TABLE OF CONTENTS

FEDERAL RULE REFERENCE - LOCAL RULE NUMBER

I. Scope of Local Rules

Federal - Local

1 - 1.01 Title and Citation

81 - 1.02 Application and Numbering of Local Rules; Local Patent Rules

86 - 1.03 Effective Date

86 - 1.04 Relationship to Prior Rules and Actions Pending on Effective Date

6 - 1.05 Modification of Time Limits

1 - 1.06 Judge Defined

II. Commencement of Actions

Federal - Local

5 - 2.01 Files and Filings

3 - 2.02 Forms to be Filed in Civil Cases

81 - 2.03 Cases Removed to the District Court

38 - 2.04 Demand for Jury Trial

3 - 2.05 In Forma Pauperis

45 - 2.06 Pro Se Actions

3 - 2.07 Divisional Venue

40 - 2.08 Assignment of Actions and Matters

3 - 2.09 Disclosure of Organizational Interests

3 - 2.10 The Electronic Case Record and Filing; Exemption

11 - 2.11 Signatures on Electronic Filings

5 - 2.12 Service in Electronic Cases

83 - 2.13 When Electronic Filings are Completed

6 - 2.14 Technical Failure and Filing Deadlines

83 - 2.15 Administrative Procedures for Electronic Filing

7 - 2.16 Hyperlinks in Electronically Filed Documents

5 - 2.17 Redaction of Personal Data Identifiers

III. Disclosure and Discovery

Federal - Local

26 - 3.01 Federal Rule of Civil Procedure 26(a)(1)

26 - 3.02 Filing of Discovery and Disclosure Materials

33 - 3.03 Interrogatories

37 - 3.04 Motions Concerning Disclosure and Discovery

12CR - 3.05 Disclosure and Motions in Criminal Cases

IV. Motions

Federal - Local

7 - 4.01 Motions and Memoranda

78 - 4.02 Oral Argument or Testimony Regarding Civil Motions

42 - 4.03 Motions to Consolidate

7 - 4.04 Communication with the Court

(7 - 4.05) Submission of Motion Package **(Rule Repealed)**

83 – 4.06 Motions for Transfer of Venue - Process

V. Differentiated Case Management

Federal - Local

16 - 5.01 Case Management Tracks

3 - 5.02 Track Information Statements

16 - 5.03 Rule 16 Scheduling Conference

16 - 5.04 Case Management Orders

VI. Alternative Dispute Resolution

Federal - Local

16 - 6.01 Mediation and Early Neutral Evaluation

16 - 6.02 Referral to Alternative Dispute Resolution and Duties of Participants

16 - 6.03 Neutrals

16 - 6.04 Communications Concerning Alternative Dispute Resolution

16 - 6.05 Reporting Requirements

VII. Trials

Federal - Local

47 - 7.01 Jurors and Juries

83 - 7.02 Trial Exhibits

VIII. Judgments

Federal - Local

41 - 8.01 Dismissal for Failure to Prosecute

54 - 8.02 Motions for Attorney's Fees

54 - 8.03 Bill of Costs

41 - 8.04 Assessment of Jury Costs

XI. Special Proceedings

Federal - Local

81 - 9.01 Bankruptcy Court Matters

56 - 9.02 Social Security Appeals

58CR - 9.03 Petty Offenses

71A - 9.04 Condemnation Cases

X. Admiralty Cases

Federal - Local

9 - 10.01 Scope of Admiralty Rules

9 - 10.02 Actions in Rem, Special Provisions

9 - 10.03 Actions in Rem and Quasi in Rem, General Provisions

XI. United States Magistrate Judges

Federal - Local

73 - 11.01 General Authority of United States Magistrate Judges

XII. Attorneys

Federal - Local

83 - 12.01 Attorney Admissions

83 - 12.02 Attorney Discipline

83 - 12.03 Attorney Admission Fee Non-Appropriated Fund

83 - 12.04 Former Law Clerks

83 - 12.05 Law Student Practice

83 - 12.06 Appointed Counsel's Fees and Expenses in Civil Cases

83 - 12.07 Attorney's Obligations Regarding Appeal

XIII. Miscellaneous Provisions

Federal - Local

32CR - 13.01 Probation and Pretrial Services Records

83 - 13.02 Use of Photographic and Recording Equipment

46CR - 13.03 Surety on Criminal Bonds

67 - 13.04 Deposit of Funds with the Court

83 - 13.05 Pleadings and Documents Filed Under Seal

Local Patent Rules

Appendix A Protective Order

Appendix B Claims Construction Chart

Appendix C Timeline

TABLE OF FEDERAL-LOCAL RULE REFERENCES

Arranged in Federal Rules of Civil Procedure Sequence

Federal - Local	
1 - 1.01	Title and Citation
1 - 1.02	Application and Numbering of Local Rules; Local Patent Rules
3 - 2.02	Forms to be Filed in Civil Cases
3 - 2.05	In Forma Pauperis
3 - 2.07	Divisional Venue
3 - 2.09	Disclosure of Corporation Interests
3 - 2.10	The Electronic Record and Filing; Exemption
3 - 5.02	Track Information Statements
5 - 2.01	Files and Filings
5 - 2.12	Service in Electronic Cases
5 - 2.17	Redaction of Personal Data Identifiers
6 - 1.05	Modification of Time Limits
6 - 2.14	Technical Failure and Filing Deadlines
7 - 4.01	Motions and Memoranda
7 - 4.04	Communications with the Court
7 - 4.05	Submission of Motion Package **(Rule Repealed)**
7 - 2.16	Hyperlinks in Electronically Filed Documents
9 - 10.01	Scope of Admiralty Rules
9 - 10.02	Actions in Rem, Special Provisions
9 - 10.03	Actions in Rem and Quasi In Rem, General Provisions
11 - 2.11	Signatures on Electronic Filings

Federal - Local	
16 - 5.01	Case Management Tracks
16 - 5.03	Rule 16 Scheduling Conference
16 - 5.04	Case Management Order
16 - 6.01	Mediation and Early Neutral Evaluation
16 - 6.02	Referral to Alternative Dispute Resolution and Duties of Participants
16 - 6.03	Neutrals
16 - 6.04	Communications Concerning Alternative Dispute Resolution
16 - 6.05	Reporting Requirements
26 - 3.01	Federal Rule of Civil Procedure 26(a)(1)
26 - 3.02	Filing of Discovery and Disclosure Materials
33 - 3.03	Interrogatories
37 - 3.04	Motions Concerning Disclosure and Discovery
38 - 2.04	Demand for Jury Trial
40 - 2.08	Assignment of Actions and Matters
41 - 8.01	Dismissal for Failure to Prosecute
41 - 8.04	Assessment of Jury Costs
42 - 4.03	Motions to Consolidate
45 - 2.06	Pro Se Actions
47 - 7.01	Jurors and Juries
54 - 8.02	Motions for Attorney's Fees
54 - 8.03	Bill of Costs
56 - 9.02	Social Security Appeals

Federal - Local

67 - 13.04	Deposit of Funds With the Court
71A - 9.04	Condemnation Cases
72 - 1.06	Judge Defined
73 - 11.01	General Authority of United States Magistrate Judges
78 - 4.02	Oral Arguments or Testimony Regarding Civil Motions
81 - 2.03	Cases Removed to the District Court
81 - 9.01	Bankruptcy Court Matters
83 - 2.13	When Electronic Filings are Completed
83 - 2.15	Administrative Procedures for Electronic Filing
83 – 4.06	Motions for Transfer of Venue - Process
83 - 7.02	Trial Exhibits
83 -12.01	Attorney Admissions
83 -12.02	Attorney Admissions Fee Non-Appropriated Fund
83 -12.04	Former Law Clerks
83 -12.05	Law Student Practice
83 -12.06	Appointed Counsel’s Fees and Expenses in Civil Cases
83 -12.07	Attorney’s Obligations Regarding Appeals
83 -13.02	Use of Photographic and Recording Equipment
83 -13.05	Pleadings and Documents Filed Under Seal
86 - 1.03	Effective Date
86 - 1.04	Relationship of Prior Rules and Actions Pending on Effective Date

Local Rules Arranged in Federal Rules of Criminal Procedure Sequence

Federal - Local

12CR-13.05 Disclosure and Motions in Criminal Cases

32CR-13.01 Probation and Pretrial Services Records

46CR-13.03 Surety on Criminal Bonds

58CR-9.03 Petty Offenses

Local Patent Rules

Appendix A Protective Order

Appendix B Claims Construction Chart

Appendix C Timeline

I. SCOPE OF LOCAL RULES

Rule 1 - 1.01 Title and Citation.

These rules shall be known as the Local Rules of the United States District Court for the Eastern District of Missouri. They may be cited as "E.D.Mo. L.R. __.__", without reference to the companion federal rule.

Rule 81 - 1.02 Application and Numbering of Local Rules; Local Patent Rules.

(A) Application.

These rules shall apply to cases and proceedings in the District Court and in the United States Bankruptcy Court for the Eastern District of Missouri, when not inconsistent with the Federal Rules of Bankruptcy Procedure.

(B) Local Patent Rules.

In addition to these rules, Local Patent Rules have been promulgated to govern cases and proceedings alleging patent infringement, non-infringement, invalidity or unenforceability. These Local Patent Rules are published separately.

(C) Numbering.

These rules have been renumbered in accordance with a directive from the Judicial Conference of the United States. The numbering system combines the most relevant Federal Rule of Civil Procedure or Federal Rule of Criminal Procedure, indicated first, followed by the pre-existing number of the Local Rule at the time of renumbering. The organizational structure of these rules follows a local framework rather than the federal outline.

Amended September 3, 2010; Effective January 1, 2011.

Rule 86 - 1.03 Effective Date.

These rules become effective on July 1, 1998, except as otherwise indicated. They shall govern all applicable proceedings commenced after the effective date. Unless otherwise ordered by a judge, these rules shall apply to the extent practicable to all actions pending on the effective date.

(Amended July 10, 2006; effective August 28, 2006)

Rule 86 - 1.04 Relationship to Prior Rules.

These rules supersede all previous rules and conflicting administrative orders promulgated by this Court.

Rule 6 - 1.05 Modification of Time Limits.

For good cause, the Court may extend or shorten any time limit imposed by these rules.

Rule 1 - 1.06 "Judge" Defined.

Unless otherwise specified, the term "judge" as used in these rules refers to a district judge, a magistrate judge, and, where practicable, a bankruptcy judge.

<u>II. COMMENCEMENT OF ACTION</u>

Rule 5 - 2.01 Files and Filing.

(A) Format.

(1) All filings, unless otherwise permitted by leave of Court, shall be double spaced typed or legibly written on 8 ½ by 11 inch pages, and shall contain the signature of the party or the party's attorney. Immediately beneath each signature shall appear the name, address, telephone number, and bar registration number, if any, of the signer.

(2) On all documents offered for filing, a blank area on the first page, no smaller than 2 by 2 inches, shall be left in the upper left and upper right hand corners.

(B) Filing Fees.

(1) Fees required by law in connection with the institution or prosecution of an action in this Court shall be collected in advance by the Clerk of Court and deposited in accordance with the directives of the Administrative Office of the United States Courts, except when, by order of the Court in a specific case, filing in forma pauperis is permitted pursuant to 28 U.S.C. § 1915. The Clerk may refuse to receive and file any pleading or document in any case until the applicable statutory fee is paid, except in cases accompanied by a completed application to proceed in forma pauperis.

(2) For instructions regarding payment of filing fees in an electronically filed case, refer to the Administrative Procedures For Case Management/Electronic Case Filing (CM/ECF) Manual.

(C) Where to Submit Papers.

Except in Bankruptcy Court proceedings, all documents permitted to be filed in paper format in a case in the Eastern Division or Northern Division shall be delivered to the Clerk's office in St. Louis, and all documents permitted to be filed in paper format in a case in the Southeastern Division shall be delivered to the Clerk's office in Cape Girardeau.

(D) Files and Records Open to Examination.

(1) Except as otherwise provided or ordered, any material filed in the Clerk's office may be examined by any person within the confines of the Clerk's office or through the Public Access to Court Electronic Records (PACER) system.

(2) No material on file shall be taken from the Clerk's office, except upon order of the Court and receipt given by the party taking the same. Upon payment of the fee prescribed by the Court or the PACER Service Center, any person may obtain copies of any material which may be examined under the provisions of this rule.

(Amended August 12, 1998; effective September 16, 1998)

(Amended July 10, 2006; effective August 28, 2006)

Rule 3 - 2.02 Forms to be Filed in Civil Cases.

(A) Forms.

Every complaint or other document commencing a civil case shall be accompanied by a completed Civil Cover Sheet, an Original Filing Form and a Disclosure of Organizational Interests Certificate. These required documents must be filed in the form provided by and available from the Clerk of Court.

(B) Summons or Waiver.

Except when plaintiff seeks leave to proceed in forma pauperis, the plaintiff shall provide at the time a complaint is submitted for filing a completed summons accompanied by a Notice of Process Server form (if service is to be effected by summons on a defendant who is not a federal government agency), or request for waiver of service for each defendant pursuant to Fed.R.Civ.P. 4. Upon the filing of a complaint, process shall issue under the Clerk's signature and seal, or requests for waivers shall be returned to plaintiff for mailing.

(Amended July 10, 2006; effective August 28, 2006; Amended October 11, 2018; effective December 1, 2018)

Rule 81 - 2.03 Cases Removed to the District Court.

A party commencing a civil case with a notice of removal shall (1) pay the prescribed filing fee for a new action or file an application to proceed in forma pauperis, (2) file an original notice of removal, (3) file proof of filing the notice with the Clerk of the State Court and proof of service on all adverse parties, (4) file a copy of all process, pleadings, orders and other documents then on file in the State Court, and (5) comply with Local Rule 2.02.

Rule 38 - 2.04 Demand for Jury Trial.

Every party demanding a trial by jury in a civil case by endorsement upon a pleading, pursuant to Fed.R.Civ.P. 38(b) shall place the words "JURY TRIAL DEMANDED" in the top right hand corner of the first page of each such pleading.

(Amended July 10, 2006; effective August 28, 2006)

Rule 3 - 2.05 In Forma Pauperis.

(A) An application to proceed in forma pauperis shall be accompanied by a statement of the applicant's financial information set forth on a form provided by the Court. The Court may require the submission of additional information in a particular case.

(B) A pro se plaintiff or petitioner who seeks or has been granted leave to proceed in forma pauperis shall promptly notify the Court in writing of any change in his or her financial status. Failure to so notify may result in dismissal of the case or other sanctions.

(C) The Clerk shall return any complaint or petition that is submitted for filing in forma pauperis which is not accompanied by an affidavit as required by 28 U.S.C. § 1915(a).

(D) If a plaintiff who has been granted leave to proceed in forma pauperis is successful on the merits of his or her case, the Court, in its discretion, may require the plaintiff to pay any fees or costs suspended under 28 U.S.C. § 1915 as the Court directs. Any fees or costs paid by the plaintiff pursuant to this subsection may be requested as plaintiff's costs under Fed.R.Civ.P. 54(d).

(Amended July 10, 2006; effective August 28, 2006)

Rule 45 - 2.06 Pro Se Actions.

(A) Court-Provided Forms.

All actions brought by pro se plaintiffs or petitioners should be filed on Court-provided forms where applicable. If an action is not filed on a Court-provided form, the Court, in its discretion, may order the pro se plaintiff or petitioner to file the action on a Court-provided form.

(B) Change of Address.

Every pro se party shall promptly notify the Clerk and all other parties to the proceedings of any change in his or her address and telephone number. If any mail to a pro se plaintiff or petitioner is returned to the Court without a forwarding address and the pro se plaintiff or petitioner does not notify the Court of the change of address within thirty (30) days, the Court may, without further notice, dismiss the action without prejudice.

(C) Issuance of Subpoenas and Writs of Habeas Corpus Ad Testificandum.

(1) Pro se litigants proceeding in forma pauperis must file a written request for the issuance of any witness subpoenas, setting forth the name and address of each witness for whom a subpoena is sought, along with a brief summary of the substance of the witness' anticipated testimony. The request shall be filed not less than **twenty**-one (21) days prior to the date set for trial or hearing. In its discretion, the Court may impose this requirement on pro se litigants not proceeding in forma pauperis.

(2) All pro se litigants must include in any application for a writ of habeas corpus ad testificandum for a non-party witness the name, inmate number, if any, and address of the witness, along with a brief summary of the substance of the witness' anticipated testimony. The application shall be filed not less than 21 days prior to the date set for trial or hearing. In its discretion, the Court may impose this requirement on any other litigant.

(Amended July 10, 2006; effective August 28, 2006)

(Amended September 8, 2009; effective December 1, 2009)

Rule 3 - 2.07 Divisional Venue.

(A) Divisions within the Eastern District of Missouri.

The United States District Court for the Eastern District of Missouri comprises the following three (3) divisions:

(1) The Eastern Division comprises the counties of Crawford, Dent, Franklin, Gasconade, Jefferson, Lincoln, Maries, Phelps, Saint Charles, Saint Francois, Saint Louis, Warren, and Washington, and the City of Saint Louis. Court for the Eastern Division shall be held in Saint Louis.

(2) The Northern Division comprises the counties of Adair, Audrain, Chariton, Clark, Knox, Lewis, Linn, Macon, Marion, Monroe, Montgomery, Pike, Ralls, Randolph, Schuyler, Scotland and Shelby. Court for the Northern Division shall be held in Hannibal.

(3) The Southeastern Division comprises the counties of Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Iron, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, Ripley, Scott, Shannon, Sainte Genevieve, Stoddard, and Wayne. Court for the Southeastern Division shall be held in Cape Girardeau.

(B) Divisional Venue in Civil Actions.

(1) **Single defendant.** All actions brought against a single defendant who is a resident of this district must be brought in the division where the defendant resides, or where the claim for relief arose.

(2) **Multiple defendants.** All actions brought against multiple defendants all of whom reside in the same division must be brought in that division, or in the division where the claim for relief arose. If at least two of the defendants reside in different divisions, such action

shall be filed in any division in which one or more of the defendants reside, or where the claim for relief arose. If only one of multiple defendants resides in a division of the Eastern District, the action will be filed in the division in which the defendant resides, or where the claim for relief arose.

(3) **Non-resident defendant.** If none of the defendants is a resident of the Eastern District of Missouri, the action shall be filed in the division where at least one plaintiff resides, or where the claim for relief arose.

