LOCAL RULES OF PROCEDURE

March 1, 2017

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I. CIVIL RULES

Rule 1. Scope and Purpose; Definitions.

(a) Scope and Purpose. These local rules supplement the Federal Rules of Civil Procedure. Both sets of rules apply to civil actions in this district unless they conflict with each other or with any statute of the United States, in which event the Federal Rules of Civil Procedure or the statute governs. Any party asserting a conflict must call it to the court's attention in writing and suggest an equitable resolution.

(b) Effective Date. These rules become effective as revised on January 3, 2014 and supersede all previous rules and related general orders promulgated by this court.

(c) Definitions.

(1) ***Judge.*** In these rules, "Judge" means:

(A) a judge of this court;

(B) a judge assigned to this court; or

(C) a magistrate judge performing authorized duties in this court.

(2) ***Clerk.*** In these rules, "Clerk" means:

(A) the clerk of this court; or

(B) any deputy clerk or assistant authorized by the clerk.

Rule 3. Materials to Accompany a Complaint.

(a) Filing. To institute a civil action, a plaintiff must submit the following to the court:

(1) the original complaint;

(2) the filing fee or a motion and affidavit to proceed *in forma pauperis*;

(3) a Civil Cover Sheet [form JS 44];

(4) When applicable, a Notice of Lawsuit and Request for Waiver of Service [AO 398 or Fed. R. Civ. P. Form 5] for each defendant;

(5) When applicable, a Waiver of Service of Summons [AO 399 or Fed. R. Civ. P. Form 6] for each defendant.

(b) Waiver of Service. When sent to a defendant, the Notice of Lawsuit and Waiver of Service forms must be accompanied by a means for cost-free return of the forms back to the plaintiff after signing. Executed Waiver of Service of Summons forms must be filed with the Clerk's Office by the plaintiff.

(c) *In Forma Pauperis* Status. The granting of *in forma pauperis* status waives the cost of filing and serving the complaint, but not litigation expenses unless provided by statute. A party seeking to proceed *in forma pauperis* should refer to the Application to Proceed *In Forma Pauperis* available on the court's website.

Rule 4. Summons.

(a) Summons. Subject to Fed. R. Civ. P. 4(d), the plaintiff may request a formal summons from the court [AO 440 or Fed. R. Civ. P. Form 3].

(b) Third-Party Summons. A defending party may request a third-party summons from the court [AO 441 or Fed. R. Civ. P. Form 4].

Rule 5. Electronic Filing.

(a) Voluntary Electronic Filing. Electronic filing is voluntary.

(b) Electronic Filing Procedures. Electronic filings must comply with the court's Administrative Procedures for Electronic Case Filing located on the court's website: http://www.vtd.uscourts.gov. Additional information regarding electronic filing is available from the Electronic Filing Help Desk at <CMECFHelpDesk@vtd.uscourts.gov> or (802) 951-8123.

Rule 5.2. Sealed Documents; Procedure.

(a) Order Required. Cases or court documents cannot be sealed without a court order. Otherwise, all official files in the court's possession are public documents.

(b) Procedure. In order to seal a document, a party must:

(1) file a separate motion for each document;

(2) place the document in a sealed envelope;

(3) affix a copy of the document's cover page (with confidential information redacted) to the outside of the envelope; and

(4) conspicuously mark the envelope with "SEALED DOCUMENT" or the equivalent.

Rule 7. Motions.

(a) Generally.

(1) ***Title.*** The court will not consider any motion unless it contains the word "motion" in the title.

(2) ***Memorandum in Support.*** Unless presented at trial, all written motions must be accompanied by, or contain, a memorandum of law concisely stating the legal contentions and supporting authorities. A copy of each motion and memorandum must be served on all opposing parties.

(3) ***Memorandum in Opposition.*** Unless the judge extends the deadline:

(A) a memorandum opposing dispositive motions, such as a motion to dismiss or motion for summary judgment, must be filed no more than 30 days after the motion is served;

(B) a memorandum in opposition to all other motions must be filed no more than 14 days after the motion is served.

(4) ***Length of Memorandum.*** Unless the judge grants prior leave:

(A) a memorandum supporting or opposing a dispositive motion must not exceed 25 pages, excluding exhibits and attachments; and

(B) a memorandum supporting or opposing a non-dispositive motion must not exceed 15 pages, excluding exhibits and attachments.

