some manner other than by mail. The magistrate shall also forthwith file a copy of the report or proposed findings of fact and recommendations with the judge to whom the matter has been assigned.

(c) Any party may object to the magistrate's proposed findings of fact, recommendations or report issued under this Rule within ten (10) days after being served with a copy thereof. Such party shall file with the Clerk of the Court, and serve on all other parties through their counsel of record, if any, with copies to the judge and magistrate, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objection. The judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made in accordance with the provisions of 28 U.S.C. § 636(b) (1).

(d) In accordance with the directives, standards and criteria established in 28 U.S.C. § 636(b) (1) and these Rules, a magistrate may exercise the powers enumerated in Rules 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the Rules Governing § 2254 and § 2255 Proceedings.

#### RULE 5

##### SPECIAL MASTER REFERENCES AND TRIALS BY CONSENT

(a) A magistrate may serve as a Special Master subject to the procedures and limitations of 28 U.S.C. § 636(b) (2) and Rules 53 of the Federal Rules of Civil Procedure.

(b) Where the parties consent, the magistrate may serve as Special Master and try the issues in any civil case, without regard to the provisions of Rule 53(b) of the Federal Rules of Civil Procedure. The entry of final judgment in any civil case, however, shall be made by a judge of the Court or at the direction of a judge.

#### RULE 6

##### OTHER DUTIES

A magistrate is also authorized to--

(a) Exercise general supervision of the pretrial civil and criminal calendars of the Court, conduct calendar and status calls, and determine motions to expedite or postpone trial of cases for the judges.

(b) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings;

(c) Conduct post-indictment arraignments in cases not triable by the magistrate to the extent of taking a not guilty plea or noting a

defendant's intention to plead guilty or nolo contendere and ordering a presentence report in appropriate cases;

(d) Receive grand jury returns in accordance with Rule 6(f) of the Federal Rules of Criminal Procedure;

(e) Conduct voir dire and select petit juries for the court;

(f) Accept petit jury verdicts in civil cases;

(g) Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties or witnesses or evidence needed for Court proceedings;

(h) Conduct proceedings for the collection of civil penalties of not more than \$200 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. § 1484(d);

(i) Conduct examination of judgment debtors, in accordance with Rule 69 of the Federal Rules of Civil Procedure;

(j) Hear motions for the setting aside of entries of default and judgments by default and submit to a judge proposed findings of fact and recommendations for the disposition of such motions. Review shall be in accord with Rule 4(b) and (c).

(k) Review petitions in civil commitment proceedings under Title III of the Narcotic Addict Rehabilitation Act;

(l) Perform any additional duty which may be assigned by a judge of the Court not inconsistent with the Constitution and laws of the United States.

Applications for review from the decisions of the magistrate in any of the above matters, where not already provided, shall be by immediate petition to a judge of the Court.

#### RULE 7

#### ASSIGNMENT OF DUTIES TO MAGISTRATES

##### A. Criminal Cases

Upon the return of an indictment or the filing of an information, all criminal cases shall be assigned by the Clerk of the Court to a magistrate for the conduct of an arraignment and the appointment of counsel if required. Where designated by a judge of this Court, the magistrate shall conduct such pretrial conferences as are necessary and shall hear and determine all pretrial procedural and discovery motions in accordance with Rule 3. Where designated by the judge of the Court, the magistrate may hear motions to suppress evidence and motions to dismiss or quash an indictment or information made by the defendant and shall submit a report and recommend a disposition of such motions to the Clerk of the Court and the judge, in accordance with Rule 4. In conducting such proceedings, the magistrates shall conform to the general procedural rules of this Court and the instructions of the judge to whom a case is assigned.

##### B. Civil Cases

(1) All applications for post-trial relief made by an individual convicted of criminal offenses, prisoner petitions challenging conditions of confinement, and actions for judicial review of final decisions of administrative agencies, including but not being limited to decisions relating to the granting or denying of benefits to claimants under the Social Security Act, the "Black Lung" benefits laws, or related or similar statutes, may be assigned by the Clerk of the Court when filed to a magistrate who shall conduct proceedings as provided for in these Rules and submit to the

Clerk of the Court and the judge proposed findings of fact and recommendations for the disposition thereof in accordance with Rule 4.

(2) All civil actions, other than those referred to magistrates under subdivision B(1) of this Rule, may be assigned by the Clerk of the Court when filed to a magistrate, who shall conduct status conferences and shall hear and determine all nondispositive pretrial procedural and discovery motions, in accordance with Rule 3. Where designated by a judge of the Court, the magistrate may conduct the pretrial conference and hear the motions and perform the duties set forth in Rules 4 and 5. In conducting such proceedings, the magistrate shall conform to the general procedural rules of this Court and the instructions of the judge to whom the case is assigned.

(C) Additional Assignment

In addition to those duties specifically referred to magistrates in subdivisions (A) and (B) of this Rule, a magistrate may perform such additional duties authorized by 28 U.S.C. § 636(b) and Rules 3 through 6, upon specific designation by a judge of the Court or pursuant to a general order of the Court assigning duties. In performing such duties a magistrate shall conform to the general procedural rules of this Court and the instructions of the judge to whom the case is assigned.

(Rules 1 through 7 added effective December 1, 1977.)