(4) **Corporations.** For purposes of this rule, a corporation shall be deemed to be a resident of the division in which it has its principal place of business. If a corporation does business throughout the Eastern District of Missouri and has no site therein that can properly be deemed its principal place of business, it is deemed a resident of any division where it conducts activities which render it subject to personal jurisdiction in this District.

(C) Divisional Venue in Criminal Actions.

All prosecutions of offenses committed in the Eastern or Northern Division shall be brought in the Eastern Division. All prosecutions of offenses committed in the Southeastern Division shall be brought in the Southeastern Division. A prosecution charging one or more offenses committed in part in the Eastern or Northern Division and in part in the Southeastern Division may be brought in either the Southeastern or Eastern Division.

(D) Departures from this Rule.

In all cases, the Court retains discretion to fix the location where any courtroom proceedings shall be held. The Court in its discretion may transfer a civil action to another division pursuant to 28 U.S.C. § 1404 (a) or § 1406(a). In criminal cases, the Court may, pursuant to Fed.R.Crim.P. 18, fix the place of trial anywhere within the district, giving due regard to the convenience of the defendant and the witnesses and to the prompt administration of

justice.

(E) Division to Appear in Cause Number.

Eastern Division cases shall be designated by the prefix “4:” in the cause number. Northern Division cases shall be designated by the prefix “2:” and Southeastern Division cases shall be designated by the prefix “1:” In the event a case is transferred from one division to another division, the case shall receive a new cause number which reflects the appropriate division.

(Amended January 3, 2018; effective March 1, 2018.)

Rule 40 - 2.08 Assignments of Actions and Matters.

(A) Assignment of Civil Actions.

Unless otherwise ordered by the Court, the Clerk will assign each civil action to a district judge or a magistrate judge by automated random selection, except that when preliminary injunctive relief is requested by motion, the Clerk will assign the action to a district judge. In the event the action is assigned to a magistrate judge, each party must execute and file within 21 days of its appearance either a written consent to the exercise of authority by the magistrate judge under 28 U.S.C. § 636(c), or a written election to have the action reassigned to a district judge. Each party must indicate its consent or election on a form provided by the Court, which must be submitted in the manner directed by the Court. Consent to a magistrate judge's authority does not constitute a waiver of any jurisdictional defense unrelated to the grant of authority under 28 U.S.C. § 636(c).

(B) Assignment of Criminal Actions.

Unless otherwise ordered by the Court, the Clerk will assign each grand jury indictment and each felony information to a district judge by automated random selection. Each case proceeding by felony indictment will be referred to a magistrate judge by automated random selection for a ruling or recommendation on all pretrial motions. Unless otherwise ordered by the Court, the Clerk initially will assign each misdemeanor information to a magistrate judge by automated random selection.

(C) Assignment of Miscellaneous Matters.

Unless otherwise ordered by the Court, miscellaneous matters will be assigned to a district judge or a magistrate judge by automated random selection, except that, as appropriate, miscellaneous matters brought by the government for expedited ex parte consideration will be presented to the district judge or magistrate judge to whom miscellaneous duty is then assigned.

(D) Judge's Initials to Appear in Cause Number.

The cause number for each case will include the initials of the assigned judge. In the event a case is reassigned to a different judge, the cause number will be modified to include the new judge's initials.

(E) Clerk to Enter Magistrate Judge Referrals and Designations on the Record.

In each civil action, criminal action, miscellaneous matter or other matter assigned to a magistrate judge pursuant to this rule, the Clerk is directed to enter on the public record of the action, case, or matter a designation by the Court stating that the assigned or referred magistrate judge is authorized to exercise, as appropriate, full authority under 28 U.S.C. § 636 and 18 U.S.C. § 3401.

(Amended July 10, 2006, effective August 28, 2006; Amended November 21, 2008 by adding paragraph (E), effective January 1, 2009; Amended September 8, 2009, effective December 1, 2009; Amended November 30, 2016, effective February 1, 2017)

Rule 3 - 2.09 Disclosure of Organizational Interests.

(A) Certificate.

Every non-governmental organizational party in a civil or criminal case must file a Disclosure of Organizational Interests Certificate provided by and available from the Clerk of Court. Information provided in the certificate may be used by the judge assigned to a case to determine whether recusal is necessary or appropriate and to confirm jurisdiction is proper. The certificate must be filed with the party's first pleading or entry of appearance. The certificate may be filed under seal if so ordered by the Court in accordance with Local Rule 13.05 (A). When a negative or "not applicable" response is required, the certificate must so state.

(B) Content.

(1) If the party is a corporation, the certificate must identify all parent companies of the corporation, subsidiaries not wholly owned, and any publicly held corporation or company that owns ten percent (10%) or more of the corporation's stock.

(2) If the party is a limited liability company or a limited liability partnership, the certificate must identify each member of the subject organization and each member's state of citizenship.

(C) Changes and Updates.

If a change in any of the items listed in paragraph (B) of this rule occurs after the certificate is filed and before the time has expired for filing a notice of appeal from a final judgment in the case, an amended certificate must be filed within seven (7) days of the change.

(Amended December 9, 1998, effective February 1, 1999; Amended July 10, 2006, effective August 28, 2006; Amended November 5, 2014, effective December 15, 2014.)

Rule 3 - 2.10 The Electronic Case Record and Filing; Exemption.

Filings shall be made by means of the Court's electronic case filing system, except by pro se litigants and by attorneys who have been granted an exemption from electronic filing. Registration with the Court shall be required to obtain an attorney login and password. A form application for exemption from electronic filing is available from the Clerk. Such exemptions will be granted only for good cause. A filing in electronic format constitutes the official record. The Clerk is authorized to determine whether and when a non-exempt attorney may file a document in paper form.

(New Rule added May 15, 2003; effective October 1, 2003)

(Amended July 10, 2006; effective August 28, 2006)

Rule 11 - 2.11 Signatures on Electronic Filings.

An authorized filing made through a person's electronic filing account, together with the person's name on a signature block, constitutes the person's signature for all purposes, including Fed.R.Civ.P. 11.

The electronic filing of preexisting documents, not created for the litigation, requires no verification as to signatures. When a document to be electronically filed has been created for the litigation, but is signed by other than the filing attorney, the document must be physically signed, and the paper copy bearing the original signature(s) must be retained by the filing attorney during the pendency of the litigation including all possible appeals. The electronic filing of such a document with a blank signature line must be accompanied by a verification in which the filing attorney attests to the existence of the signed original. The required form of verification is available from the Clerk.

(New rule added May 15, 2003; effective October 1, 2003; Amended July 10, 2006; effective August 28, 2006; Amended October 11, 2018; effective December 1, 2018)

Rule 5 - 2.12 Service in Electronic Cases.

(A) Service of Public Papers.

Service of public papers on other parties as required by Fed.R.Civ.P. 5, and service by the Court of notice of entry of an order or judgment as required by Fed.R.Civ.P. 77, may be made by means of the Court's Notice of Electronic Filing where the person so served has consented in writing to service by such means. See Fed.R.Civ.P. 5(b)(2)(E). An attorney's registration for electronic case filing constitutes written consent to such service. No certificate of service is required when a public paper is served by filing it with the Court's electronic filing system. Service pursuant to Fed.R.Civ.P. 4 may not be effected by electronic means.

(B) Service of Papers Filed Under Seal.

An attorney filing a paper under seal must serve opposing counsel and any unrepresented parties by means other than the Court's electronic filing system, as no service of sealed filings occurs via the Court's electronic filing system. The sealed paper shall include a certificate of service reflecting the means by which service was made.

(New rule added May 15, 2003; effective October 1, 2003; Amended October 11, 2018; effective December 1, 2018)

Rule 83 - 2.13 When Electronic Filings are Completed.

Electronic filing is permitted at all times, except when the electronic filing system is temporarily unavailable due to routine or necessary emergency maintenance. An electronic filing completed at any time before midnight Central time shall be entered on the docket as of that date. The Court's electronic case filing system determines the date and time when a filing is completed. A filing is timely only if accomplished in compliance with deadlines set by an applicable order, rule or statute.

(New rule added May 15, 2003; effective October 1, 2003)

Rule 6 - 2.14 Technical Failure and Filing Deadlines.

If technical failure prevents timely electronic filing of any document, the filing party may seek relief from the Court.

(New rule added May 15, 2003; effective October 1, 2003)

Rule 83 - 2.15 Administrative Procedures for Electronic Filing.

The Court may promulgate, enforce, and amend as necessary administrative procedures governing electronic case filing. Such administrative procedures shall be compiled in a manual available from the Clerk in written and/or electronic format.

(New rule added May 15, 2003; effective October 1, 2003)

Rule 7- 2.16 Hyperlinks in Electronically Filed Documents.

A hyperlink is an icon or highlighted text inserted in a document that connects one point of electronic data to another, permitting retrieval of the target data when activated. Electronically filed documents may contain hyperlinks to other portions of the same document or hyperlinks to a location on the Internet that contains a source document cited by the filing party.

Hyperlinks to cited authority may not replace standard legal citation format. Complete citations must be included in the text of the filed document. Neither a hyperlink, nor any site to which it refers, shall be considered part of the Court record. The proper technical functionality of any hyperlink is the exclusive responsibility of the filing party.

(New Rule added October 7, 2005; effective November 14, 2005)

Rule 5 - 2.17 Redaction of Personal Data Identifiers.

(A) Required Redaction.

In compliance with the policies of the Judicial Conference of the United States and the E-Government Act of 2002, promoting electronic access to case files while also protecting personal privacy and other legitimate interests, parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal identifiers from all documents filed with the Court, including exhibits to such filings, unless otherwise ordered by the Court:

(1) Social Security Number. Only the last four digits of a Social Security number may be listed in the filing.

(2) Names of Minor Children. Only the initials of minor children may be listed in the filing.

(3) Dates of Birth. Only the year of birth may be listed in the filing.

(4) Financial Account Numbers. Only the last four digits of financial account numbers may be listed in the filing.

(5) Home Addresses. The home address of a non-party should not appear in any filing. If a home address must be included, only the city and state may be listed.

(B) Required Filing. Parties must, in addition to the redacted filing, file under seal with the Court either (1) an unredacted copy of the document, or (2) a reference sheet containing a key to the redacted personal identifiers. All paper documents filed under seal are subject to the provisions of Local Rule 13.05.

(C) Responsibility for Redaction. The responsibility for redaction rests solely with the filing party. The Clerk of Court will not review each filing for compliance with this rule.

(New Rule added July 10; effective August 28, 2006)

III. DISCLOSURE AND DISCOVERY

Rule 26 - 3.01 Federal Rule of Civil Procedure 26.

(A) Disclosure Pursuant to Rule 26(a)(1) and (2).

Disclosures shall be made in the manner set forth in Fed.R.Civ.P. 26(a)(1) and (2), except to the extent otherwise stipulated by the parties or directed by order of the Court. Disclosure of documents and electronically stored information pursuant to Rule 26(a)(1)(A)(ii) shall be made by providing a copy to all other parties, except as otherwise ordered by the Court. Electronically stored information shall be disclosed in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable. A party need not disclose the same electronically stored information in more than one form.

(B) Timing and Sequence of Discovery.

Discovery shall commence in accordance with Fed.R.Civ.P. 26(d), except to the extent otherwise stipulated by the parties or directed by order of the Court.

(Amended June 12, 2001, effective August 1, 2001)

(Amendment to Paragraph (A) adopted April 9, 2007; effective May 14, 2007)

(Amended October 8, 2009; effective December 1, 2009)

Rule 26 - 3.02 Filing of Discovery and Disclosure Materials.

(A) In civil actions, discovery and disclosure materials pursuant to Fed.R.Civ.P. 26, 30, 31, 33, 34, 35, and 36, and the certificates of their service, shall not be filed with the Court except as exhibits to a motion or memorandum.

(B) Unless otherwise ordered by the Court, no deposition transcript shall be filed until admitted into evidence at trial. If deposition testimony is needed to support any motion or memorandum, a copy of the relevant excerpts shall be filed as an exhibit to the motion or memorandum.

(Amended July 10, 2006; effective August 28, 2006)

Rule 33 - 3.03 Interrogatories.

Any party propounding interrogatories in a civil action shall set forth each question in clear and concise language leaving space below each question. The answer or objection to each interrogatory shall be typewritten or printed legibly immediately following the interrogatory.

Rule 37 - 3.04 Motions Concerning Discovery and Disclosure.

(A) The Court will not consider any motion relating to discovery and disclosure unless it contains a statement that movant's counsel has conferred in person or by telephone with the opposing counsel in good faith or has made reasonable efforts to do so, but that after sincere efforts to resolve their dispute, counsel are unable to reach an accord. This statement also shall recite the date, time and manner of such conference, and the names of the individuals participating therein, or shall state with specificity the efforts made to confer with opposing counsel.

(B) Any motion relating to a deposition, including but not limited to a motion to quash or modify a deposition subpoena or for a protective order, shall be filed before the deposition date unless a belated notice of deposition renders this deadline impracticable.

(C) Upon the filing of a motion to compel, the Court may summarily overrule an objection to any discovery request if the objection is not stated in detail.

(Amended July 10, 2006; effective August 28, 2006)

Rule 12CR - 3.05 Disclosure and Motions in Criminal Cases.

Deadlines for filing requests for disclosure of evidence and information, the disclosure of evidence and information, and deadlines for filing any pretrial motions, shall be governed by an order of Court entered at or after a defendant's arraignment.

IV. MOTIONS

Rule 7 - 4.01 Motions and Memoranda.

(A) Unless otherwise directed by the Court, the moving party shall file with each motion a memorandum in support of the motion, including any relevant argument and citations to any authorities on which the party relies. If the motion requires consideration of facts not appearing in the record, the party also shall file all documentary evidence relied upon.

(B) Except as otherwise provided in these rules or by order of the Court, each party opposing a motion shall file, within seven (7) days after being served with the motion, a memorandum containing any relevant argument and citations to authorities on which the party relies. If any memorandum in opposition requires consideration of facts not appearing in the record, the party shall file with its memorandum all documentary evidence relied upon.

(C) Within seven (7) days after being served with a memorandum in opposition, the moving party may file a reply memorandum. Additional memoranda may be filed by either party only with leave of Court.

(D) No party shall file any motion, memorandum or brief which exceeds fifteen (15) numbered pages, exclusive of the signature page and attachments, without leave of Court. Statements of material fact filed pursuant to paragraph (E) of this rule shall be deemed attachments not part of any party's memorandum or brief.

(E) A memorandum in support of a motion for summary judgment shall have attached a statement of uncontroverted material facts, set forth in a separately numbered paragraph for each fact, indicating whether each fact is established by the record, and, if so, the appropriate citations. Every memorandum in opposition shall include a statement of material facts as to which the party contends a genuine issue exists. Those matters in dispute shall be set forth with specific references to portions of the record, where available, upon which the opposing party relies. The opposing party also shall note for all disputed facts the paragraph number from movant's listing of facts. All matters set forth in the statement of the movant shall be deemed admitted for purposes of summary judgment unless specifically controverted by the opposing party.

(F) A party opposing a motion for summary judgment under Fed.R.Civ.P. 56 shall file a memorandum and any appropriate documentary evidence twenty-one (21) days after being served with the motion. A party opposing a motion for attorney's fees pursuant to Rule 8.02, or a bill of costs pursuant to Rule 8.03 shall file, within fourteen (14) days after being served, a memorandum and any supporting documentary evidence.

(Amended April 3, 1998; effective July 1, 1998)

(Amended July 10, 2006; effective August 28, 2006)

(Amended September 8, 2009; effective December 1, 2009)

(Amended September 7, 2012; effective November 1, 2012)

Rule 78 - 4.02 Oral Argument or Testimony Regarding Civil Motions.

(A) Motions in civil cases shall be submitted and determined upon the memoranda without oral argument. The Court may in its discretion order oral argument on any motion.

(B) A party requesting the presentation of oral argument or testimony in connection with a motion shall file such request with its motion or memorandum briefly setting forth the reasons which warrant the hearing of oral argument or testimony.

Rule 42 - 4.03 Motions to Consolidate.

A party desiring the consolidation of related cases shall file a motion in the case bearing the lowest cause number. The movant shall file in each related case a notice of the motion, to which a copy of the motion shall be attached. The district or magistrate judge presiding in the lowest-numbered case shall rule on the motion. If the motion is granted, the consolidated cases shall be reassigned to the judge presiding in the lowest-numbered case. Following consolidation, all documents shall be filed only in the lowest-numbered case, unless otherwise ordered by the Court.

(Amended July 10, 2006; effective August 28, 2006)

Rule 7 - 4.04 Communication with the Court.

(A) Correspondence.

Attorneys and pro se litigants shall not communicate in writing with the Court concerning any pending case except by motion or memorandum, unless otherwise directed by the Court. Attorneys and pro se litigants shall not furnish the Court copies of correspondence among themselves except as exhibits to a motion or memorandum.

(B) Ex Parte Oral Communications.

Ex parte oral communications with the Court on substantive matters in a pending case are prohibited except when permitted by the Federal Rules of Civil, Criminal, or Bankruptcy Procedure.

(Amended July 10, 2006; effective August 28, 2006)

Rule 7 - 4.05 Submission of Motion Package (Rule Repealed)

(New rule added April 3, 1998; effective July 1, 1998)

(Amended May 15, 2003 by adding new Paragraph A; effective October 1, 2003)

(Repealed July 10, 2006; effective August 28, 2006)

Rule 83 – 4.06 Motions for Transfer of Venue – Process

In any case where the Court grants a motion to transfer venue to another division or district under 28 U.S.C. 1404 or 1406, the transfer of the file to the transferee court will occur no sooner than fourteen (14) days after the granting of the motion but as soon as possible after fourteen (14) days, unless:

(1) A party requests immediate transfer of the file and all parties consent to the transfer; or

(2) The Court, after notice to the parties, specifically orders transfer of the file in less than fourteen (14) days; or

(3) A party files a motion for reconsideration of the transfer with this Court or a petition for a writ of prohibition of the transfer to the United States Court of Appeals for the Eighth Circuit prior to the expiration of the fourteen (14) day period, and the Court, on proper motion filed prior to the expiration of the fourteen (14) day period, orders a stay pending action on the motion or petition.

(New Rule added January 3, 2018, effective March 1, 2018.)

V. DIFFERENTIATED CASE MANAGEMENT

Rule 16 - 5.01 Case Management Tracks.