(5) ***Reply Memorandum.*** A reply memorandum must:

(A) be filed no more than 14 days after an opposing memorandum; and

(B) not exceed 10 pages, excluding exhibits and attachments.

(6) ***Oral Argument.*** Motions are decided without oral argument unless scheduled by the Court. Parties may make a written request for oral argument, which is subject to the discretion of the presiding judge.

(7) ***Attempt to Reach Agreement.*** A party filing a non-dispositive motion must certify that the party has made a good faith attempt to obtain the opposing party's agreement to the requested relief. If obtained, the statement of agreement must be in the body of the motion, and the word "Stipulated" must be in the document caption. This requirement does not apply to motions involving incarcerated *pro se* litigants.

(8) ***Pending Matters in Stayed Cases.*** When the court grants a stay, it may dismiss any pending motions without prejudice.

(b) Motion for Continuance of Trial. A motion to continue a trial must contain counsel's certification that the represented party has been notified of the request.

(c) Motion for Reconsideration. A motion to reconsider a court order, other than one governed by Fed. R. Civ. P. 59 or 60, must be filed within 14 days from the date of the order.

Rule 7.1. Corporate Disclosure; Purpose.

(a) Corporate Disclosure. In addition to the disclosures required by Fed. R. Civ. P. 7.1, a non-governmental corporate party must file a statement identifying:

(1) any subsidiary (except wholly-owned subsidiaries); and

(2) any affiliate that has issued shares of ownership to the public.

(b) Purpose. This requirement is intended to assist the court in determining whether conflicts-of-interest might disqualify the judge from the case. Counsel may obtain information regarding a judge's financial interests by a written request to the clerk.

Rule 9. Pleading Social Security Cases; Bankruptcy Appeals.

(a) Social Security Cases. The following procedures govern all actions challenging a final decision of the Commissioner of the Social Security Administration filed under the Social Security Act, 42 U.S.C. § 405.

(1) ***Time for Filing Answer.*** Within 60 days after service of the complaint, the Commissioner must serve and file:

(A) an answer; and

(B) a certified copy of the administrative record, which may be in electronic form.

(2) ***Motion for Order Reversing the Commissioner's Decision.*** Within 60 days after the Commissioner files an answer, the plaintiff must serve and file:

(A) a Motion for Order Reversing the Commissioner's Decision or for other relief; and

(B) a supporting memorandum.

(3) ***Motion for Order Affirming the Commissioner's Decision.*** Within 60 days after the plaintiff files the Motion for Order Reversing the Commissioner's Decision, the Commissioner must serve and file:

(A) a Motion for Order Affirming the Decision of the Commissioner or for other relief; and

(B) a supporting memorandum.

(4) ***Reply Memorandum.*** Within 14 days after the Commissioner files the Motion for Order Affirming the Commissioner's Decision, the plaintiff may serve and file a reply.

(5) ***Further Reply Memorandum.*** If the plaintiff raises new issues or arguments in a reply memorandum, the Commissioner may serve and file a sur-reply within 14 days after service of the reply memorandum.

(6) ***Content of Motions and Memoranda.***

(A) Motions and memoranda must not exceed a total of 25 pages, and must meet the formatting requirements of Rule 10(a).

(B) The first section of the memorandum must include a summary of the case's procedural history and a brief summary of the relevant background facts, with page citations to the administrative record.

(C) The second section of the memorandum must include a concise statement of each issue for review, similar to an appellate brief; and must present the argument, discussing each issue in a separate subsection. The argument shall refer to the pertinent facts, if any, and shall include specific page citations to the administrative record for supporting evidence.

(b) Bankruptcy Appeals.

(1) ***Filing.*** To appeal a bankruptcy judgment, the appellant must submit the following to the bankruptcy court clerk within 14 calendar days after the court's final judgment, order, or decree:

(A) a notice of appeal; and

(B) a fee for each notice of appeal (refer to Bankruptcy fee schedule).