Differentiated Case Management (DCM) is a system for managing civil cases based on their relative complexity and the need for judicial involvement. All civil cases filed on or after January 1, 1995 will be assigned to one of the following five tracks:

Track 1 - Expedited. Track 1 cases are expected to be concluded within 12 months of filing, with minimal judicial involvement. Motion and discovery deadlines are established by a standardized Case Management Order.

Track 2 - Standard. Track 2 cases are expected to be concluded within 18 months of filing. Motion and discovery schedules are established by a Case Management Order issued after a Rule 16 Scheduling Conference.

Track 3 - Complex. Track 3 cases are expected to be concluded within 24 months of filing. Motion and discovery schedules are established by a Case Management Order issued after a Rule 16 Scheduling Conference, and the Court may require periodic case management conferences.

Track 4 - Administrative. Track 4 governs bankruptcy, Social Security, and Administrative Procedure Act appeals, petitions for writ of habeas corpus, and motions pursuant to 28 U.S.C. § 2255. Such cases are expected to be concluded in accordance with the requirements of each case, but typically within 24 months of filing. Event deadlines are established by a standardized Case Management Order unique to each type of case.

Track 5 - Prisoner. Track 5 cases are those in which the plaintiff is, at the time the complaint is filed, proceeding pro se and is confined in a federal, state or local penal facility under the authority of any federal, state, or local law (including, but not limited to, a plaintiff who is a convicted inmate, a pretrial detainee, an immigration detainee, a sexually violent predator, or a plaintiff confined in a mental facility after being found not guilty of a criminal offense by reason of mental disease or defect). Special case management guidelines govern these cases.

(Amended July 10, 2006 effective August 28, 2006)

Rule 3 - 5.02 Track Preference.

Except cases assigned to Track 4 or Track 5, every party in a civil case shall indicate its track preference in a joint scheduling plan filed as directed by a judge prior to the Rule 16 conference.

(Amended February 10, 2004; effective March 12, 2004)

Rule 16 - 5.03 Rule 16 Scheduling Conference.

Scheduling conferences pursuant to Fed.R.Civ.P. 16(a) will be held in cases assigned to Tracks 2 and 3. Rule 16 scheduling conferences may be held at the judge's discretion in actions assigned to other tracks. The Court will inform counsel of their obligation to participate in a conference by issuing an Order Setting Rule 16 Scheduling Conference.

Failure to comply with the order may result in the imposition of sanctions by the Court, including but not limited to dismissal of the action, entry of a default judgment, or restrictions on the admissibility of certain evidence.

Rule 16 - 5.04 Case Management Order.

The Court will issue a Case Management Order (CMO) in each civil case. A CMO is a comprehensive scheduling order issued by the judge reflecting all pretrial case management deadlines, and, if applicable, a trial setting and pretrial compliance requirements. In Tracks 2 and 3 the CMO is issued following the Rule 16 Scheduling Conference. In Tracks 1, 4 and 5 a standardized CMO will be issued early in the proceedings.

Failure to comply with the CMO may result in the imposition of sanctions by the Court, including but not limited to dismissal of the action, entry of a default judgment, or restrictions on the admissibility of certain evidence.

VI. ALTERNATIVE DISPUTE RESOLUTION

Rule 16 - 6.01 Mediation and Early Neutral Evaluation.

The Court may refer appropriate civil cases to Alternative Dispute Resolution (ADR): mediation or early neutral evaluation. The Court may also refer cases to any ADR process upon which the parties may agree.

(A) Mediation.

Mediation is an informal non-binding dispute resolution process in which an impartial mediator facilitates negotiations among the parties to help them reach settlement. A mediator may not impose the mediator's own judgment on the issues for that of the parties. The following cases will not be referred for mediation:

(1) appeals from rulings of administrative agencies;

(2) habeas corpus and extraordinary writs;

(3) bankruptcy appeals; and

(4) Social Security cases.

(B) Early Neutral Evaluation.

Early neutral evaluation brings together parties and counsel in the early pretrial period to present case summaries before and receive a non-binding assessment from an experienced neutral evaluator. Immediate settlement is not a primary purpose of this process, though it may lead to settlement negotiations. Any civil case may be appropriate for early neutral evaluation, if the judge believes the parties are likely to benefit mutually from such referral.

(Amended October 1, 2001, effective November 1, 2001; Amended August 11, 2011, effective September 19, 2011; Amended November 5, 2014, effective December 15, 2014.)

Rule 16 - 6.02 Referral to Alternative Dispute Resolution and Duties of Participants; Appointment of Counsel.

(A) Order Referring Case to Alternative Dispute Resolution.

(1) The Court, on its own motion or on the motion of any party, may enter an Order Referring Case to Alternative Dispute Resolution. The Order will state whether the case is referred to mediation or early neutral evaluation or other mutually agreed ADR process, will designate a lead counsel who is responsible for coordinating ADR, and will inform counsel and the parties of their additional obligations regarding ADR.

(2) The Order will specify a date on which the ADR referral will terminate. Upon motion of a party for good cause shown, the Court may extend the referral termination deadline. In addition, the neutral (mediator or evaluator) may elect to extend the deadline for a period not to exceed fourteen (14) additional days by filing an Alternative Dispute Resolution Compliance Report indicating the neutral's election and the length of the extension. Unless otherwise ordered, referral to ADR does not abate or suspend the action, and no scheduled dates will be delayed or deferred, including the date of trial.

(3) If the parties agree that the referral to ADR has no reasonable chance of being productive, the parties may jointly move the Court for an order vacating the ADR referral prior to the selection of the neutral.

(B) Duties of Participants.

(1) Attendance. All named parties and their counsel are required to attend the ADR conference, participate in good faith, and possess the requisite settlement authority unless excused under paragraph (B)(2), below. The attendance requirement is satisfied by appearing in person or by video conference, provided all parties and the neutral agree to video conferencing as an alternative to personal appearance.

(a) Corporation or Other Non-Governmental Entity. A party other than a natural person (e.g., a corporation or association) satisfies this attendance requirement if represented by a person (other than outside counsel) who has authority to settle and who is knowledgeable about the facts of the case.

(b) Government Entity. A unit or agency of government satisfies this attendance requirement if represented by a person who has authority to settle, and who is knowledgeable about the facts of the case, the government unit's position, and the procedures and policies under which the governmental unit decides whether to accept proposed settlements. If under applicable law proposed settlement terms can be approved only by a governing board or public official, the person attending on behalf of the government entity must have full authority to negotiate on behalf of and to recommend settlement to the governing board or public official. When the entity is precluded by law from delegating full settlement authority to a representative, the entity must disclose this fact in writing to all other parties and the neutral not less than fourteen (14) days before the scheduled ADR conference. The Court may deem a party's failure to comply with this notice requirement as the party's failure to attend. If the action is brought by the government on behalf of one or more individuals, at least one such individual also must attend.

(c) Counsel. Each party must be accompanied at the ADR conference by the lawyer who will be primarily responsible for handling the trial of the matter.

(d) Insurers. Insurer representatives are required to attend in person unless excused under paragraph (B)(2), below, if their agreement would be necessary to achieve a settlement. An insurer satisfies this attendance requirement if represented by a person (other than outside counsel) who has authority to settle and who is knowledgeable about the facts of the case.

(2) Request to be Excused. A person who is required to attend an ADR conference may be excused from attending in person only after a showing that personal attendance would impose an extraordinary or otherwise unjustifiable hardship. A person seeking to be excused must submit, no fewer than fourteen (14) days before the date set for the conference, a motion to the Judge, simultaneously copying all counsel and the neutral. The motion must:

(a) set forth all considerations that support the request;

(b) identify an appropriate substitute; and

(c) indicate whether the other party or parties join in or object to the request.

(C) Appointment of Counsel.

(1) Upon request of an unrepresented party, the Court may appoint counsel for the limited purpose of providing legal advice and representation in preparation for and during the course of mediation or early neutral evaluation ordered under this rule. Although the scope of this representation is limited, counsel will provide such services as counsel deems appropriate to the mediation, including but not limited to review of the pleadings, communication with opposing counsel, and interviews with the client and such key witnesses as may be necessary in advance of the mediation or early neutral evaluation. Counsel will not be precluded from conducting or participating in such discovery, if any, as may be necessary in advance of the mediation or early neutral evaluation.

(2) Counsel appointed under this paragraph must be a member in good standing of the bar of this Court, must agree to serve without compensation from the party and must file a Limited Representation Appearance on a form provided by the Clerk of Court

confirming counsel's consent to serve pro bono and for the limited purpose of assisting the otherwise unrepresented party in the alternative dispute resolution process ordered for the case in which the appearance is filed. The client will be required to sign the entry of appearance as an indication of the client's consent to and understanding of the nature of the limited scope representation.

(3) The court-appointed representation will terminate, and appointed counsel will have no further obligation to advise or otherwise appear on behalf of the party, when the ADR process is concluded and any resulting settlement agreement is executed. Nothing in this rule prohibits the party and counsel from continuing the legal representation on terms they may negotiate, subject to approval of the Court. Appointed counsel may not condition the undertaking of the party's representation on the making of such agreement.

(Amended October 1, 2001, effective November 1, 2001; Amended July 10, 2006, effective August 28, 2006; Amended September 8, 2009, effective December 1, 2009; Amended July 9, 2010, effective August 16, 2010; Amended June 24, 2011, effective September 1, 2011; Amended August 11, effective September 19, 2011; Amended May 8, 2013, effective July 1, 2013; Amended November 5, 2014, effective December 15, 2014.)

Rule 16 - 6.03 Neutrals.

(A) Certification of Neutrals.

(1) The Court will certify those persons who are eligible to serve as neutrals (mediators or evaluators) in such numbers as the Court deems appropriate. The Court will have the authority to establish qualifications for and monitor the performance of neutrals, and to withdraw the certification of any neutral. A list of certified neutrals will be maintained by the Clerk, and will be made available to counsel, litigants, and the public for inspection upon request.

(2) To be eligible for certification under this rule a person must:

(a) file an application for certification on a form provided by the Clerk;

(b) be admitted to practice law in the highest court of any state or the District of Columbia for at least five (5) years;

(c) be a member in good standing in each jurisdiction where admitted to practice law at the time of application for certification;

(d) complete at least thirty-two (32) hours of approved professional training in mediation;

(e) observe as a non-participant at least two (2) mediations conducted by a mediator who has completed at least twenty-five (25) mediations and is either certified under this rule or qualified under Missouri Supreme Court Rule 17;

(f) agree to serve for reduced or no compensation from a party who has qualified pursuant to paragraph (C)(2) of this rule for appointment of a pro bono neutral;

(g) complete four (4) hours of accredited continuing legal education in alternative dispute resolution on or before January 31 of each odd numbered year beginning with an initial reporting period in 2019 for the two preceding years; and

(h) after having completed twenty-five (25) mediations, agree to be observed for two (2) mediations each year by interested individuals who would otherwise be qualified for certification under this rule.

(3) The training requirement established in paragraph (A)(2)(d) above is satisfied by the completion of accredited continuing legal education course work which includes the following:

(a) conflict resolution and mediation theory, including causes and dynamics of conflict, interest-based versus positional bargaining, negotiating theory, and models of conflict resolution;

(b) mediation and co-mediation skills and techniques, including information gathering skills, conflict management skills, listening skills, negotiations techniques, power issues, caucusing, management of joint session, cultural and gender issues, and modeling with self-represented as well as represented individuals;

(c) mediator conduct, including conflicts of interest, confidentiality, impartiality, ethics and standards of practice; and

(d) mediation simulations or role play activities.

(4) An attorney certified under this rule who is not admitted to practice law in this Court is bound by the Rules of Professional Conduct as approved and amended from time to time by the Supreme Court of Missouri and this Court's Rules of Disciplinary Enforcement, in accordance with Local Rule 12.02, to the same extent and under the same conditions as a member of the bar authorized to practice before this Court.

(5) Any member of the bar of this Court who is certified as a neutral will not for that reason be disqualified from appearing as counsel in any other case pending before the Court.

(6) After January 31 of each odd-numbered year beginning in 2019, the Clerk will examine the list of certified neutrals to determine which neutrals did not receive appointments during the previous two years and which neutrals did not complete the continuing legal education required in paragraph (A)(2)(g) above. The Clerk will determine the neutral's interest in continuing to be carried on the Court's list of certified neutrals. If the neutral desires to remain on the list, the neutral will submit by April 1 information demonstrating completion of the continuing legal education requirement during the previous two years as well as information demonstrating the neutral's continued interest in mediation. If such information is not provided, the Clerk will recommend to the Court that the neutral be removed from the list. A person applying for certification as a neutral after having been removed pursuant to this rule must satisfy the requirements for certification in effect at the time of the new application.

(7) In addition to the removal process set forth in paragraph (6) above, the Court may withdraw the certification of any neutral at any time, provided that the neutral will be given notice in writing including the reason for the withdrawal of certification at least 30 days prior to the proposed date of withdrawal. If the neutral objects to the withdrawal, the neutral must respond in writing to the Clerk prior to the proposed date of withdrawal and may request an opportunity to be heard. Upon receipt of the neutral's request, the Court will stay the withdrawal, furnish an opportunity to be heard to the neutral, and respond to the neutral in writing as to the manner of the hearing. The hearing will take place within 30 days of the neutral's request. After the hearing, the Court will advise the neutral in writing as to its final determination of the neutral's status.

(B) Appointment of Neutrals.

(1) Within the time prescribed by the Order Referring Case to Alternative Dispute Resolution, the parties must notify the Clerk in writing of the parties' choice of a neutral. If the parties fail timely to select a neutral, the Clerk will select a neutral from the list and notify the parties.

(2) Notwithstanding subsection (B)(1), the Court, in consultation with the parties, may appoint a neutral who has special subject matter expertise germane to a particular case, whether or not such individual is on the list of certified neutrals. Parties must file a motion for leave to designate a neutral not on the list of certified neutrals maintained by the Court. The motion must include the reason for the selection of the neutral.

(3) The Clerk will send a Notice of Appointment of Neutral to the parties and to the individual designated by the parties, after lead counsel has confirmed that individual's availability. Upon receipt of the Notice of Appointment, lead counsel must send to the neutral a copy of the Order referring the case to Alternative Dispute Resolution. The appointment will be effective until the neutral notifies the Court in writing that the referral has been concluded.

(C) Compensation of Neutral.

(1) Unless otherwise agreed by all parties or ordered by the Court, one-half the cost of the neutral's services will be borne by the plaintiff(s) and one-half by the defendant(s) at the rate contained in the neutral's fee schedule filed with the Court. In a case with third-party defendants, the cost will be divided into three equal shares. Except as provided in subsection (C)(2), a neutral may not charge or accept in connection with a particular case a fee or thing of value from any source other than the parties. The Court may review the reasonableness of the fee and enter any order modifying the fee. Compensation will be paid directly to the neutral. Failure to pay the neutral will be brought to the Court's attention.

(2) A party who demonstrates a financial inability to pay all or part of that party's pro rata share of the neutral's fee may file a motion asking the Court to appoint a neutral who will serve pro bono. The Court may waive all or part of that party's share of the fee. A neutral appointed to serve pro bono may apply to the Court for payment of that share of the neutral's fee waived for an indigent party, consistent with regulations approved by the Court. When so ordered by the Court, payment to the neutral will be made by the Clerk from the Attorney Admission Fee Non-Appropriated Fund. Other parties to the case who are able to pay the fee will bear their pro rata portions of the fee.

(D) Disqualification of Neutral.

(1) The term "conflict of interest" as used in this rule means any direct or indirect financial or personal interest in the outcome of a dispute, or any existing or prior financial, business, professional, family or social relationship with any participant in an ADR process which is likely to affect the neutral's impartiality or which may reasonably create an appearance of partiality or bias.

(2) A neutral must avoid a conflict of interest or the appearance of a conflict of interest during and after a mediation or early neutral evaluation. A neutral must make a reasonable inquiry to determine whether there are any facts that would cause a reasonable person to believe that an actual or potential conflict of interest exists for the neutral in connection with service in a particular case referred to ADR by the Court.

(3) A neutral must disclose to participants, as soon as practicable, all facts and information relevant to any actual and potential conflicts of interest that are reasonably known to the neutral. If, after accepting a designation by the parties, a neutral learns any previously undisclosed information that could reasonably suggest a conflict of interest, the neutral must

promptly disclose the information to the participants. After the neutral's disclosure, the ADR may proceed if all parties agree to service by the neutral.

(4) Notwithstanding the agreement of the parties to waive a conflict of interest, a neutral must withdraw from or decline a designation in a case if the neutral determines that an actual or potential conflict of interest may undermine the integrity of the mediation or early neutral evaluation.

(5) Any party who believes that an assigned neutral has a conflict of interest may request the neutral to recuse. If the neutral declines, the party may file a motion for disqualification of the neutral. Failure to file a motion will waive the objection.

(E) **Unavailability of Neutral.** A neutral who cannot serve within the period of referral must notify lead counsel who will arrange for selection of a different neutral by agreement of the parties or by the Clerk.

(Amended October 1, 2001, effective November 1, 2001; Amended February 10, 2004, effective March 12, 2004; Amended July 10, 2006, effective August 28, 2006; Amended April 6, 2009, effective May 11, 2009; Amended July 9, 2010, effective August 16, 2010; Amended September 5, 2013, effective January 1, 2014; Amended November 5, 2014, effective December 15, 2014; Amended September 7, 2016, effective December 1, 2016; Amended January 3, 2018, effective March 1, 2018.)

Rule 16 - 6.04 Communications Concerning Alternative Dispute Resolution.

(A) Confidentiality.

Alternative dispute resolution proceedings are private and confidential. A neutral may exclude all persons other than the named parties and their counsel from ADR conferences. Other individuals may participate with the consent of the neutral, provided they agree to the rules pertaining to confidentiality. All written and oral communications made or disclosed to the neutral are confidential and may not be disclosed by the neutral, any party, or other participant, unless the parties otherwise agree in writing. Documents created by the parties for use by the neutral will not be filed with the Court. The neutral must not testify regarding matters disclosed during ADR proceedings. This rule does not prohibit or limit the enforcement of agreements or the collection of non-identifying information for Court-approved research and evaluation purposes, or the filing of the ADR compliance report.

(B) Pre-Mediation Ex Parte Communication.

The neutral designated in a case may communicate privately and ex parte with counsel and unrepresented parties prior to the commencement of the formal dispute resolution process.

(Amended October 1, 2001, effective November 1, 2001; Paragraph B amended August 19, 2005, effective September 20, 2005; Amended November 5, 2014, effective December 15, 2014.)

Rule 16 - 6.05 Reporting Requirements.

(A) Failure to Participate in ADR Process in Good Faith.

The neutral must report to the judge any willful or negligent failure to attend any ADR conference, to substantially comply with the Order Referring Case to Alternative Dispute Resolution, or otherwise participate in the ADR process in good faith. The judge may impose any sanctions deemed appropriate.

(B) Compliance Certification.

Within fourteen (14) days after the ADR referral is concluded, the neutral must file with the Court an Alternative Dispute Resolution Compliance Report on a form provided by the Clerk.

(C) Report of Settlement.

If the parties settle any claim during the ADR referral, a written settlement agreement, a stipulation for dismissal, a motion for leave to voluntarily dismiss, or a proposed consent judgment, signed by all parties and counsel, must be filed with the Court no later than fourteen (14) days after the last ADR conference.

(D) Proposed Litigation Plan.

If an ADR referral results in decisions or agreements regarding scheduling or other case management matters, the parties must file a proposed litigation plan or motion to amend an existing Case Management Order with the Court no later than fourteen (14) days after the last ADR conference.

(Amended October 1, 2001, effective November 1, 2001; Amended November 5, 2014, effective December 15, 2014.)

VII. TRIALS

Rule 47 - 7.01 Jurors and Juries.

(A) Jury Lists.

Unless otherwise ordered, no counsel or party may view a petit jury list except during voir dire, after the panel has been called into the courtroom. Counsel and the parties shall return their jury lists to the deputy clerk at the conclusion of voir dire.

(B) Communication with Jurors.

(1) Petit Jurors.

Petit jurors shall not be required to provide any information concerning any action of the petit jury, unless ordered to do so by the Court. Attorneys and parties to an action shall not initiate, directly or indirectly, communication with any petit juror, relative, friend or associate thereof at any time concerning the action, except with leave of Court. If an attorney or party receives evidence of misconduct by a petit juror, the attorney or party shall inform the Court, and the Court may conduct an investigation to establish the accuracy of the misconduct allegations.

(2) Grand Jurors.

Grand jurors shall not communicate with anyone except a judge, the Attorney General of the United States, the United States Attorney, or their assistants, concerning any matter before the grand jury. No one shall communicate with a grand juror concerning any matter before the grand jury except a judge, the Attorney General of the United States, the United States Attorney, or their assistants.

(Amended July 10, 2006; effective August 28, 2006)

Rule 83 - 7.02 Trial Exhibits.

(A) Custody During Trial.

All exhibits received in evidence shall be placed in the custody of the Clerk during trial, except as otherwise ordered by the Court.

(B) Disposition Following Jury Trial.

At the conclusion of a jury trial, except as otherwise ordered by the Court, the Clerk shall return to the respective parties all exhibits received in evidence and obtain a receipt therefor. The receipt shall be filed and docketed. Said exhibits shall be retained by the respective parties until the time for filing a notice of appeal has expired.

(C) Disposition Following Non-Jury Trial.

At the conclusion of a non-jury trial, except as otherwise ordered by the Court, the Clerk shall retain custody of all exhibits until a final decision is rendered by the Court. All exhibits shall be removed from the Clerk's custody within thirty (30) days of the Court's final decision by the parties who offered them at trial. If a party to a non-jury case does not timely remove an exhibit after receiving notice from the Clerk, the exhibit may be discarded. All exhibits shall be retained by the respective parties until the time for filing a notice of appeal has expired.

(Amended July 10, 2006; effective August 28, 2006)

VIII. JUDGMENTS

Rule 41 - 8.01 Dismissal for Failure to Prosecute.

If a civil case has been pending for six (6) months without any action, the Court may order the appropriate party to show cause why its claims should not be dismissed for failure to prosecute. Absent a showing of good cause, the Court may dismiss the claims with or without prejudice.

Rule 54 - 8.02 Motions for Attorney's Fees.

A party seeking an award of attorney's fees shall file a motion for attorney's fees no later than twenty-one (21) days after entry of final judgment pursuant to Fed.R.Civ.P. 58. Failure to file a motion for attorney's fees within the time provided may constitute a waiver of attorney's fees.

Each party opposing a motion for attorney's fees shall file, within fourteen (14) days after being served with the motion, a memorandum and any supporting documentary evidence. Within seven (7) days after being served with the memorandum in opposition, the moving party may file a reply memorandum.

The filing of a motion for attorney's fees in no way affects the finality and appealability of the final judgment previously entered.

(Amended September 8, 2009; effective December 1, 2009)

Rule 54 - 8.03 Bill of Costs.

(A) District Court Costs.

(1) Unless otherwise ordered by the Court, a party seeking an award of costs must file a verified bill of costs, in the form prescribed by the Clerk, no later than twenty-one (21) days after entry of final judgment by the District Court pursuant to Fed.R.Civ.P. 58.

(2) Failure to file a bill of costs within the time provided may constitute a waiver of taxable costs.

(3) Each party objecting to a bill of costs must file, within fourteen (14) days of being served, a memorandum stating specific objections. Within seven (7) days after being served with the memorandum, the moving party may file a reply memorandum. The Clerk will tax costs as claimed in the bill if no timely objection is filed.

(4) Costs will be paid directly to counsel of record and execution may be had therefor.

(5) The filing of a bill of costs in no way affects the finality and appealability of the final judgment previously entered.

(B) Costs on Appeal Taxable in the District Court. Costs allowable pursuant to Fed.R.App.P. 39(e) will be taxed in accordance with section (A) of this rule, provided a bill of costs is filed within twenty-one (21) days of the issuance of the mandate or other order terminating the action by the Court of Appeals.

(Amended July 10, 2006; effective August 28, 2006; Amended September 8, 2009, effective December 1, 2009; Amended November 30, 2016, effective February 1, 2017)

Rule 41 - 8.04 Assessment of Jury Costs.

If a civil action scheduled to commence trial by jury is to be settled or voluntarily dismissed, the parties shall notify the judge and the Clerk immediately. If due to the parties' failure to give such notice prospective jurors report to the Court for service in the case, the judge may assess the costs of the panel, including per diem, parking charges and mileage reimbursement against any or all of the parties. A judge may assess jury costs against a party or attorney who is responsible for a mistrial.

IX. SPECIAL PROCEEDINGS

Rule 81 - 9.01. Bankruptcy Court Matters.

(A) Filings in Bankruptcy Proceedings.

The Clerk of the Bankruptcy Court shall receive all filings and maintain all files in Bankruptcy Court cases and proceedings.

(B) Reference to Bankruptcy Judges.

(1) All cases under Title 11 of the United States Code, and all proceedings arising under Title 11 or arising in or related to a case under Title 11, are referred to the bankruptcy judges for this district, who shall exercise the full extent of the authority conferred upon them.

(2) A motion for withdrawal of reference pursuant to 28 U.S.C. § 157(d) shall not stay any matter pending before the Bankruptcy Court unless a stay is ordered by the district judge or the bankruptcy judge.

(C) Jury Trials Before Bankruptcy Judges.

Pursuant to 28 U.S.C. § 157(e), the bankruptcy judges of this district are specially designated to conduct jury trials with the express consent of all the parties.

(D) Bankruptcy Appeals.

(1) Bankruptcy appeals to the District Court are governed by the Federal Rules of Bankruptcy Procedure, as supplemented herein. Appeals to a Bankruptcy Appellate Panel, if applicable, are governed by the Federal Rules of Bankruptcy Procedure as supplemented by rules of the panel.

(2) Prior to the transmittal of a notice of appeal to the Clerk of the District Court, the Bankruptcy Court may hear and determine requests to consolidate appeals which present similar issues. The Bankruptcy Court's ruling concerning consolidation of appeals may be reviewed by the District Court, in accordance with Local Rule 4.03, on motion filed within twenty- eight (28) days of the District Court's issuance of the Case Management Order pursuant to Local Rules 5.01 and 5.04.

(3) Any motion to dismiss a procedurally defective bankruptcy appeal shall be filed within twenty-eight (28) days of the issuance of the Case Management Order.

(Amended September 8, 2009; effective December 1, 2009)

Rule 56 - 9.02 Social Security Appeals.

In all cases seeking review pursuant to 42 U.S.C. § 405(g) of a final determination of the Commissioner of Social Security denying a claim for benefits, no motion for summary judgment shall be filed without leave of Court for good cause shown. The action shall commence upon filing of a complaint, and the Commissioner shall file any motion to dismiss, motion to remand, and/or answer within sixty (60) days of service of the complaint. With its answer, the Commissioner shall file the administrative record. The plaintiff shall, unless otherwise ordered by the Court, serve and file a brief in support of the complaint within thirty (30) days after the Commissioner's service of an answer and the administrative record. The Commissioner shall serve and file a brief in support of the answer within thirty (30) days after service of the plaintiff's brief. Plaintiff shall have fourteen (14) days after service of the Commissioner's brief to file a reply brief. No further briefs shall be filed except by leave of Court for good cause shown. A brief filed pursuant to this rule shall not exceed fifteen (15) standard typed pages, exclusive of a signature page and attachments, except by leave of Court for good cause shown. A reply brief shall not exceed ten (10) typed pages.

(Amended February 8, 1999; effective March 15, 1999)

(Amended July 10, 2006; effective August 28, 2006)

(Amended September 8, 2009; effective December 1, 2009)

Rule 58CR - 9.03 Petty Offenses.

(A) Prosecution by Information.

Prosecution of a petty offense initiated by citation or violation notice and processed through the Central Violations Bureau shall be commenced in the District Court only upon the filing of an information, which shall supersede the citation or violation notice issued to a defendant. When a defendant appears pursuant to a summons or an arrest warrant issued with an information, the Court shall proceed in accordance with Fed.R.Crim.P. 58.

(B) Paying a Fixed Sum in Lieu of Appearance.

(1) In cases other than those commenced in the District Court upon the filing of an information as provided in paragraph (A) of this rule, a fixed sum may be posted as collateral by a defendant charged with a petty offense, the forfeiture of which shall be accepted by the government in full satisfaction of the charge without a court appearance. The payment of a fixed sum as provided in this rule shall terminate the case, and signifies that the person charged with a petty offense agrees that the sum so paid shall be forfeited to the United States.

(2) The petty offenses for which a fixed sum may be paid, and the sum to be paid for each such violation, shall be determined as provided by law or as set forth in schedules approved and subsequently amended from time to time by order of the Court.

(3) Schedules of fixed sums approved pursuant to subparagraph (2) shall be maintained by the Clerk of Court for examination by the public.

(Paragraph (B) added by amendment adopted on July 9, 2004; effective August 16, 2004)

Rule 71A - 9.04 Condemnation Cases.

(A) The Complaint.

The complaint in a condemnation case shall pertain to only one tract of land unless the tracts of land are contiguous and ownership of the tracts is identical.

(B) Declaration of Taking.

A declaration of taking may pertain to more than one tract of land. If a declaration pertains to more than one tract, the original shall be filed with the complaint in the case with the lowest cause number. A copy of the declaration shall be filed with the complaint pertaining to each other tract listed in the declaration. A cover sheet shall be appended to each copy of the declaration, stating: "The original of the declaration of taking is filed in Civil Action No.__________."

(C) Notice.

The government may combine in any notice or process required by law multiple condemnation actions in which there is a single declaration of taking.

(D) Pretrial Procedure.

(1) Within thirty (30) days of the date of filing the complaint, the government shall file with the Court a current abstract of title or other title document, together with a list of all parties who may claim an interest in the tract.

(2) The government shall file proof of service on all potential claimants and file a notice with the Court stating when service has been completed.

(Amended July 10, 2006; effective August 28, 2006)

X. LOCAL ADMIRALTY RULES

Rule 9- 10.01 Scope of Admiralty Rules.

These rules apply to admiralty and maritime actions in rem and quasi in rem, statutory condemnation proceedings analogous to maritime actions in rem, and forfeiture actions. The local rules are to be read in conjunction with the Supplemental Rules for Certain Admiralty and Maritime Claims, which are appended to the Federal Rules of Civil Procedure. Nothing in these rules is intended to modify or repeal provisions of any bankruptcy rules governing admiralty matters.

Rule 9 - 10.02 Actions in Rem: Special Provisions.

(A) Complaint.

In actions in rem, the complaint must state with particularity the dollar amount of relief sought.

(B) Multiple Proceedings In Rem Against Single Res.

Wherever a vessel or other res has been seized, and the res or proceeds thereof remains in custody, and another proceeding in rem is filed against the res or proceeds, no warrant for arrest shall be necessary in the new proceeding. Instead, the Court may issue an order for the detention of the res or proceeds pending final judgment in the new proceeding. The order shall be served upon the owner, master, claimant (or other person in possession or in custody of the res or proceeds), and any other interested persons.

(C) Substitute Custodian.

Upon seizure of a vessel, the Court may, upon application of the plaintiff or other interested party, appoint a substitute custodian who will relieve the Marshal of all further responsibility for the care and safekeeping of the vessel and who will hold the Marshal harmless for any loss or injury to the vessel while in the custody of the substitute. Such appointment may be made upon a satisfactory showing that the proposed substitute custodian has adequate facilities for the safekeeping of the vessel, and adequate liability insurance or assets to respond in damages for any loss or injury to the vessel during said custody, and for any damage sustained by third parties due to the negligence of the proposed substitute custodian, its employees or agents during said custody. Such application shall be supported by an affidavit of the proposed substitute custodian.

(D) Notice.

(1) The notice required by Supplemental Admiralty Rule C(4) shall be published at least once and shall contain the fact and date of the arrest, the title of the cause, the nature of the action, the amount demanded, the name of the Marshal, and the name and address of the attorney for the plaintiff. It shall also state the requirement of Supplemental Admiralty Rule C(6) that claimants must file their claims within fourteen (14) days of the date of the notice or within such additional time as the Court may allow, and must file their answers within twenty-one (21) days after the filing of their claims or within such additional time as the Court may allow. The notice also shall state that in the absence of timely-filed claims and answers, default will be taken and the property forfeited.

(2) In suits in rem, no default shall be granted, nor sale of the vessel allowed, unless the plaintiff or other interested party shall establish by affidavit, satisfactory to the Court, that actual notice containing the information in Local Rule 10.02(D)(1) has been given to such parties whose interest in the vessel appears of record at the United States Coast Guard vessel documentation office at the home port of said vessel, or that diligent efforts have been made to give such notice.

(E) Motion to Quash Seizure.

Whenever property is arrested or attached, any person claiming an interest in it shall be entitled to a prompt hearing on a written motion to quash seizure, which motion shall be granted upon a showing, by a preponderance of the evidence, that seizure was improper. If the motion is granted, the Court may award the movant attorney's fees and damages incurred as a result of the seizure.

(Amended September 8, 2009; effective December 1, 2009)

Rule 9 - 10.03 Actions in Rem and Quasi in Rem: General Provisions.

(A) Release of Property.

(1) Property seized by the Marshal may be released only upon a Court order. Unless the parties stipulate in writing to security for release of the property, the release is also contingent upon the Court's approval of a bond submitted by the property owner in accordance with Supplemental Admiralty Rule E(5)(a) or (b), and upon the property owner's payment into Court of the Marshal's accrued costs.

(2) In all cases subject to Local Rule 10.02(B), the amount of the bond for the release of the res or proceeds shall be double the total amount claimed in all complaints on which process has issued, or equal to the appraised value of the property, whichever is smaller.

(3) Every bond shall be executed by a corporate surety on the Clerk's approved list or by two individual sureties approved by the Court.

(4) Every surety shall consent that, if judgment is entered against the property owner, judgment also may be entered against the surety in an amount not exceeding the bond, and execution may issue against the surety's property.

(5) In the place of any bond, the required security may be deposited in cash in the registry of the Court.

(B) Sale of Property.

(1) Before any sale under Supplemental Admiralty Rule E, notice of sale shall be published in a newspaper of general circulation in the division of the seizure for at least four consecutive days in a daily newspaper or four consecutive weeks in a weekly newspaper, between three and thirty-one days before the sale date.

(2) The successful bidder shall make payment to the Marshal by cash, cashier's check, or certified check. Accepted bids of less than $ 1,000.00 shall be paid to the Marshal on acceptance. For accepted bids of $ 1,000.00 or more, the higher of ten percent of the bid or

$ 1,000.00 shall be deposited immediately with the Marshal and the balance shall be paid in full within seven (7) days of the sale. If an objection is filed within the seven (7) days, the buyer may defer payment of the balance until the sale is confirmed.

(3) If the buyer does not pay the bid on time, the deposit is forfeited to the registry of the Court, to be added to whatever sums are obtained through a second sale. The Court may accept the second highest bid or order a new sale.

(4) Upon the conclusion of the sale the Marshal shall provide the Court with notice of the fact of the sale, setting forth the name of the buyer, the price brought, the name of the second highest bidder, and the amount bid. This notice shall be filed on the date of the sale or as soon thereafter as practicable.

(C) Objections to Sale.

(1) Objections to a sale must be filed with the Court within seven (7) days after the sale date. A copy of the objections shall be served on the Marshal.

(2) The Marshal's service copy of the objections shall be accompanied by a cost deposit sufficient to cover the estimated expenses of custody for seven days.

(3) If the Court sustains an objection, the Marshal will refund the deposits by the bidder and objector. If the Court overrules an objection, the Marshal will remit to the objector the balance, if any, of the objector's deposit remaining after deduction of the expenses of custody from the day of the objection until the day of the confirmation.

(D) Confirmation of Sale.

(1) If no objection is filed with the Court within seven (7) days after the sale, or the Court overrules all objections, the sale shall be deemed confirmed, except that no sale shall be deemed confirmed until the buyer has performed the terms of the purchase. The buyer shall submit a proposed order of confirmation to the Court no later than fourteen (14) days after the sale.

(2) In the event no objections to the sale are filed, the cost of keeping the property pending confirmation shall be paid out of the proceeds of the sale; except that if the confirmation is delayed by the purchaser's failure to pay any balance which is due on the price, the cost of keeping the property shall be borne by the purchaser after the seven-day objection period expires.

(E) Marshal's Receipts and Charges.

As soon as practicable following a sale of property under Supplemental Admiralty Rule E, the Marshal shall file with the Court an accounting of the Marshal's receipts and charges related to the property, and pay to the Clerk the receipts remaining after deduction of the Marshal's charges.

(F) Wharfage, Storage, and Other Charges.