(2) ***Parties to Assist Bankruptcy Clerk with Transmitting Record.*** The designating party must comply with any request by the bankruptcy court clerk to facilitate the assembly and transmission of the record to the district court within 30 calendar days after filing the designation. A judge may dismiss the appeal or take other appropriate action for failure to comply with this provision, including, but not limited to, failing to provide all copies of designated items or failing to notify or prepay the bankruptcy clerk for copy or filing fees.

(c) Interlocutory Bankruptcy Appeals.

(1) ***Filing.*** To appeal a decision in a pending bankruptcy action, a party must file the following with the bankruptcy court clerk:

(A) a motion for leave to appeal;

(B) a notice of appeal; and

(C) a notice of appeal fee (refer to Bankruptcy fee schedule).

(2) ***If Granted.*** If the court grants the motion for leave to appeal, the appellant must pay an additional filing fee to the bankruptcy court clerk (refer to Bankruptcy fee schedule).

(d) Withdrawal of Reference.

(1) ***Filing.*** To file a motion for withdrawal of reference of a case or proceeding, a party

must submit the following to the bankruptcy court clerk:

(A) a clear statement that the party is seeking relief from the district court; and

(B) a filing fee (refer to Bankruptcy fee schedule).

(2) ***Opposition.*** A party opposing withdrawal of reference must file an opposition paper within 14 calendar days after service of the motion for withdrawal of reference. The moving party has 14 calendar days after service of the opposition to file a reply.

(3) ***District Court Assignment.*** A district judge will be assigned according to the court's usual system for assigning civil cases. Contested motions for withdrawal of reference receive a civil case number. Uncontested motions for withdrawal receive a miscellaneous case number.

(4) ***Notification of Bankruptcy Court Clerk.*** The district court clerk must notify the bankruptcy court clerk of the case number and the assigned judge.

Rule 10. Format of Pleadings, Motions and Other Papers.

(a) Size and Format. Filings and attachments must:

(1) be of 8 ½ x 11 inch size;

(2) be plainly legible, whether keyed, typed, handwritten, or duplicated;

(3) have at least 1 inch margins;

(4) be no less than 12 point font;

(5) be consecutively numbered;

(6) be double-spaced, except for quoted material;

(7) use footnotes sparingly; and

(8) be paper-clipped or otherwise attached to facilitate scanning.

(b) Facsimile Filings.

(1) ***Prior Authorization for Facsimile Filing.*** The clerk's office does not accept filings by facsimile without prior authorization from the court.

(2) ***Filing Date.*** The filing date is the date the clerk's office adequately receives the transmission.

(3) ***Filing Original Document***. Parties must file the original document within 3 business

days of receipt of the facsimile.

(c) Affidavits and Declarations. An affidavit or declaration must identify the title of the document to which it relates.

Rule 11. Appearances; *Pro Se* or Otherwise; Withdrawal of Counsel.

(a) By Individuals. A party appearing *pro se* must:

(1) declare *pro se* status in the initial filing or in the notice of *pro se* appearance form;

(2) appear personally;

(3) not authorize another person to appear on his or her behalf; and

(4) include the words "*pro se*" after the party's signature on all filings.

(b) By Corporations. A corporation or unincorporated association may not appear *pro se* in any proceeding.

(c) Change of Address. An attorney or *pro se* party must notify the court of any change of address or telephone number.

(d) Withdrawal of Counsel. An attorney may not withdraw until:

(1) replacement counsel has entered an appearance, or a party has declared its *pro se* status under section (a);

(2) the attorney files a motion to withdraw; and

(3) the court grants the motion to withdraw.

Rule 15. Motion to Amend a Filing.

(a) Filing Requirements. A motion to amend a filing must include:

(1) a redlined version of the proposed amendment clearly designating additions and deletions; and

(2) a non-redlined reproduction of the entire amended filing.

(b) No Incorporation by Reference. No amendment may incorporate any prior filing by reference without prior authorization of the court.

Rule 16. Pretrial Conferences.

(a) Conference to Discuss Trial Exhibits. Counsel must confer prior to trial about the admission of exhibits. Counsel must prepare exhibits in accordance with L.R. 40 unless the court directs otherwise.

(b) Final Pretrial Conference.