(1) Wharfage, storage and like charges which accrue while the vessel or other property is in the Marshal's custody shall not be included in the Marshal's accounting except by consent of all interested parties, lienors who have appeared, or their attorneys. If such charges are not consented to in the Marshal's accounting, they may be claimed by petition filed against the proceeds, or against any party claimed to be responsible therefor, not later than fourteen (14) days after the sale of the vessel or other property. The wharfinger or other person entitled to such charges shall be given notice of settlement of the final judgment and order of distribution of proceeds.

(2) All such wharfage, storage and like charges which accrue while the vessel or other property is in the custody of the Marshal or a substitute custodian shall be paid out of any proceeds of sale of the vessel or other property, prior to payment of any and all other claims against the vessel which may have been filed on behalf of plaintiff or any other party. The Court, in its discretion, may tax such costs against any party or parties to the proceeding as justice may require.

(G) Claims on Proceeds of Sale.

In proceedings in rem, claims upon the proceeds of a sale of property under a final decree (except for seamen's wages) will not be admitted on behalf of lienors who file such claims after the sale, to the prejudice of lienors who filed claims before the sale. Such after-filed claims shall be limited to the surplus.

(Amended July 10, 2006; effective August 28, 2006)

(Amended September 8, 2009; effective December 1, 2009)

(Amended October 9, 2009; effective December 1, 2009)

XI. UNITED STATES MAGISTRATE JUDGES

Rule 73 - 11.01 General Authority of United States Magistrate Judges.

Each United States Magistrate Judge appointed by this Court is authorized to exercise all powers and perform all duties conferred expressly or by implication upon magistrate judges by, and in accordance with, procedures now or hereafter set forth in the United States Code, rules promulgated by the Supreme Court, the local rules of this Court, and the orders of this Court. Subject to the foregoing, magistrate judges are authorized to set and to conduct hearings or trials on any matter assigned or referred to them, notify and require parties, attorneys, and witnesses to appear, require proofs, briefs, and argument, and to make such further orders as may be incidental or necessary to the completion of their duties.

XII. ATTORNEYS

Rule 83 - 12.01 Attorney Admission.

(A) Roll of Attorneys.

The bar of this Court consists of those attorneys who have been granted admission upon satisfaction of the requirements for admission to practice before this Court prescribed by the rules in force at the time of their application for admission. Except as otherwise provided in this rule, only attorneys enrolled pursuant to the rules of this Court or duly admitted pro hac vice may file pleadings, appear, or practice in this Court.

Nothing in these rules is intended to prohibit any individual from appearing personally on his or her own behalf. An attorney admitted to practice in another Federal District Court or licensed by any state to practice law may appear and represent the United States or the State of Missouri, or any of their respective departments or agencies, without general admission to the bar of this Court. Admission to the bar of this Court is not required in order to file or appear in a miscellaneous case, to appear in a case transferred to this Court pursuant to 28 U.S.C. § 1407 on an order of the Judicial Panel on Multidistrict Litigation, or in any other case transferred from another District Court on an order of that District Court.

(B) Qualifications for Admission.

An attorney of good moral character who holds a license to practice law from, and who is a member in good standing of the bar of, the highest court of any state or the District of Columbia may apply for admission to the bar of this Court.

(C) Procedure for Admission.

A candidate for admission to the bar must file electronically a verified application for admission on a form provided by the Clerk of the Court. In addition to the completed form, the

applicant must submit: (1) a current certificate of good standing from the highest court of the state of the applicant's primary practice; and (2) the prescribed application fee. Applicants who attend this Court's biannual admission ceremony in Jefferson City who are admitted to the Missouri Bar on the same day as this Court's ceremony are not required to submit a current certificate of good standing from the Supreme Court of Missouri. If the Court determines that an investigation of an applicant's character and fitness is necessary, a member of the bar of the Eastern District of Missouri may be appointed by the Chief Judge to conduct an examination of the applicant's background and report written findings to the Court. An attorney appointed for this purpose will be compensated from the Attorney Admission Fee Non-Appropriated Fund at a reasonable hourly rate, provided that total compensation may not exceed $2,500.00 plus actual expenses. Each completed application will be examined by the Clerk of Court for satisfactory evidence of compliance with these rules. The Clerk is authorized to approve an application for admission that satisfies these requirements. Upon approval of an application for admission, the attorney must take an oath or affirmation administered by a district, magistrate or bankruptcy judge of this Court. For good cause, the oath may be administered via telephone, videoconference or other electronic means. Admission to the bar of any division will constitute admission to practice in all divisions of the Court, including the Bankruptcy Court.

(D) Admission of Government Attorneys.

An attorney representing the United States, the State of Missouri or another State, or any of their respective departments, officials or agencies may apply for special Government Counsel limited admission to the bar of this Court. The applicant must be a member in good standing of the bar of the highest Court of any State or the District of Columbia. A candidate for limited admission under this rule must file electronically a verified application on a form provided by the Clerk of Court. The application must include a letter written on the employing government

agency's letterhead containing a statement signed by the agency executive indicating the applicant's name, title and current employment status.

(E) Renewal of Membership.

The roll of attorneys admitted to practice before this Court will be renewed quadrennially commencing after 1999. A renewal registration on a form provided by the Court must be filed with the Clerk by every member of the bar on or before the thirty-first day of January of each renewal year. Each renewal registration must be accompanied by a fee in an amount set by order of the Court at least ninety days prior to each registration period. The Clerk will publish notice or otherwise inform the bar of the renewal requirement and the fee at least sixty days before the deadline for filing such renewal registration forms.

The Clerk will deposit the renewal registration fees collected pursuant to this rule into the fund created by Local Rule 12.03, to be used for the purposes specified in that rule, and to defray the expenses of maintaining a current register of members of the bar of this Court.

An attorney who fails to file the required renewal registration and pay the renewal fee will be provisionally removed from the roll of members in good standing, and the attorney's privilege to file pleadings, appear and practice in any division of the Eastern District of Missouri will be suspended. If no renewal registration is filed within three months of the delinquency, the name of the attorney will be permanently removed from the roll by order of the Court, without prejudice to a subsequent application for admission.

(F) Admission Pro Hac Vice.

An attorney who is not regularly admitted to the bar of this Court, but who is a member in good standing of the bar of the highest court of any state or the District of Columbia, may be admitted pro hac vice for the limited purpose of appearing in a specific pending action. Unless allowed by a judge for good cause, an attorney may not be granted admission pro hac vice if the

applicant resides in the Eastern District of Missouri, is regularly employed in the Eastern District of Missouri, or is regularly engaged in the practice of law in the Eastern District of Missouri. A motion requesting admission pro hac vice must be verified and must include the name of the movant attorney, the address and telephone number of the movant, the name of the firm under which the movant practices, the name of the law school attended and the date of graduation, the movant's dates and places of admission to practice law; and a statement that the movant is in good standing in all bars in which he or she is a member, and that the movant does not reside in the Eastern District of Missouri, is not regularly employed in this district, and is not regularly engaged in the practice of law in this district. The movant attorney must include as an attachment to the motion for admission pro hac vice a current certificate of good standing from the highest court of the state in which the attorney resides or is regularly employed as an attorney, or other proof of good standing satisfactory to the Court. The motion must be filed with the Clerk of the District Court or with the Clerk of the Bankruptcy Court, as appropriate, where the action is pending, with payment of the prescribed fee. If the attorney has not previously been issued an electronic filing login and password for the CM/ECF System, the attorney must request a login and password through the online attorney registration system, AttorneyReg. Once the login and password has been issued by the Court, all subsequent documents submitted to the Court by that attorney must be filed electronically, including the motion for pro hac vice admission and any subsequent motion for pro hac vice admission. Attorneys not admitted to this Court who appear in a miscellaneous case, in a case transferred to this Court pursuant to 28 U.S.C. § 1407 on an order of the Judicial Panel on Multidistrict Litigation, or in any other case transferred from another District Court on an order of that District Court, must request a login and password through the online attorney registration in the same manner as described above for attorneys seeking admission pro hac vice.

(G) Duty to Report Contact Information.

Attorneys admitted to practice under this rule have a continuing duty to promptly notify the Clerk of any change of name, business address, telephone number, or e-mail address.

(H) Registration Number.

Each attorney granted regular admission to the bar of this Court will be issued a registration number which must be included with the attorney's signature block on every filing in this Court.

(I) Court Appointed Representation.

Attorneys who are members in good standing of the bar of this Court will be required to represent without compensation indigent parties in civil matters when so ordered by a judge of this Court, and to accept appointments by a judge to represent indigent criminal defendants under the Criminal Justice Act unless exempt by rule or statute, except when such representation would create a conflict of interest. Statutory fees and expenses may be awarded as provided by law to an attorney appointed under this rule.

(Amendment to Paragraph (D) adopted October 2, 1999, effective December 1, 2000; Amendment to Paragraph (C) adopted July 9, 2004, effective August 16, 2004; Amended July 10, 2006, effective August 28, 2006; Amendment to Paragraph (A) adopted April 9, 2007, effective May 14, 2007; Amendment to Paragraph (E) adopted November 21, 2008, effective January 1, 2009; Amendment to Paragraph (D) adopted May 7, 2010, effective June 15, 2010; Amended June 15, 2012, effective August 1, 2012; Amended November 5, 2014, effective December 15, 2014; Amended November 4, 2015, effective January 1, 2016; Amended September 7, 2016, effective December 1, 2016.)

Rule 83 - 12.02 Attorney Discipline.

A member of the bar of this Court and any attorney appearing in any action in this Court, for good cause shown and after having been given an opportunity to be heard, may be disbarred or otherwise disciplined, as provided in this Court's Rules of Disciplinary Enforcement. In addition, a judge may impose sanctions pursuant to the Court's inherent authority, Fed.R.Civ.P. 11, 16 or 37, or any other applicable authority, and may initiate civil or criminal contempt proceedings against an attorney appearing in an action in this Court.

The Rules of Professional Conduct adopted by this Court are the Rules of Professional Conduct adopted by the Supreme Court of Missouri, as amended from time to time by that Court, except as may otherwise be provided by this Court's Rules of Disciplinary Enforcement.

(Amended June 12, 2001, effective August 1, 2001)

Rule 83 - 12.03 Attorney Admission Fee Non-Appropriated Fund.

All monies received by the Court from attorney admission and renewal registration fees pursuant to Local Rule 12.01 shall be deposited by the Clerk into the Attorney Admission Fee Non-Appropriated Fund. The Clerk of the District Court shall serve as the custodian of the fund, with such duties and responsibilities as the Court may provide.

Disbursements from the fund shall be made only upon order of a district or magistrate judge. In the Court's discretion, payment may be made from the fund upon motion to reimburse a court-appointed attorney for reasonable expenses and attorney's fees incurred in a civil matter on behalf of an indigent client, consistent with regulations approved by the Court. An attorney providing pro bono representation in a civil case who has not been appointed by the Court is also eligible to seek reimbursement for reasonable expenses under this rule. The Court shall establish policies and guidelines for other uses of the fund for the benefit of the bench and bar in the administration of justice.

(Amended June 12, 2001; effective August 1, 2001)

(Amended February 10, 2004; effective March 12, 2004)

(Amended July 10, 2006; effective August 28, 2006)

Rule 83 - 12.04 Former Law Clerks.

An attorney who is a former law clerk to a judge of this Court is prohibited from acting as counsel of record in a case assigned to that judge or otherwise appearing before that judge for a period of one year following the termination of the law clerk's service.

Rule 83 - 12.05 Law Student Practice.

A judge may authorize the participation of a law student certified under Missouri Supreme Court Rule 13 to assist in the preparation and presentation of a civil or criminal case. A motion for such authorization must be accompanied by the party's signed consent to the participation of the law student on the party's behalf. The law student shall be supervised by an attorney of record.

Rule 83 - 12.06 Appointed Counsel's Fees and Expenses in Civil Cases.

(A) Fee Agreements.

In a civil case, appointed counsel and the party represented may enter into a contingent fee agreement only upon the Court's approval of the terms of the agreement, as set forth in a joint motion of appointed counsel and the party. Appointed counsel may not condition the undertaking or continuation of the party's representation on the making of such an agreement.

(B) Party's Ability to Pay for Legal Services.

If at any time the party represented becomes able to afford private counsel, the appointed attorney or the party shall so notify the Court in writing. If the appointment of counsel is vacated because of the party's ability to afford counsel, the appointed attorney and the party may enter into a fee agreement for the attorney's continued representation.

(C) Award of Attorney's Fees and Costs.

Appointed counsel representing a prevailing party may apply for an award of reasonable attorney's fees and costs against the opposing party, where such an award is authorized by applicable statute, rule or other provision of law.

(D) Expenses.

To the extent reasonable in light of his or her financial condition, a party represented by appointed counsel shall bear the expenses of the litigation. Pursuant to Local Rule 12.03, appointed counsel may apply for reimbursement of expenses and attorney's fees from the Court's Attorney Admission Fee Non-Appropriated Fund.

(Paragraph D Amended July 9, 2004; effective August 16, 2004)

Rule 83 - 12.07 Attorney's Obligations Regarding Appeal.

(A) Criminal Cases.

Following judgment of conviction in a criminal case, a privately retained or appointed attorney representing a convicted defendant shall file one of the following documents within the time permitted for an appeal:

(1) a notice of appeal;

(2) a notice signed by the defendant stating that the defendant declines to file a notice of appeal; or

(3) a notice signed by the attorney indicating that the attorney has explained to the defendant his right to appeal, and that the defendant has not requested the attorney to file a notice of appeal, but that the defendant declines to sign a notice under subsection (A)(2).

(B) Civil Cases.

Following final judgment in a civil case, an appointed attorney representing a party who has lost any significant issue before the District Court shall file one of the following documents within the time permitted for an appeal:

(1) a notice of appeal;

(2) a notice signed by the party stating that the party declines to file a notice of appeal; or

(3) a notice signed by the attorney indicating that the attorney has explained to the party his right to appeal, and that the party has not requested the attorney to file a notice of appeal, but that the party declines to sign a notice under subsection (B)(2).

XIII. MISCELLANEOUS PROVISIONS

Rule 32CR - 13.01 Probation and Pretrial Service Records.

(A) Presentence investigation reports are confidential documents which shall be filed with the Clerk of the Court under seal. For good cause and with leave of Court, objections to a presentence investigation report may be filed under seal. Except as authorized by law, the contents of presentence investigation reports and of objections filed under seal shall not be disclosed by the government, the defendant, the attorney for the defendant or any court officer unless ordered by the Court.

(B) Except as authorized by law, all records created or maintained by the U.S. Probation Office and the U.S. Pretrial Services Office are subject to disclosure only by order of the Court entered upon a motion alleging the movant's need for specific information contained in such records. When a demand by way of subpoena or other judicial process is made of an officer either for copies of records or testimony relating thereto, the officer may petition the Court for instructions.

(C) The Court may require electronic filing and storage of original Probation and Pretrial Service Reports, including objections to presentence investigation reports.

(Amended July 10, 2006; effective August 28, 2006)

Rule 83 - 13.02 Use of Photographic, Recording and Communication Equipment.

(A) All means of photographing, recording, broadcasting and televising are prohibited in any courtroom, and in areas adjacent to any courtroom, except when authorized by the judge presiding over an investiture, naturalization or other ceremonial proceeding. Unless specifically authorized by the judge presiding over any court proceeding, spectators may not use laptop computers, cell phones, or any other electronic devices in any courtroom. Nothing in this rule is intended to prohibit the use of electronic audio and visual devices for the presentation of evidence, for making the official record of a proceeding, for insuring Court security, or when authorized by the judge presiding as necessary to the administration of justice.

(B) The prohibition described in paragraph A of this rule shall not apply to proceedings in civil cases assigned to district judges of this court when the presiding judge has approved recording and broadcasting of a proceeding in accordance with the digital video recording pilot program guidelines issued by the Judicial Conference of the United States in September 2010 (JCUS- SEP 10, pp.3-4).

(Amended October 8, 2009; effective December 1, 2009)
(Amended June 24, 2011; effective July 25, 2011)

Rule 83 - 13.03 Bonds and Other Sureties.

(A) General Requirements.

Every bond, recognizance or other undertaking required by law or Court order in any proceeding must be executed by the principal obligor or by one or more sureties qualified as provided in this rule.

(B) Unacceptable Sureties.

Employees of the Court, employees of the United States Marshals Service, any member of the bar of this Court and any employee of such member will not be accepted as surety on a cost bond, bail bond, appeal bond, or any other bond filed in this Court, except as authorized by a Judge.

(C) Corporate Surety.

A corporate surety must be approved by the United States Department of the Treasury (Circular 570) and the Missouri Department of Insurance. The Court will verify that the surety has a current active license with the Fidelity and Surety Business Authority prior to acceptance, and will not accept the surety if the license is not current and active. In all cases, a valid power of attorney showing the authority of the agent signing the bond must either be on file with the Court or attached to the bond with a tender of the required fee.

(D) Real Property Bonds.

Persons competent to convey real estate in the State of Missouri of an unencumbered value of at least the stated penalty of a bond ordered by the Court may be considered for qualification as surety by providing proof deemed sufficient by a judge showing: (1) the legal description of the real estate in a General Warranty Deed or Deed of Trust showing current ownership of the property; (2) a list of all encumbrances and liens, and balances owed; (3) a current appraisal or other document verifying current value of the property; (4) a waiver of

inchoate rights of any character and certification that the real estate is not exempt from execution; and (5) proof of payment of property taxes. If all documents are approved by the Court, the sureties on the bond must include all record owners of the real property.

(E) Cash Bonds.

Cash bonds may be deposited into the registry of the Court, but only in connection with the execution and filing of a written bond sufficient as to form and setting forth the conditions for the bond as ordered by the Court. Unless otherwise ordered by a judge, every deposit of cash bond in a criminal case must be accompanied by an affidavit of ownership, in the form required by the Court, which when filed will establish conclusively the identity of the owner of the cash to be posted as security. Bond funds will be disbursed only to the surety of record listed on the affidavit of ownership. The Court will not accept assignment of the bond to anyone other than the listed owner.

(F) Costs Bonds.

The Court on motion or on its own initiative may order any party to file an original bond for costs or additional security for costs in such an amount and so conditioned as the Court by its order may designate.

(G) Insufficiency--Remedy.

Any opposing party may raise objections to a bond's form or timeliness or the sufficiency of the surety. If the bond is found to be insufficient, the judge may order that a sufficient bond be filed within a stated time, and if the order is not complied with, the case may be dismissed for want of prosecution or the judge may take other appropriate action.