(1) ***Preparation*****.** Before the final pretrial conference, counsel must:

(A) be fully informed of the client's supporting evidence;

(B) identify witnesses expected to be called and the nature of their testimony so as to facilitate the exchange of substantive evidence with opposing counsel;

(C) supplement or correct disclosures under Fed. R. Civ. P. 26(e);

(D) if the court requires, meet and jointly prepare a proposed final pretrial order meeting the requirements of subsection (2); and

(E) if the court requires, confer and be prepared to report orally the items listed in subsection (2).

(2) ***Proposed Final Pretrial Order.***

(A) The court may require the parties to jointly prepare and sign a proposed final pretrial order that contains some or all of the following:

(i) a statement of the nature of the case;

(ii) a statement as to whether there are amendments to the pleadings and if so, a motion to amend the pleadings;

(iii) any stipulations, including proper venue, jurisdiction over the parties and subject matter, uncontested facts and the law governing the case;

(iv) a statement of the factual issues to be determined at trial;

(v) a statement of the issues of law to be determined at trial;

(vi) a statement of plaintiff's contentions, including the theory of recovery;

(vii) a statement of defendant's contentions, including the theory of defense;

(viii) a list of plaintiff's witnesses, including expert witnesses, and a brief description of their anticipated testimony. If an expert witness has filed a report under Fed. R. Civ. P. 26(a)(2)(B) and supplemented the report under Fed. R. Civ. P. 26(e)(2), there is no need for a description of testimony;

(ix) a list of defendant's witnesses, including expert witnesses, and a brief description of their anticipated testimony. If an expert witness has filed a report under Fed. R. Civ. P. 26(a)(2)(B) and supplemented the report under Fed. R. Civ. P. 26(e)(2), there is no need for a description of testimony;

(x) a list of plaintiff's exhibits, indicating whether there is agreement as to admissibility in accordance with L.R. 40(b) and (c);

(xi) a list of defendant's exhibits, indicating whether there is agreement as to admissibility in accordance with L.R. 40(b) and (c);

(xii) a statement of damages; and

(xiii) an estimate of trial length.

(3) ***Pretrial Conference.***

(A) Unless production is waived, the court may require counsel to bring all documentary evidence and physical exhibits that they expect to offer on contested issues to the final pretrial conference. The court may exclude large or cumbersome exhibits.

(B) Counsel must be prepared to discuss:

(i) the availability of witnesses and evidence, including alternative arrangements for their presentation by transcript or video, etc.;

(ii) evidentiary or other matters parties wish the court to consider before trial;

(iii) evidentiary issues that would consume a significant amount of time and disrupt the flow of the trial;

(iv) settlement; and

(v) in jury cases, the extent and nature of prior settlement negotiations, including reasons for non-settlement.

(C) Parties are discouraged from attending the final pretrial conference. Plaintiffs in personal injury cases, however, must be available to discuss settlement proposals.

(D) Counsel must discuss acceptable terms of settlement with their clients before the conference. Each party must be represented at the conference by counsel authorized to discuss settlement. If counsel does not have full settlement authority, a person with settlement authority should be available by phone.

(E) The court may require the parties to submit:

(i) a trial brief addressing doubtful or disputed points of law that may arise at trial; and

(ii) memoranda before trial for a novel and complex evidentiary issue.

Rule 16.1. Early Neutral Evaluation (ENE).

(a) Purpose. ENE is meant to reduce costs and litigation by providing litigants the opportunity:

(1) to articulate respective positions;

(2) to hear, first-hand, opponent's views on disputed matters;

(3) to hear a neutral assessment of the strengths and weaknesses of each party's case;

(4) for realistic settlement negotiations; and

(5) in the absence of settlement, to narrow issues and structure discovery and trial preparation.

(b) Cases Subject to ENE.

(1) ***District Court Cases.*** Unless the court exempts them for good cause, civil cases with the following "nature of suit" statistical code categories, as shown by the JS-44 Civil Cover Sheet, are subject to the ENE procedures:

(A) Contract Cases. 110 (Insurance), 120 (Marine), 140 (Negotiable Instrument), 150 (Recovery of Overpayment and Enforcement of Judgment), 160 (Stockholders'

Suits), 190 (Other Contract), 195 (Contract Product Liability), and 196 (Franchise);

(B) Real Property Cases. 230 (Rent, Lease, and Ejectment), 240 (Torts to Land), 245 (Tort Product Liability), and 290 (All Other Real Property);

(C) Torts Cases. 310 – 368 (All Personal Injury Cases), 370 (Other Fraud), 371 (Truth in Lending), 380 (Other Personal Property Damage), and 385 (Property Damage Product Liability);

(D) Civil Rights Cases. 440 (Other Civil Rights), 442 (Employment), 445 (Americans with Disabilities – Employment), 446 (Americans with Disabilities – Other), and 448 (Education);

(E) Labor Cases. 720 (Labor/Management Relations), 740 (Railway Labor Act), 751 (Family and Medical Leave Act), 790 (Other Labor Litigation), and 791 (Employee Retirement Income Security Act);

(F) Property Rights Cases. 820 (Copyrights), 830 (Patent), and 840 (Trademark); and

(G) Cases Arising Under Other Statutes. 375 (False Claims Act), 410 (Antitrust), 430 (Banks and Banking), 470 (Racketeer Influenced and Corrupt Organizations), 480 (Consumer Credit), 490 (Cable/Satellite TV), 850 (Securities/Commodities/Exchange), 891 (Agricultural Acts), 893 (Environmental Matters), 896 (Arbitration), and 899 (Administrative Procedures Act/Review or Appeal of Agency Decision).

(2) *Bankruptcy Court*. Bankruptcy cases are eligible for ENE as the bankruptcy judge designates.

(3) *Subject to Change*. The court may change the categories of cases subject to this rule by order.

(c) ENE Administration. A court staff member shall serve as ENE Administrator to oversee the ENE program and perform the duties specified under this rule.

(d) Neutral Evaluators.

(1) ***Appointment.*** The court maintains a roster of neutral evaluators.

(2) ***Eligibility.*** To be eligible for the roster, a person must be:

(A) an attorney admitted to practice for at least 5 years, who has significant trial experience and substantive expertise that serves the ENE program's objectives; or

(B) a non-attorney, or an attorney admitted to practice for less than 5 years, having expertise in a substantive or legal area that serves the ENE program's objectives.

(3) ***Compensation.*** Neutral evaluators are paid $500 per case. Parties share the cost equally. This fee assumes an ENE session of approximately one-half day, related preparation, and submission of an evaluator's report. If the ENE session requires significantly more time, if an additional session is required, or if the parties request a formal evaluation, the parties and the evaluator must agree on any additional compensation.

(4) ***ENE by Stipulation.*** Parties may stipulate to a neutral evaluator of their choosing for an agreed-upon fee if:

(A) the parties file a stipulation with the ENE administrator on or before the date they are required to report their evaluator selection;

(B) all parties and the evaluator sign the stipulation; and

(C) the stipulation contains the following information:

(i) the neutral evaluator's name and address;

(ii) the fee arrangement, which clearly sets forth each party's share of the fees;

(iii) each party's agreement to participate in the evaluation procedure; and

(iv) the evaluator's agreement to perform the ENE in accordance with these rules.

(e) Neutral Evaluator Selection.

(1) ***Choice and Assignment Process.***

(A) The ENE Administrator must send a list of potential evaluators from the

court's roster to the parties after the last answer is filed. The number of evaluators on the list must be one more than the number of "sides" in the litigation. For purposes of this rule, all plaintiffs are one side; all defendants are one side; and all third-party defendants are one side.

(B) Each party must report its selection to the ENE Administrator, in writing, within 14 days from when the list is mailed.

(C) If the parties fail to agree, each "side" may strike one potential evaluator's name, notifying the ENE Administrator, in writing, of the strike within that same 14 days.

(D) The ENE Administrator must assign the selected evaluator or, in the absence of agreement, an evaluator whose name was not stricken, and promptly notify the parties and the evaluator of the designation. The evaluator selection process should be completed quickly to enable the parties to consult with the evaluator in scheduling the ENE session for inclusion in the discovery schedule required by L.R. 26(a)(4)(G).

(2) ***Conflicts of Interest.*** Unless all parties waive objection, no person may serve as a neutral evaluator for a case in which any of the circumstances specified in 28 U.S.C. § 455 exist. An evaluator must promptly disclose disqualifying circumstances to the ENE administrator. A party who believes that a potential or assigned evaluator has a conflict of interest must notify the ENE Administrator within 7 days of learning of the possible conflict; otherwise the party is deemed to have waived objection.