(Amended December 21, 2001, effective February 1, 2002; Amended July 10, 2006, effective August 28, 2006; Amended November 4, 2015, effective January 1, 2016; Amended September 7, 2016, effective December 1, 2016.)

Rule 67 - 13.04 Deposit of Funds with the Court.

(A) Receipt of Funds.

An order of Court is required for the deposit of funds into the registry of the Court. The instrument to be deposited in the registry must be made payable to Clerk, U.S. District Court. No third-party checks will be accepted. All monies ordered to be paid to the Court or received by its officers in any case pending or adjudicated will be deposited with the Treasurer of the United States in the name and to the credit of this Court pursuant to 28 U.S.C. § 2041.

(B) Investment of Funds.

(1) In any case in which the deposit of funds is governed by Fed.R.Civ.P. 67, the depositor must, before presenting to the Clerk the funds for deposit, obtain from the Court an order directing the Clerk to invest the funds in an interest-bearing account or instrument. The Clerk will deposit all such funds into the Court Registry Investment System (CRIS) as administered by the Administrative Office of the United States Courts (AOUSC) pursuant to 28 U.S.C. § 2045. The CRIS may consist of various funds as directed by the AOUSC. The Court may, by administrative order, adopt further guidance for deposit into various funds of CRIS, or such other directions for management of deposit of funds into CRIS as are necessary to enforce this rule.

(2) All interpleader funds deposited by this Court pursuant to 28 U.S.C. § 1335 will be considered Disputed Ownership Funds (DOF) for the purposes of Internal Revenue Service (IRS) tax administration. Unless otherwise ordered by the Court, all interpleader funds will be deposited in the DOF established within the CRIS and administered by the AOUSC, and the AOUSC will be responsible for meeting all DOF tax administration requirements.

(3) Funds deposited and held in the CRIS by this Court remain subject to the control and jurisdiction of this Court. Such funds will be pooled with like funds from other

entities within the Federal Judiciary, and will be invested and administered pursuant to the CRIS investment policy as administered by the AOUSC.

(4) Per the direction of the AOUSC the Court will deduct a CRIS administrative fee for deposits in the CRIS fund, as follows:

(a) A CRIS fee of 10 basis points on assets on deposit for all CRIS funds, excluding the case funds held in the DOF, for the management of investments in CRIS;

(b) A CRIS fee of 20 basis points on assets on deposit in the DOF for management of investments and tax administration.

(5) In each fund the CRIS fee will be assessed only from interest earnings to the pool before a pro rata distribution of earnings is made to court cases.

(6) The effective date of the CRIS fee is December 1, 2016. The effective date of deposits to the DOF is April 1, 2017 or as soon thereafter as the fund begins accepting deposits. Deposits to the DOF will not be transferred from any existing CRIS funds. Only new deposits pursuant to 28 U.S.C. § 1335, after the fund begins accepting deposits, will be placed in the CRIS DOF fund.

(C) Disbursement of Funds.

(1) Pursuant to 28 U.S.C. § 2042, no funds deposited in the registry of the Court will be withdrawn except by order of Court. Unless otherwise ordered by the Court**,** withdrawals of registry funds will be made by check only.

(2) Cash bail is refunded when the purpose for which the bond was posted has been fully satisfied. The Court's Financial Deputy will attest that the conditions of the bond have been satisfied prior to presentation to the Court. Cash deposited as security on a bond in a criminal case will be refunded in accordance with an affidavit of ownership filed pursuant to

Local Rule 13.03(E). Instructions and proposed orders for the refund of cash bail are available from the Clerk.

(3) Upon adjudication of entitlement to interest-bearing registry funds, the Court may order the appropriate party to file a proposed order for disbursement of the fund. The proposed order must comply with the redaction requirements of Local Rule 2.17 and must contain the following:

(a) the principal sum initially deposited;

(b) the amount or amounts of principal to be disbursed;

(c) the percentage of accrued interest payable with each principal amount, after the Clerk deducts from the total accrued interest the applicable administrative fee pursuant to the General Order of January 10, 1991;

(d) to whom exactly each disbursement check should be made payable;

(e) full mailing instructions for each disbursement check, including full street address and zip code; and

(f) for funds not held in the DOF, the social security number or tax ID number of each recipient of accrued interest, and known attorney fees, which must be provided to the Finance Department of the Clerk's Office on a completed and signed I.R.S. Form W-9.

(4) Disbursement of funds will not be made until all applicable W-9 forms in a case are received. A copy of I.R.S. Form W-9 is available on the Court's website.The legal tax

mailing address of the party must match I.R.S. records or the payee may be subject to backup withholding of 28%. The Clerk will prepare and file I.R.S. Form 1099-INT with the I.R.S. pursuant to I.R.S. Ruling 76-50.

(Amended December 21, 2001, effective February 1, 2002; Amended July 10, 2006, effective August 28, 2006; Amended November 5, 2014, effective December 15, 2014; Amended October 5, 2016, effective December 1, 2016.)

Rule 83- 13.05 Pleadings and Documents Filed Under Seal.

(A) Pleadings and Documents in Civil Cases.

(1) Upon a showing of good cause the Court may order that documents filed in a civil case be received and maintained by the Clerk under seal. The Clerk of Court will restrict access to such documents so that they are not in the file to which the public has access. Unless the docket reflects prior entry of an order to file under seal or the party offering a pleading or document presents the clerk with an order of the Court authorizing a filing under seal or a motion for such order, all pleadings and documents received in the office of the clerk will be filed in the public record of a civil case, except as otherwise required by law. For instructions on seeking leave to file sealed motions or sealed documents in CM/ECF, see the Sealed and Ex Parte Documents section of the Court's Administrative Procedures for Case Management/Electronic Case Filing at http://www.moed.uscourts.gov/administrative-procedures.

(2) Not less than 30 days after a final order or other disposition has been issued in a civil action in the District Court, or 30 days after the receipt of a mandate from the Court of Appeals in a case in which an appeal has been taken, a motion may be filed with the Court requesting that documents previously filed under seal be unsealed and made part of the public record. Unless otherwise ordered by the Court, all documents previously sealed in a civil action will remain sealed by the Clerk of Court.

(B) Pleadings and Documents in Criminal Cases.

(1) All applications for pen registers, trap and trace devices, wire taps, records of electronic communications, and IRS search warrants and tax return orders will be filed and maintained by the Clerk under seal unless otherwise ordered by the Court. Documents, pleadings, and other materials filed under seal pursuant to this paragraph will be maintained by the Clerk in original form for not less than five (5) years from the date of filing. All such original

sealed documents will be scanned into electronic digital images, indexed, and permanently stored under seal in such electronic format in lieu of maintaining the original paper copies after the required period of five (5) years. When an electronic digital image or copy of any original document, pleading, or other material filed with the Court under seal is created pursuant to this paragraph, the electronic version will be the permanent and official court record. From time to time, the Clerk may petition the Court for leave to destroy original documents and materials filed under seal pursuant to this paragraph for which electronic digital images have been made.

(2) All presentence investigation reports and such other materials regarding any guilty plea or sentencing which the Court orders filed under seal, including but not limited to any plea agreement supplement, sentencing statement, plea transcript supplement, or sentencing transcript supplement, will be filed and maintained by the Clerk under seal. The U.S. Attorney's Office must file a sealed statement in all criminal cases in which a defendant enters a guilty plea that will either explain the terms of a defendant’s cooperation or state that a defendant did not cooperate with the government. Nothing in the Court’s public record will allow anyone to be able to determine whether a defendant did or did not cooperate with the government. The Court may issue administrative orders and procedures further specifying processes necessary to preserve the confidentiality of the documents and proceedings described in this paragraph.

(3) Applications for search warrants, warrants and similar orders issued pursuant to Rule 41 upon application of the government for the acquisition of information or evidence in connection with a criminal investigation, and returns made pursuant to Fed.R.Crim.P. 41(f), will each be received by the Court under temporary seal. Within fourteen (14) days from the date of receipt by the Court of any such document, the government or any other person or entity having a sufficient privacy interest in the search warrant information, or the property or evidence that is the object of acquisition by the government, may file an ex parte

motion seeking an order to file under seal. The motion to seal will set out the date on which the sealing order will expire without further order of the court. The moving party will have the burden of establishing a compelling interest necessitating a restriction on public access. When such a motion is pending, the subject material will remain sealed but the Court must rule on the motion promptly. If the motion is granted, the Court will direct the Clerk to file the relevant documents under seal. The maximum period of time for which the motion may be granted is six (6) months. If, after six months, a party seeks continued sealing of the file, the party must submit a motion to that effect demonstrating a continuing compelling interest necessitating restriction on public access. If the motion to seal or for continued sealing is denied in whole or in part, or if no motion is timely filed, the Court will order the Clerk to unseal and file unrestricted material in the public record unless the Court determines otherwise.

(4) Except as otherwise provided in this paragraph, any written communication regarding any defendant by persons other than court-related personnel working on the case, the defendant, or counsel, submitted at any point before the defendant has been sentenced, will be made available for viewing at the public terminal in the clerk's office. Any written communication received in paper form will be scanned and filed electronically in the appropriate case. Any party may file a motion, either at or after the time any written communication is submitted, stating the particular reasons as to why it should not be made available at the public terminal. A judge, either on the judge's own motion or on the motion of any party, may order all or any portion of any written communication to be removed from the public terminal at any time. Any written communication that has been redacted will be filed under seal in a non-redacted form. The clerk's office will publish a notice to the bar and include a permanent notice on its website restating this paragraph. This notice will also state the types of personally identifying information that must not be included on any written communication

submitted to this Court, consistent with Fed. R. Crim. P 49.1 and any order of this Court regarding prohibited information on any such written communication.

(5) All pleadings and documents relating to grand jury proceedings will be filed and maintained by the Clerk under seal.

(6) Any material or item ordered sealed by the Court will be filed and maintained by the Clerk under seal.

(New rule added April 3, 1998, effective July 1, 1998; Paragraph B amended February 4, 2000, effective March 8, 2000; Paragraph B amended April 5, 2002, effective June 1, 2002; Amended July 10, 2006, effective August 28, 2006; Amended January 9, 2009, effective February 16, 2009; Amended September 8, 2009, effective December 1, 2009; Amended November 4, 2015, effective January 1, 2016; Amended November 30, 2016, effective February 1, 2017.)

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF MISSOURI
PATENT RULES
TABLE OF CONTENTS

1. SCOPE OF RULES
- **1-1. Title**
- **1-2. Scope and Construction**

2. GENERAL PROVISIONS
- **2-1. Governing Procedure**
- **2-2. Confidentiality**
- **2-3. Relationship to Federal Rules of Civil Procedure**

3. PATENT INITIAL DISCLOSURES
- **3-1. Disclosure of Asserted Claims and Preliminary Infringement Contentions**
- **3-2. Document Production Accompanying Disclosure of Asserted Claims and Preliminary Infringement Contentions**
- **3-3. Preliminary Counter-Infringement Contentions**
- **3-4. Preliminary Invalidity Contentions**
- **3-5. Document Production Accompanying Preliminary Invalidity Contentions**
- **3-6. Disclosure Requirement in Patent Cases for Declaratory Judgment**
- **3-7. Final Contentions**
- **3-8. Amendment to Contentions**
- **3-9. Willfulness**

4. CLAIM CONSTRUCTION PROCEEDINGS
- **4-1. Exchange of Proposed Terms and Claim Elements for Construction**
- **4-2. Exchange of Preliminary Claim Constructions and Extrinsic Evidence**
- **4-3. Joint Claim Construction and Joint Prehearing Statement**
- **4-4. Completion of Claim Construction Discovery**
- **4-5. Claim Construction Briefs**

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF MISSOURI
PATENT RULES

1. SCOPE OF RULES

1-1. Title.

These are the Rules of Practice for Patent Cases pending in the United States District Court for the Eastern District of Missouri. They should be cited as "Local Patent R. -."

1-2. Scope and Construction.

(a) **Utility Patents**. These rules apply to all civil actions filed in or transferred to this Court which allege infringement of a utility patent in a complaint, counterclaim, cross-claim or third party claim, or which seek a declaratory judgment that a utility patent is not infringed, is invalid or is unenforceable. The Court may accelerate, extend, eliminate, or modify the obligations or deadlines set forth in these Local Patent Rules based on the circumstances of any particular case. The Local Rules of this Court shall also apply to these actions, except to the extent they are inconsistent with these Local Patent Rules.

(b) **Design Patents.** These rules do not specifically apply to civil actions filed in or transferred to this Court which allege infringement of a design patent. The parties in a design patent litigation may, however, consider whether some or all of the below Local Patent Rules should be adopted to address infringement contentions, invalidity contentions, or claim construction matters in cases involving one or more design patents. These considerations shall be addressed by the parties when they confer pursuant to Fed. R. Civ. P. 26(f) and raised with the Court at the Rule 16 Scheduling Conference.

2. GENERAL PROVISIONS

2-1. Governing Procedure.

Rule 16 Scheduling Conference. When the parties confer pursuant to Fed. R. Civ. P. 26(f), in addition to the matters covered by Rule 26, the parties must discuss and address the following topics in the Joint Proposed Scheduling Plan filed pursuant to Fed. R. Civ. P. 26(f):

(a) Any proposed modification of the deadlines provided for in the Local Patent Rules, and the effect of any such modification on the date and time of any claim construction hearing;

(b) Whether the Court will hold a claim construction hearing and, if so, whether it will receive live testimony, deposition testimony, or other evidence at the hearing;

(c) If applicable, the scheduling of any claim construction prehearing conference to be held after the Joint Claim Construction Chart and Joint Prehearing Statement provided for in Local Patent R. 4-3 has been filed;

(d) The need for and any specific limits on discovery relating to claim construction, including depositions of fact witnesses and expert witnesses;

(e) Whether discovery should be conducted in stages, for example, whether only claim construction discovery should be taken before the Court's Claim Construction Ruling or whether discovery should otherwise be limited prior to such a ruling;

(f) Whether the parties should provide a tutorial to the Court concerning the technology at issue, including whether any such tutorial should be provided before any claim construction hearing; and

(g) The content of any protective order that should govern the case, including whether the Court's Form Protective Order (Appendix A) should be adopted in whole or in part; and what, if any, disputes exist regarding the final content of any such protective order.

2-2. Confidentiality.

If any document or information produced in Patent Litigation is deemed confidential by the producing party and if the Court has not entered a protective order, the producing party shall mark the document Confidential--Outside Attorneys' Eyes Only and, until such time as the Court enters a protective order, disclosure of the confidential document or information shall be limited to each party's outside attorney(s) of record, the employees of such outside attorney(s), and necessary outside document services, unless the parties agree to the contrary. The person(s) to whom disclosure of a confidential document or information is made under this rule shall keep it confidential and use it only for the purpose of litigating the case.

2-3. Relationship to Federal Rules of Civil Procedure.

Except as provided in this paragraph or as otherwise ordered, it shall not be a legitimate ground for objecting to an opposing party's discovery request (*e.g.,* interrogatory, document request, request for admission, deposition question) or declining to provide information otherwise required to be disclosed pursuant to Fed. R. Civ. P. 26(a)(1), that the discovery request or disclosure requirement is premature in light of, or otherwise conflicts with, these Local Patent Rules. A party may object, however, to responding to the following categories of discovery requests (or decline to provide information in its initial disclosures under Fed R. Civ. P. 26(a)(1)) on the ground that they are premature in light of the timetable provided in these Local Patent Rules:

(a) Requests seeking to elicit a party's claim construction position;

(b) Requests seeking to elicit from a party claiming patent infringement ("Patent Claimant") a comparison of the asserted claims and the accused apparatus, product, device, process, method, act, or other instrumentality, or counter-invalidity contentions;

(c) Requests seeking to elicit from a party opposing a claim of patent infringement ("Alleged Infringer") a comparison of the asserted claims and the prior art, invalidity contentions, or counter-infringement contentions; and

(d) Requests seeking to elicit from an Alleged Infringer the identification of any opinions of counsel, and related documents, that it intends to rely upon as a defense to an allegation of willful infringement.

Where a party properly objects to a discovery request (or declines to provide information in its initial disclosures under Fed. R. Civ. P. 26(a)(1)) as set forth in this subsection 2-3, that party shall provide the requested information on the date on which it is required to provide the requested information to an opposing party under these Local Patent Rules, unless there exists another legitimate ground for objection.

3. PATENT INITIAL DISCLOSURES

3-1. Disclosure of Asserted Claims and Preliminary Infringement Contentions.

(a) Not later than 21 days after the initial Rule 16 Scheduling Conference, a Patent Claimant must serve on all parties a Disclosure of Asserted Claims and Preliminary Infringement Contentions. Separately for each Alleged Infringer, the Disclosure of Asserted Claims and Preliminary Infringement Contentions shall contain the following information:

(i) Each claim of each patent-in-suit that is allegedly infringed by each Alleged Infringer;

(ii) Separately for each asserted claim, a specific identification of each accused apparatus, product, device, process, method, act, or other instrumentality ("Accused Instrumentality") of each Alleged Infringer of which the party is aware. Each product, device, and apparatus must be identified by name or model number, if known. Each method or process must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

(iii) A chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;

(iv) Whether each element of each asserted claim is claimed to be literally present or present under the doctrine of equivalents in the Accused Instrumentality;

(v) For each claim that is alleged to be indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. If the alleged direct infringement is based on joint acts of multiple parties, the role of each such party in the direct infringement must be described;

(vi) For any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled;

(vii) If a Patent Claimant wishes to preserve the right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party must identify and produce documents sufficient to show, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim; and

(viii) In patent cases arising under 21 U.S.C. § 355, at or before the initial Rule 16 Scheduling Conference, the Alleged Infringer shall produce to the Patent Claimant the entire Abbreviated New Drug Application or New Drug Application that is the basis of the case. The Court recognizes that, in cases brought under 21 U.S.C. § 355, scheduling and sequencing provisions distinct from those set forth in these Local Patent Rules may be appropriate.

(b) Not later than 28 days after service upon it of documents accompanying the Preliminary Invalidity Contentions pursuant to Rule 3-5 below, a Patent Claimant may amend its Disclosure of Asserted Claims and Preliminary Infringement Contentions if the Patent Claimant believes in good faith that the documents produced by the Alleged Infringer necessitate such an amendment. The Patent Claimant shall serve on the Alleged Infringer a Notice of Amended Preliminary Infringement Contentions, including a statement of reasons why the Patent Claimant believes such amendment is warranted under this subsection.