(f) Scheduling and Reporting the Session Date.

(1) ***Midpoint of Discovery.*** The ENE session should take place near the midpoint of the 8-month discovery period on a date convenient for the parties and evaluator.

(2) ***Rescheduling.***

(A) ***No Motion Required.*** The parties may reschedule the ENE session without motion if:

(i) the new date is within 60 days of the original date; and

(ii) rescheduling is not anticipated to affect the trial-readiness date; and

(iii) the parties notify the ENE Administrator, in writing, of the new date.

(B) ***Motion Required.*** A motion to reschedule the ENE session, for good cause, is required if:

(i) the request is for indefinite postponement; or

(ii) the new date requires extension of the trial-readiness date.

(C) ***Other Situations.*** If (A) or (B) do not apply, parties should contact the ENE Administrator.

(g) Attendance at ENE Session.

(1) ***Persons Required to Attend.*** The following persons must attend the ENE session:

(A) ***Individuals.*** The parties, unless excused pursuant to subsection (g)(1)(D) or (g)(3);

(B) ***Corporations.*** When a party is a corporation or not a natural person, a person other than outside counsel who possesses settlement authority and the authority to enter into stipulations for the entity;

(C) ***United States Government.*** When the United States, or an agency or unit thereof, is party to a case, counsel from the United States Attorney's Office who has settlement authority and the authority to enter into stipulations;

(D) ***Insurance Companies.*** In cases involving insurance companies, an insurance company representative with settlement authority. The insured party need not attend if the representative has exclusive settlement authority; and

(E) ***Counsel.*** The attorney for each party who has primary responsibility for handling the trial.

(2) ***Settlement Authority Defined.*** As used in this rule, "settlement authority" means control of the full financial settlement resources involved in the case, including insurance proceeds.

(3) ***Excusal.*** The court may excuse an attorney or party's attendance at the ENE session if:

(A) the person shows undue hardship; and

(B) the person files with the court a written request to be excused at least 21 calendar days before the session date; and

(C) the person is available by telephone during the session; and/or

(D) the person designates, in the written request, a substitute familiar with the case to attend in his or her place, and describes that substitute's familiarity with the case; and

(E) the court grants the request and approves the substitute.

(h) Evaluation Statements.

(1) ***Requirements.*** At least 14 days before the ENE session, each party must submit to the evaluator and serve upon each party, a written evaluation statement. The statement must:

(A) not exceed 10 pages in length (excluding exhibits and attachments);

(B) provide a brief statement of facts;

(C) identify the legal and factual issues in dispute and the submitting party's position relating to those issues;

(D) address whether there are legal or factual issues that, if resolved, would facilitate early settlement or reduce the scope of dispute;

(E) identify the attorney who will represent the party at the ENE session; and

(F) identify the person(s), in addition to counsel, who will attend the ENE session as the party's representative with decision-making authority.

(2) ***Other Matters.*** Parties may include other matters in the statement to assist the evaluator.

(3) ***Important Documents.*** Parties must attach to their statements copies of key documents that gave rise to the action (e.g., contracts) or other materials (e.g., medical reports, photographs) that will assist the evaluator and advance the ENE session's purposes.

(4) ***Statements Not Filed.*** Parties must not file evaluation statements with the court or provide them to the judge.

(i) Process and Procedures at the ENE Session.

(1) ***Structure.*** The evaluator has broad discretion in structuring the ENE session. The session is informal, the rules of evidence do not apply, and there is no formal examination or cross-examination.

(2) ***Preparation.*** Each party must be prepared to fully participate and to discuss realistic estimates of:

(A) case value;

(B) case costs, including, but not limited to, costs of additional discovery, expert witnesses, attorney's fees, other costs associated with trial preparation, and actual trial if settlement efforts are unsuccessful; and

(C) delay that will result if settlement efforts are not successful.

(3) ***Conducting the ENE Session.*** The evaluator must:

(A) permit each party to make an oral presentation of its position;

(B) help the parties to identify areas of agreement and enter a stipulation, where feasible;

(C) assess the strengths and weaknesses of the parties' contentions and evidence and explain the reasons for the assessments;

(D) explore the possibility of settlement using private caucusing and mediation techniques; and

(E) estimate, where feasible, the likelihood of liability and the range of damages.

(4) ***No Settlement.*** If the session does not result in settlement, the evaluator must:

(A) discuss with the parties follow-up measures to facilitate case development or future settlement (e.g. an additional ENE session, formal evaluation, or other ADR procedures); and

(B) help the parties develop an information-sharing or discovery plan to expedite settlement discussions or position the case for efficient disposition by other means.

(5) ***Remedy for Noncompliance.*** A party who has a substantial belief that another party has not complied in good faith with this rule may file a motion to that effect with the court.

(j) Evaluator's Report.

(1) ***Items to Include.*** Within 21 calendar days after the ENE session, the evaluator must file with the court and send to the parties a report (fillable form available on the court's website) that includes:

(A) the date the session took place, including starting and finishing times;

(B) the names of the persons who attended, noting each person's role in the session and identifying each party's representative with decision-making authority;

(C) a summary of any court-approved substitute arrangement regarding attendance;

(D) the date the evaluator received each party's evaluation statement;

(E) notations showing whether each party did or did not make an oral presentation of its position; and

(F) the results of the session, including:

(i) whether full or partial settlement was reached;

(ii) any stipulation to narrow the scope of the dispute; and

(iii) any agreement to limit discovery, facilitate future settlement, or otherwise reduce cost and delay related to trial preparation, including scheduling another ENE session.

(2) ***Items to Exclude.*** The report must not disclose:

(A) the evaluator's assessment of any aspect of the case; or

(B) substantive matters discussed during the session, except as required in (j)(1)(F).

(k) Supplemental Evaluator's Report.

(1) ***Requirements.*** An evaluator may file with the court a Supplemental Evaluator's Report if:

(A) an initial evaluator's report has been filed with the court; and

(B) evaluator diligently continued to work with the parties after the initial session; and

(C) such efforts resulted in partial or full settlement; and

(D) the supplemental report is filed within 60 days from the date of the session.

(l) Confidentiality.

(1) ***ENE Process.*** The ENE process is treated as a settlement negotiation under Fed. R. Evid. 408. All written and oral communications made in connection with or during the ENE process are confidential.

(2) ***Exceptions.*** This section does not apply to any stipulation or agreement to narrow the scope of the dispute, facilitate future settlement, or otherwise reduce cost and delay that was approved by all parties.

(3) ***Evaluation of ENE Process.*** Parties, counsel, insurance representatives, and evaluators may respond to inquiries from persons authorized by the court to monitor or evaluate the ENE program. The sources of data and opinions collected for this purpose will be kept confidential.

Rule 23. Class Actions; General Requirements.

(a) Title. The words "Complaint – Class Action" must appear on the face of the complaint, next to the caption.

(b) Separate Class Allegations. The complaint must contain the following under a separate heading, titled "Class Action Allegations":

(1) ***Rule Citation.*** A reference to the portion of Fed. R. Civ. P. 23 under which the party claims the suit is properly maintainable as a class action.

(2) ***Class Justification.*** Supporting allegations must comply with Fed. R. Civ. P. 23(a).

(c) Other Claims. This rule applies, with appropriate adaptations, to counterclaims or cross-claims brought for or against a class.

Rule 26. Discovery.

(a) Discovery Schedule.

(1) ***Discovery Conference.*** Counsel for the parties must confer as required by Fed. R. Civ. P. 26(f), and jointly prepare and file a single schedule providing for the completion of discovery no later than 8 months after the last answer was filed.

(2) ***Timing of the Discovery Schedule.*** Fed. R. Civ. P. 16(b)(2) requires the court to issue a scheduling order within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared. The Discovery Schedule must be filed by the parties within the earlier of 75 days after any defendant has been served with the complaint or 45 days after any defendant has appeared. If the Discovery Schedule is not filed within that deadline, the case will be set for a scheduling conference. For good cause, any party may file a motion to extend the time to file the Discovery Schedule.

(3) ***Pending Motions.*** Discovery, including the obligation to file a Discovery Schedule, shall not be stayed during the pendency of a Fed. R. Civ. P. 12(b) or (c) motion. A party may request a stay, or phased discovery, until the motion is decided, if a stay or phasing will help to secure the just, speedy, and inexpensive determination of the action. Fed. R. Civ. P. 1. Participation in discovery as required under this rule will not be deemed a forfeiture or waiver of any Fed. R. Civ. P. 12 defenses.