3-2. Document Production Accompanying Disclosure of Asserted Claims and Preliminary Infringement Contentions.

With the Disclosure of Asserted Claims and Preliminary Infringement Contentions, the Patent Claimant must produce to each Alleged Infringer or make available for inspection and copying:

(a) Documents (*e.g.,* contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, and third party or joint development agreements) sufficient to evidence (i) each discussion with, disclosure to, or other manner of providing to a third party the claimed invention prior to the date of application for the patent(s)-in-suit, or (ii) the sale of or offer to sell the claimed invention prior to the date of application for the patent(s)–in-suit and/or the priority date identified pursuant to Local Patent R. 3-1(vi), whichever is earlier. A party's production of a document as required herein shall not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102;

(b) All documents evidencing the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application for the patent(s)-in-suit and/or the priority date identified pursuant to Local Patent R. 3-1(vi), whichever is earlier; and

(c) A copy of the file history for each patent-in-suit.

The Patent Claimant shall separately identify by production number which documents correspond to each of the above categories. The Patent Claimant shall timely supplement document production under this Local Patent R. 3-2 as required by the Federal Rules of Civil Procedure; however, the act of supplementation does not of itself permit amendment of the Patent Claimant's Disclosure of Asserted Claims and Preliminary Infringement Contentions, which amendment shall instead be governed by Local Patent R. 3-1(b) and 3-7(a).

3-3. Preliminary Counter-Infringement Contentions.

Not later than 28 days after service upon it of the Disclosure of Asserted Claims and Preliminary lnfringement Contentions, each Alleged Infringer shall serve on all parties its Preliminary Counter-Infringement Contentions, indicating which elements from each asserted patent claim that it admits are present in any Accused Instrumentality, and which it contends are absent. As to absent elements, the Alleged Infringer shall set forth in detail the basis for its contention that the element is absent.

3-4. Preliminary Invalidity Contentions.

Not later than 49 days after service upon it of the Disclosure of Asserted Claims and Preliminary lnfringement Contentions, each Alleged Infringer shall serve on all parties its Preliminary Invalidity Contentions, which must contain the following information:

(a) The identity of each item of prior art, including patents, printed publications, prior public use, and prior on sale activity, that allegedly anticipate(s) each asserted claim or render(s) it obvious. Each prior art patent shall be identified by its number, country of origin, and date of issuance. Each prior art publication must be identified by its title, date of publication, and where feasible, author and publisher. Prior use under 35 U.S.C. § 102(a) or (b), or on sale activity under 35 U.S.C. § 102(b), shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. Prior art under 35 U.S.C. § 102(g) shall be identified by providing the identity of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);

(b) On a claim-by-claim basis, whether each item of prior art anticipates each asserted claim or renders it obvious. If a combination of items of prior art makes a claim obvious, each such combination, and the basis for such allegation, must be identified;

(c) A chart identifying where specifically in each alleged item of prior art each element of each asserted claim is found, including for each element that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function;

(d) Any grounds of invalidity under 35 U.S.C. § 102(c) shall be identified by providing a description of the facts supporting the allegation of abandonment; any grounds of invalidity under 35 U.S.C. § 102(f) shall be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived; and

(e) Any grounds of invalidity based on indefiniteness under 35 U.S.C. § 112(2) or enablement, written description, or failure to describe the best mode under 35 U.S.C. § 112(1) of any of the asserted claims.

3-5. Document Production Accompanying Preliminary Invalidity Contentions.

With the Preliminary Invalidity Contentions, the Alleged Infringer must produce or make available for inspection and copying:

(a) Source code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects or elements of an Accused Instrumentality identified by the Patent Claimant in its Local Patent R. 3-1(a)(iii) chart. If the Patent Claimant contends that compliance with this section requires the production of particular documentation (*e.g.*, source code), the Alleged Infringer may request, and the Patent Claimant is obliged to produce, the same information as to any apparatus, product, device, process, method, act or other instrumentality that it has identified pursuant to Local Patent R. 3-1(a)(vii), above; and

(b) A copy of each item of prior art identified pursuant to Local Patent R. 3-4(a) which does not appear in the file history of the patent(s) at issue. To the extent any such item is not in English, an English translation of the portion(s) relied upon must be produced.

(c) The Alleged Infringer shall timely supplement document production under this Local Patent R. 3-5 as required by the Federal Rules of Civil Procedure; however, the act of supplementation does not of itself permit amendment of the Alleged Infringer's Preliminary Counter-Infringement Contentions or Preliminary Invalidity Contentions, which amendment shall instead be governed by Local Patent R. 3-7(a) and (b).

3-6. Disclosure Requirement in Patent Cases for Declaratory Judgment.

(a) Invalidity Contentions If No Claim of Infringement. In all cases in which a party files a complaint or other pleading seeking a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable, Local Patent R. 3-1 and 3-2 shall not apply unless and until a claim for patent infringement is made by a party. If the defendant in such a declaratory judgment lawsuit does not assert a claim for patent infringement in its answer to the complaint, no later than 14 days after the defendant serves its answer, or 14 days after the initial Rule 16 Scheduling Conference, whichever is later, the party seeking a declaratory judgment of invalidity (on that basis alone or among other bases) must serve upon each opposing party its Preliminary Invalidity Contentions that conform to Local Patent R. 3-4 and produce or make available for inspection and copying the documents described in Local Patent R. 3-5. The parties shall meet and confer within 14 days of service of the Preliminary Invalidity Contentions for the purpose of determining the date on which the plaintiff will file its Final Invalidity Contentions, which shall be no later than 49 days after filing by the Court of its Claim Construction Ruling.

(b) Inapplicability of Rule. This Local Patent R. 3-6 shall not apply to cases in which a request for a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable is filed in response to a claim alleging infringement of the same patent.

3-7. Final Contentions.

The Disclosure of Asserted Claims and Preliminary Infringement Contentions and Preliminary Invalidity Contentions shall be deemed to be that party's final contentions, except as set forth below.

(a) If a Patent Claimant believes in good faith that the Court's Claim Construction Ruling necessitates a modification of its preliminary position, that party may serve Final Infringement Contentions without leave of Court that amend its Disclosure of Asserted Claims and Preliminary Infringement Contentions with respect to the information required by Local Patent R. 3-1(a)(iii), (iv) and (v). The Patent Claimant may seek leave of Court, for good cause shown, to assert infringement with respect to an Accused Instrumentality not disclosed in the Disclosure of Asserted Claims and Preliminary Infringement Contentions. Any Final Infringement Contentions must be served no later than 28 days after the Court files its Claim Construction Ruling. Any Alleged Infringer may serve Final Counter-Infringement Contentions without leave of Court that amend its Preliminary Counter-Infringement Contentions served previously pursuant to Local Patent. R. 3-3 not later than (i) 21 days after service upon it of any Final Infringement Contentions pursuant to this Local Patent R. 3-7(a), or (ii) in the absence of Final Infringement Contentions, and upon a good faith belief that the Court's Claim Construction Ruling necessitates a modification of its preliminary position, not later than 49 days after the Court files its Claim Construction Ruling.

(b) Not later than 49 days after the Court files its Claim Construction Ruling, each Alleged Infringer may serve Final Invalidity Contentions without leave of Court that amend its Preliminary Invalidity Contentions with respect to the information required by Local Patent R. 3-4 if: (i) a Patent Claimant has served Final Infringement Contentions pursuant to Local Patent R. 3-7(a), or (ii) the Alleged Infringer believes in good faith that the Court's Claim Construction Ruling necessitates a modification of its preliminary position. Leave of Court upon good cause shown is required to the extent the Alleged Infringer seeks to rely on prior art not disclosed in the Preliminary Invalidity Contentions.

(c) Not later than 77 days after the Court files its Claim Construction Ruling, each Patent Claimant must serve on all parties its Counter-Invalidity Contentions, which must state in detail its position on: (i) whether the purported prior art relied upon by an Alleged Infringer does indeed constitute statutory prior art, (ii) whether and how its interpretation of the prior art differs from that of the party opposing a claim of patent infringement, and (iii) its position on why the prior art does not invalidate any of the claims at issue. Notwithstanding the requirements of this Local Patent R. 3-7(c), a Patent Claimant may include the contentions that are otherwise required by this Rule in a Written Report that complies with Fed. R. Civ. P. 26(a)(2)(B) by the deadline set forth in the Case Management Order for service of rebuttal expert reports.

3-8. Amendment to Contentions.

Amendment or modification of (i) the Disclosure of Asserted Claims and Preliminary Infringement Contentions, Preliminary Counter-Infringement Contentions, or the Preliminary Invalidity Contentions (other than as expressly permitted by Local Patent R. 3-1(b) or 3-7, above), or (ii) the Final Infringement Contentions, Final Counter-Infringement Contentions, or the Final Invalidity Contentions, may only be made by order of the Court, upon a showing of good cause. The application for amendment shall disclose whether the adverse party consents or objects.

3-9. Willfulness.

Not later than 49 days after filing by the Court of its Claim Construction Ruling, each Alleged Infringer that will rely on an opinion of counsel as part of a defense to a claim of willful infringement shall:

(a) Produce or make available for inspection and copying the opinion(s) and any other documents relating to the opinion(s) as to which the attorney-client privilege or work product rule has been waived;

(b) Detail in writing any oral advice and produce or make available for inspection and copying documents related thereto for which the attorney-client privilege or work product rule has been waived; and

(c) Serve a privilege log identifying any other documents, except those authored by counsel who has acted solely as litigation counsel, relating to the subject matter of the opinion(s) which the party is withholding on the grounds of attorney-client privilege or work product rule.

An Alleged Infringer that does not comply with the requirements of this Rule shall not be permitted to rely on an opinion of counsel as part of a defense to willful infringement, (i) absent a stipulation of all parties, or (ii) by order of the Court, which shall be entered only upon a showing of good cause.

4. CLAIM CONSTRUCTION PROCEEDINGS

4-1. Exchange of Proposed Terms and Claim Elements for Construction.

(a) Not later than 42 days after service of the Preliminary Invalidity Contentions pursuant to Local Patent R. 3-4, the parties shall simultaneously exchange Proposed Terms and Claim Elements for Construction, which shall include (i) a list of claim terms, phrases, or clauses which that party contends should be construed by the Court, and (ii) the identification of any claim element which that party contends should be governed by 35 U.S.C. § 112(6).

(b) Within 7 days thereafter, the parties shall meet and confer in good faith for the purpose of narrowing the claim terms to be construed, narrowing or resolving differences, and facilitating the ultimate preparation of a Joint Claim Construction Chart and Joint Prehearing Statement, as set forth in Subsection 4-3, below.

4-2. Exchange of Preliminary Claim Constructions and Extrinsic Evidence.

(a) Not later than 21 days after the exchange of Proposed Terms and Claim Elements for Construction pursuant to Local Patent R. 4-1, the parties shall simultaneously exchange a preliminary proposed construction ("Preliminary Claim Construction") that shall address each claim term, phrase, or clause that the parties have identified for claim construction purposes. Each such Preliminary Claim Construction shall also, for each element which any party contends is governed by 35 U. S. C. § 112(6), specifically identify the asserted function and shall also identify by column: line number and specific description, the structure(s), act(s), or material(s) corresponding to that element.

(b) At the same time the parties exchange their respective Preliminary Claim Constructions, they shall each also provide a preliminary identification of extrinsic evidence, including without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of fact and expert witnesses they intend to advance in support of their respective claim constructions. The parties shall identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced. With respect to any such witness -- fact or expert -- the parties shall also provide a brief description of the substance of that witness' proposed testimony.

(c) Within 7 days thereafter, the parties shall meet and confer in good faith to discuss, among other topics, each of the claim elements the parties have identified in their Proposed Terms and Claim Elements for Construction, for the purpose of narrowing the issues and preparing a Joint Claim Construction Chart and Joint Prehearing Statement, as set forth in Local Patent R. 4-3, below.

4-3. Joint Claim Construction Chart and Joint Prehearing Statement.

Unless the Court has ordered that no claim construction hearing will be held, the parties shall, not later than 49 days after the exchange of the Proposed Terms and Claim Elements for Construction pursuant to Local Patent R. 4-1, complete and file a Joint Claim Construction Chart and Joint Prehearing Statement, which shall contain the following information:

(a) The Joint Claim Construction Chart shall be in the format set forth in Appendix B, containing: (i) a column listing complete language of disputed claims with the disputed terms in bold type and separate columns for each party's proposed construction of each disputed term; (ii) a column to be used for indicating whether the parties agree on the claim construction for a disputed term; and (iii) a column for each party's proposed construction of each disputed claim term, phrase, or clause, including all references from the specification or prosecution history that support that construction, and identifying any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction of the claim or to oppose any party's proposed construction of the claim, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises, and prior art, and testimony of percipient and expert witnesses.

(b) The Joint Prehearing Statement must set forth: (i) the anticipated length of time necessary for a claim construction hearing; (ii) whether any party proposes to call any witnesses, including experts, at the claim construction hearing, (iii) the identity of each such witness, (iv) for each witness, a summary of anticipated testimony in sufficient detail to permit a meaningful deposition of that witness and, as to witnesses who may present evidence under Fed. R. Evid. 702, 703 or 705, a report complying with the provisions of Fed. R. Civ. P. 26(a)(2)(B); (v) the order of presentation at the claim construction hearing; and (vi) a list of any other issues which might appropriately be taken up at a prehearing conference prior to the claim construction hearing, and proposed dates, if not previously set, for any such prehearing conference.

4-4. Completion of Claim Construction Discovery.

Not later than 28 days after service and filing of the Joint Claim Construction Chart and Joint Prehearing Statement, the parties shall complete all discovery relating to claim construction, including any depositions with respect to claim construction of any witnesses, including experts, identified in the Joint Claim Construction Chart and Joint Prehearing Statement.

4-5. Claim Construction Briefs.

(a) Not later than 49 days after serving and filing the Joint Claim Construction Chart and Joint Prehearing Statement, each party shall serve and file a motion for claim construction, a memorandum in support, and any evidence supporting its claim construction.

(b) Not later than 14 days after service upon it of a motion for claim construction, each party shall serve and file its responsive memorandum and supporting evidence.

APPENDIX A

FORM PROTECTIVE ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

[NAME OF PARTY]	)	
	)	
Plaintiff,	)	Case No.:
	)	
vs.	)	
	)	
[NAME OF PARTY]	)	**STIPULATION FOR**
	)	**PROTECTIVE ORDER**
Defendant.	)	

Upon stipulation of the parties for an Order pursuant to Fed. R. Civ. P. 26(c) that trade secret or other confidential information be disclosed only in designated ways:

1. As used in the Protective Order, these terms have the following meanings:

(a) "Attorneys" means counsel of record;

(b) "Confidential – Attorneys' Eyes Only" documents are the subset of confidential documents designated pursuant to Paragraph 5;

(c) "Documents" are all materials within the scope of Fed. R. Civ. 34;

(d) "Written Assurance" means an executed document in the form attached as Exhibit A.

2. By identifying a document as "Confidential," a party may designate any document, including interrogatory response, other discovery response, and/or transcript, that it, in good faith, contends constitutes or contains trade secret or other confidential information.

3. All confidential documents, along with the information contained in the documents, shall be used solely for the purpose of this action, and no person receiving such documents shall, directly or indirectly, transfer, disclose, or communicate in any way the contents of the documents to any person other than those specified in Paragraph 4. Prohibited purposes include, but are not limited to, use for competitive purposes or the prosecution of additional intellectual property rights.

4. Access to any confidential document shall be limited to:

(a) The Court and its personnel;

(b) Attorneys of record and their office associates, legal assistants, and stenographic and clerical employees;

(c) Persons shown on the face of the document to have authored or received it;

(d) Court reporters retained to transcribe testimony;

[Optional: (e) These inside counsel: [names]:]

[Optional: (f) These employees of the parties: [names]:]

(g) Outside independent persons (*i.e.,* persons not currently or formerly employed by, consulting with, or otherwise associated with any party) who are used by a party or its attorneys to furnish technical or expert services, or to provide assistance as mock jurors or focus group members or the like, and/or to give testimony in this action.

5. The parties shall have the right to further designate confidential documents or portions of documents [optional: in the areas of [identify]] as "Confidential – Attorneys' Eyes Only." Disclosure of such information shall be limited to the persons designated in Paragraphs 4(a), (b), (c), (d), and (g).

6. Third parties producing documents in the course of this action may also Designate documents as "Confidential" or "Confidential – Attorneys' Eyes Only," subject to the same protections and constraints as the parties to the action. A copy of the Protective Order shall be served along with any subpoena served in connection with this action. All documents produced by such third parties, even if not designated by such third parties as "Confidential" or "Confidential – Attorneys' Eyes Only," shall be treated by the parties to this action as "Confidential – Attorneys' Eyes Only" for a period of 15 days from the date of their production. During that 15 day period, any party may designate such documents as "Confidential" or "Confidential – Attorneys' Eyes Only" pursuant to the terms of the Protective Order.

7. Each person who is to receive confidential information, pursuant to Paragraph 4(g), shall execute a "Written Assurance" in the form attached as Exhibit A. Opposing counsel shall be notified at least 11 days prior to disclosure to any such person who is known to be an employee or agent of, or consultant to, any competitor of the party whose designated documents are sought to be disclosed. Such notice shall provide a reasonable description of the outside independent person to whom disclosure is sought sufficient to permit objection to be made. If a party objects in writing to such disclosure within 10 days after receipt of notice, no disclosure shall be made until the party seeking disclosure obtains the prior approval of the Court or the objecting party.

8. All depositions or portions of depositions taken in this action that contain trade secret or other confidential information may be designated “Confidential” or “Confidential – Attorneys’ Eyes Only” and thereby obtain the protections accorded other “Confidential” or “Confidential – Attorneys’ Eyes Only” documents. Confidentiality designations for depositions shall be made either on the record or by written notice to the other party within 10 days of receipt of the final transcript. Unless otherwise agreed depositions shall be treated as “Confidential – Attorneys’ Eyes Only” until 10 days after receipt of the final transcript. The deposition of any witness (or any portion of such deposition) that includes confidential information shall be taken only in the presence of persons who are qualified to have access to such information.

9. Any party who inadvertently fails to identify documents as “Confidential” or “Confidential-Attorneys’ Eyes Only” shall have 10 days from the discovery of its oversight to correct its failure. Such failure shall be corrected by providing written notice of the error and substituting copies of the inadvertently produced documents bearing appropriate confidentiality designations. Any party receiving such inadvertently unmarked documents shall make reasonable efforts to retrieve documents distributed to persons not entitled to receive documents with the corrected designation.

10. Any party who inadvertently discloses documents that are privileged or otherwise immune from discovery shall, promptly upon discovery of such inadvertent disclosure, so advise the receiving party and request that the documents be returned. The receiving party shall return such inadvertently produced documents, including all copies, within 10 days of receiving such a written request. The party returning such inadvertently produced documents may thereafter seek reproduction of any such documents pursuant to applicable law.

11. If a party intends to file a document containing confidential information with the Court, this Protective Order grants leave to make such filing under seal in compliance with Local Rule 13.05(A) and/or the Electronic Case Filing/Case Management procedures manual. Prior to disclosure at trial or a hearing of materials or information designated "Confidential" or "Confidential-Attorneys' Eyes Only," the parties may seek further protections against public disclosure from the Court.

12. Any party may request a change in the designation of any information designated "Confidential" and/or "Confidential-Attorneys' Eyes Only." Any such document shall be treated as designated until the change is completed. If the requested change in designation is not agreed to, the party seeking the change may move the Court for appropriate relief, providing notice to any third party whose designation of produced documents as "Confidential" and/or "Confidential-Attorneys' Eyes Only" in the action may be affected. The party asserting that the material is Confidential shall have the burden of proving that the information in question is within the scope of protection afforded by Fed. R. Civ. P. 26(c).

13. Within 60 days of the termination of this action, including any appeals, each party shall either destroy or return to the opposing party all documents designated by the opposing party as "Confidential," and all copies of such documents, and shall destroy all extracts and/or data taken from such documents. Each party shall provide a certification in writing to the disclosing party as to such return or destruction within the 60-day period. Attorneys shall be entitled to retain, however, a set of all documents filed with the Court and all correspondence generated in connection with the action, including one copy of documents designated as "Confidential" and/or "Confidential-Attorneys' Eyes Only."

14. Any party may apply to the Court for a modification of the Protective Order, and nothing in the Protective Order shall be construed to prevent a party from seeking such further provisions enhancing or limiting confidentiality as may be appropriate.

15. No action taken in accordance with the Protective Order shall be construed as a waiver of any claim or defense in the action or of any position as to discoverability or admissibility of evidence.

16. The obligations imposed by the Protective Order shall survive the termination of this action.

17. Not later than ________[INSERT DATE], the parties shall file a motion seeking leave to remove any physical materials designated "Confidential" or "Confidential – Attorneys' Eyes Only" from the office of the Clerk of Court.

Stipulated to:

Date: ______________________ By: ________________________

Date: ______________________ By: ________________________

EXHIBIT A
WRITTEN ASSURANCE

I, ____, declare that:

l. My address is ____, and the address of my present employer is _______________________________.

2. My present occupation or job description is ______________________ ____.

3. My present relationship to plaintiff(s)/defendant(s) is _________________ ____.

4. I have received a copy of the Stipulation for Protective Order (the "Protective Order") in this action.

5. I have carefully read and understand the provisions of the Protective Order, agree to be bound by it, and specifically agree I will not use or disclose to anyone any of the contents of any Confidential information received under the protection of the Protective Order.

6. I understand that I am to retain all copies of any of the materials that I receive which have been so designated as Confidential in a container, cabinet, drawer, room, or other safe place in a manner consistent with the Protective Order and that all copies are to remain in my custody until I have completed my assigned or legal duties. I will destroy or return to counsel all confidential documents and things that come into my possession. I acknowledge that such return or the subsequent destruction of such materials shall not relieve me from any of the continuing obligations imposed upon me by the Protective Order.

I declare under penalty of perjury under the laws of the state where executed that the foregoing is true and correct.

Executed this ________day of _______________________, 20__, in the State of

____________________________.

____
Signature

60653202.1

APPENDIX B. JOINT CLAIM CONSTRUCTION CHART

PATENT CLAIM	AGREED PROPOSED CONSTRUCTION	PLAINTIFF'S PROPOSED CONSTRUCTION	DEFENDANT'S PROPOSED CONSTRUCTION
1. Claim language as it appears in the patent with terms and phrases to be construed in bold.	Proposed construction if the parties agree.	Plaintiff's proposed construction if the parties disagree. Citation to Intrinsic Evidence. Citation to Extrinsic Evidence, if any.	Defendant's proposed construction if the parties disagree. Citation to Intrinsic Evidence. Citation to Extrinsic Evidence, if any.
2. Claim language as it appears in the patent with terms and phrases to be construed in bold.	Proposed construction if the parties agree.	Plaintiff's proposed construction if the parties disagree. Citation to Intrinsic Evidence. Citation to Extrinsic Evidence, if any.	Defendant's proposed construction if the parties disagree. Citation to Intrinsic Evidence. Citation to Extrinsic Evidence, if any.
3. Claim language as it appears in the patent with terms and phrases to be construed in bold.	Proposed construction if the parties agree.	Plaintiff's proposed construction if the parties disagree. Citation to Intrinsic Evidence. Citation to Extrinsic Evidence, if any.	Defendant's proposed construction if the parties disagree. Citation to Intrinsic Evidence. Citation to Extrinsic Evidence, if any.

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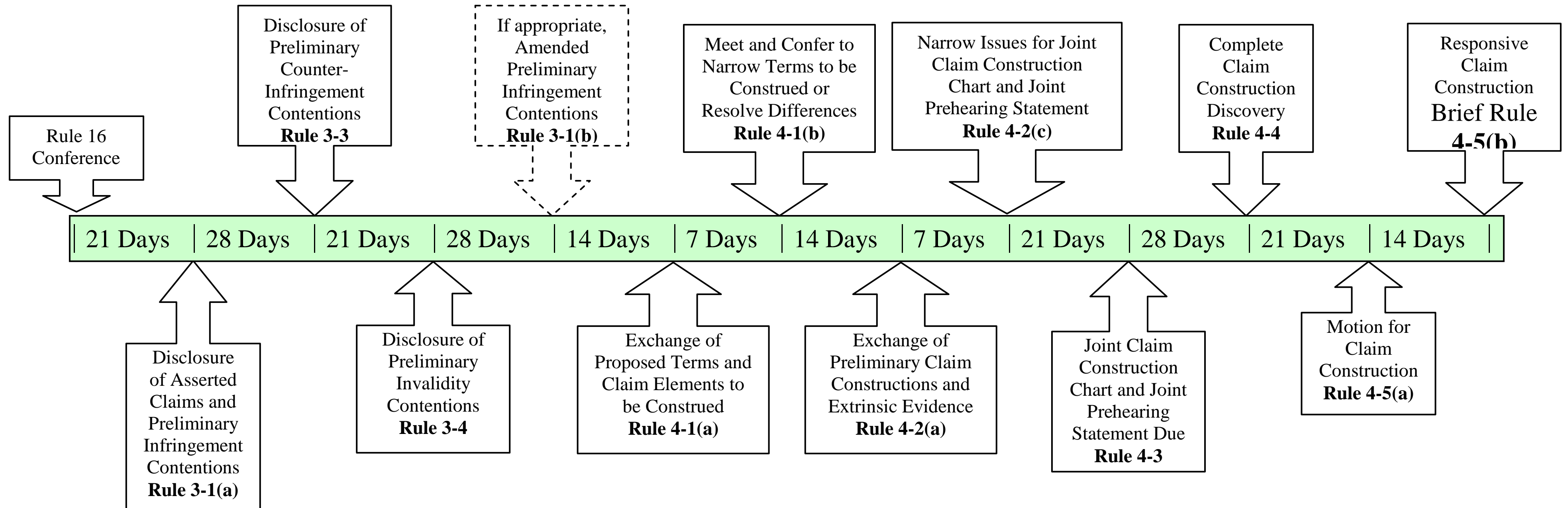
APPENDIX C. TIMELINE OF EXCHANGE AND FILING DATES

60715817.1



Revised Local Rules 2002

Local Rule	Local Rule Name	Adopted/Revision Date(s)
13.03	Bonds and Other Sureties	Approved 12-21-01 Effective 02-01-02
13.04	Deposit of Funds with the Court	Approved 12-21-01 Effective 02-01-02
13.05	Pleadings and Documents Filed Under Seal	Approved 04-05-02 Effective 06-01-02

Revised Local Rules 2003

2.10	The Electronic Case Record and Filing; Exemption	Approved 05-15-03 Effective 10-01-03
2.11	Signatures on Electronic Filings	Approved 05-15-03 Effective 10-01-03
2.12	Service in Electronic Cases	Approved 05-15-03 Effective 10-01-03
2.13	When Electronic Filings are Completed	Approved 05-15-03 Effective 10-01-03
2.14	Technical Failure and Filing Deadlines	Approved 05-15-03 Effective 10-01-03
2.15	Administrative Procedures for Electronic Filing	Approved 05-15-03 Effective 10-15-03
4.05	Submission of Motion Package	Approved 05-15-03 Effective 10-01-03

Revised Local Rules 2004

5.02	Track Information Statement	Approved 02-10-04 Effective 03-12-04
6.03	Neutrals	Approved 02-10-04 Effective 03-12-04
12.03	Attorney Admission Fee Non-Appropriated Fund	Approved 02-10-04 Effective 02-10-04
9.03	Petty Offenses	Approved 07-09--4 Effective 08-16-04
12.01	Attorney Admissions	Approved 07-09-04 Effective 08-16-04
12.06	Appointed Counsel Fees and Expenses in Civil Cases	Approved 07-09-04 Effective 08-16-04

Revised Local Rules 2005

6.04	Communications Concerning Alternative Dispute Resolution	Approved 08-19-05 Effective 09-20-05
2.16	Hyperlinks in Electronically Filed Documents	Approved 10-07-05 Effective 11-14-05

Revised Local Rules 2006

1.03	Effective Date	Approved 07-10-06 Effective 08-28-06
2.01	Files and Filing.	Approved 07-10-06 Effective 08-28-06
2.02	Forms to be Filed in Civil Cases	Approved 07-10-06 Effective 08-28-06
2.04	Demand for Jury Trial	Approved 07-10-06 Effective 08-28-06
2.05	In Forma Pauperis	Approved 07-10-06 Effective 08-28-06

2.06	Pro Se Actions	Approved 07-10-06 Effective 08-28-06
2.08	Assignments of Actions and Matters	Approved 07-10-06 Effective 08-28-06
2.09	Disclosure of Corporation Interests	Approved 07-10-06 Effective 08-28-06
2.10	The Electronic Case Record and Filing; Exemption	Approved 07-10-06 Effective 08-28-06
2.11	Signatures on Electronic Filing	Approved 07-10-06 Effective 08-28-06
2.17	Redaction of Personal Data Identifiers	Approved 07-10-06 Effective 08-28-06
3.02	Filing of Discovery and Disclosure Materials	Approved 07-10-06 Effective 08-28-06
3.04	Motions Concerning Discovery and Disclosure	Approved 07-10-06 Effective 08-28-06
4.01	Motions and Memoranda	Approved 07-10-06 Effective 08-28-06
4.03	Motions to Consolidate	Approved 07-10-06 Effective 08-28-06
4.04	Communication with the Court	Approved 07-10-06 Effective 08-28-06
4.05	Submission of Motion Package **(RULE REPEALED)**	Approved 07-10-06 Effective 08-28-06
5.01	Case Management Tracks	Approved 07-10-06 Effective 08-28-06
6.02	Referral to Alternative Dispute Resolution and Duties of Participants	Approved 07-10-06 Effective 08-28-06
6.03	Neutrals	Approved 07-10-06 Effective 08-28-06
7.01	Jurors and Juries	Approved 07-10-06 Effective 08-28-06

7.02	Trial Exhibits	Approved 07-10-06 Effective 08-28-06
8.03	Bill of Costs	Approved 07-10-06 Effective 08-28-06
9.02	Social Security Appeals	Approved 07-10-06 Effective 08-28-06
9.04	Condemnation Cases	Approved 07-10-06 Effective 08-28-06
10.3	Actions in Rem and Quasi Rem: General Provisions	Approved 07-10-06 Effective 08-28-06
12.01	Attorney Admission	Approved 07-10-06 Effective 08-28-06
12.03	Attorney Admissions Fee Non-Appropriated Fund	Approved 07-10-06 Effective 08-28-06
12.05	Law Student Practice	Approved 07-10-06 Effective 08-28-06
13.01	Probation and Pretrial Service Records	Approved 07-10-06 Effective 08-28-06
13.03	Bonds and Other Sureties	Approved 07-10-06 Effective 08-28-06
13.04	Deposit of Funds with the Court	Approved 07-10-06 Effective 08-28-06
13.05	Pleadings and Documents Filed Under Seal	Approved 07-10-06 Effective 08-28-06

Revised Local Rules 2007

3.01 (A)	Federal Rule of Civil Procedure 26 Disclosure Pursuant to Rule 26(a)(1) and (2)	Approved 04-09-07 Effective 05-14-07
12.01(A)	Attorney Admissions Roll of Attorneys	Approved 04-09-07 Effective 05-14-07

Revised Local Rules 2008

2.08	Assignments of Actions and Matters	Approved 11-21-08 Effective 01-01-09
12.01	Attorney Admissions Roll of Attorneys	Approved 11-21-08 Effective 01-01-09

Revised Local Rules 2009

2.06 (C)	Pro Se Actions	Approved 09-08-09 Effective 12-01-09
2.08 (A)	Assignment of Actions and Matters	Approved 09-08-09 Effective 12-01-09
3.01(A)	Federal Rule of Civil Procedure 26 Disclosure Pursuant to Rule 26(a)(1) and (2)	Approved 10-08-09 Effective 12-01-09
4.01(B)(C)	Motions and Memoranda	Approved 09-08-09 Effective 12-01-09
6.02(B)	Referral to Alternative Dispute Resolution and Duties of Participants	Approved 09-08-09 Effective 12-01-09
6.03(A)	Certified Neutrals Not Admitted to Practice Law in this Court	Approved 04-06-09 Effective 05-11-09
8.02	Motions for Attorney's Fees	Approved 09-08-09 Effective 12-01-09
8.03	Bill of Costs	Approved 09-08-09 Effective 12-01-09
9.01(D)	Bankruptcy Appeals	Approved 09-08-09 Effective 12-01-09
9.02	Social Security Appeals	Approved 09-08-09 Effective 12-01-09
10.02(D)	Actions in Rem: Special Provisions	Approved 09-08-09 Effective 12-01-09

10.03 (B) (C) (D) (F)	Actions in Rem and Quasi in Rem: General Provisions	Approved 09-08-09 Effective 12-01-09
10.03 (D)	Actions in Rem and Quasi in Rem: General Provisions	Approved 10-08-09 Effective 12-01-09
13.02	Use of Photographic, Recording and Communication Equipment	Approved 10-8-09 Effective 12-01-09
13.05	Pleadings and Documents Filed Under Seal	Approved 01-08-09 Effective 02-16-09
13.05 (B)	Pleadings and Documents Filed Under Seal	Approved 09-08-09 Effective 12-01-09

Revised Local Rules 2010

12.01 (D)	Attorney Admissions Renewal of Membership	Approved 05-07-10 Effective 06-15-10
6.02 (A)(2)	Referral to Alternative Dispute Resolution	Approved 07-09-10 Effective 08-16-10
6.03(A)(2)	Neutrals	Approved 07-16-10 Effective 08-16-10
1.02(B)	Local Patent Rules	Approved 09-03-10 Effective 01-01-11
Local Patent Rules	Rules and Appendices	Approved 09-03-10 Effective 01-01-11

Revised Local Rules 2011

6.01(A)	Mediation Early Neutral Evaluation	Approved 08-11-11 Effective 09-19-11
6.02(B)	Referral to Alternative Dispute Resolution Duties of Participants	Approved 08-11-11 Effective 09-19-11
6.02(C)	Referral to Alternative Dispute Resolution Appointment of Counsel	Approved 06-24-11 Effective 09-01-11
13.02(B)	Use of Photographic, Recording and Communication Equipment	Approved 06-24-11 Effective 07-25-11

Revised Local Rules 2012

12.01	Attorney Admissions	Approved 06-15-12 Effective 08-01-12
4.01	Motions and Memoranda	Approved 09-07-12 Effective 11-01-12

Revised Local Rules 2013

6.02(C)(1)	Appointment of Counsel	Approved 07-01-13 Effective 07-01-13
6.03(A)	Neutrals	Approved 11-07-13 Effective 01-01-14

Revised Local Rules 2014

2.09; and Form MOED-0001	Disclosure of Organizational Interests	Approved 11-05-2014 Effective 12-15-2014
6.01-6.05	Alternative Dispute Resolution	Approved 11-05-2014 Effective 12-15-2014
12.01	Attorney Admission	Approved 11-05-2014 Effective 12-15-2014
13.04	Deposit of Funds with the Court	Approved 11-05-2014 Effective 12-15-2014

Revised Local Rules 2015

12.01	Attorney Admission	Approved 11-04-2015 Effective 01-01-2016
13.03	Bonds and Other Sureties	Approved 11-04-2015 Effective 01-01-2016
13.05	Pleadings and Documents Filed Under Seal	Approved 11-04-2015 Effective 01-01-2016

Revised Local Rules December 2016

6.03	Neutrals	Approved 09-07-2016 Effective 12-01-2016
12.01	Attorney Admission	Approved 09-07-2016 Effective 12-01-2016
13.03	Bonds and Other Sureties	Approved 09-07-2016 Effective 12-01-2016
13.04	Deposit of Funds with the Court	Approved 09-07-2016 Effective 12-01-2016

Revised Local Rules February 2017

2.08	Assignments of Actions and Matters	Approved 11-30-16 Effective 2-1-2017
8.03	Bill of Costs	Approved 11-30-16 Effective 2-1-2017
13.05	Pleadings and Documents Filed Under Seal	Approved 11-30-16 Effective 2-1-2017

Revised Local Rules March 2018

2.07	Divisional Venue	Approved 1-3-18 Effective 3-1-2018
4.06	Motions for Transfer of Venue -Process	Approved 1-3-18 Effective 3-1-2018
6.03	Neutrals	Approved 1-3-18 Effective 3-1-2018

Revised Local Rules December 2018

2.02	Forms to Filed in Civil Cases	Approved 10-11-18 Effective 12-1-2018
2.11	Signatures on Electronic Filings	Approved 10-11-18 Effective 12-1-2018
2.12	Service in Electronic Cases	Approved 10-11-18 Effective 12-1-2018