(4) ***Form.*** The Discovery Schedule must conform to the sample Stipulated Discovery Schedule/Order form found on the court's website (see L.R. 84). Discovery Schedules that do not conform will be returned to the parties' counsel for re-submission.

(5) ***Noncompliance.*** Failure to strictly comply with the terms of this section constitutes a waiver of the need for discovery and the case will be scheduled for trial.

(6) ***Final Order.*** Once approved, the discovery schedule becomes the scheduling order required by Fed. R. Civ. P. 16(b).

(7) ***Extensions.*** If additional discovery time is required due to case complexity or other extraordinary circumstances, counsel may move for an extension of time for good cause. Absent exceptional circumstances, requests must be made before the discovery deadline expires.

(b) Third-Party Discovery Schedule.

(1) ***General.*** Third-party proceedings are subject to subsection (a) except that the discovery schedule must be filed no more than 45 days after the third-party answer is filed or the third-party has otherwise appeared.

(2) ***Discovery Completion Deadline.*** The schedule must provide for completion of discovery by the later of:

(A) the date provided by any Discovery Schedule previously approved; or

(B) 3 months after the third-party answer is filed or the third-party has otherwise appeared.

(c) Motions Related to Discovery Procedure.

(1) ***Before Filing.*** A party may not file a Fed. R. Civ. P. 26 or 37 motion unless the filing party has conferred with opposing counsel in a good faith effort to reduce or eliminate the controversy or arrive at a mutually satisfactory resolution.

(2) ***Motion with Affidavit.*** If discovery issues are not resolved, a motion must include an affidavit with the following:

(A) certification that counsel have conferred in good faith to resolve the dispute without court intervention;

(B) dates of consultation with opposing counsel;

(C) names of the participants;

(D) length of time of the conferences;

(E) any issues still unresolved; and

(F) the reasons for the unresolved issues.

(3) ***Supporting Memoranda.*** In addition to complying with L.R. 7, memoranda must include:

(A) a concise statement of the nature of the case; and

(B) a specific, verbatim listing of each discovery item sought or opposed, including the reason the item should be allowed or disallowed, except where the motion is based upon the failures under Fed. R. Civ. P. 37(d).

(d) Designated Portions of Videotaped Deposition Testimony Under Fed. R. Civ. P. 32(a)(6). At least 30 days before trial unless the court orders otherwise, counsel must provide to opposing counsel the designated portions of videotaped depositions they intend to offer at trial. Within 7 business days after service, opposing counsel must both notify the offering party of any objections and provide any counter-designations pursuant to Fed R. Civ. P. 32(a)(6).

Rule 33. Interrogatories to Parties.

The interrogatory must be restated when answering or objecting to it.

Rule 34. Producing Documents.

The request must be restated when responding or objecting to it.

Rule 40. Exhibits.

(a) Marking Exhibits for Trial. All exhibits must be marked prior to trial using the following procedures unless an alternate procedure has been agreed upon at a pretrial conference.

(1) ***Plaintiff's Exhibits*****.** Plaintiffs must mark exhibits numerically: 1-infinity.

(2) ***Defendant's Exhibits*****.** Defendants must mark exhibits with letters: A-Z; A1-A26; B1-B26; C1-C26, etc.

(3) ***Voluminous Exhibits*****.** Parties should bring cases involving voluminous exhibits to the court's attention at the pretrial conference. Exhibits in such cases will be marked as follows:

(A) plaintiffs will be assigned exhibit numbers 1-499; and

(B) defendants will be assigned exhibit numbers 500-infinity.

(4) ***"Sub" Exhibits*****.** The use of "sub" exhibits (e.g. Exhibit 1-A or A-1) is discouraged. If a group of exhibits is related, counsel are encouraged to mark it as one exhibit.

(5) ***Multiple Plaintiffs or Defendants*****.** If a trial involves more than one plaintiff and/or defendant, counsel are encouraged to submit joint exhibit lists. If joint lists are not possible, counsel must confer and decide who will use which sequence of numbers or letters. For example, plaintiff #1 may use the 100 series; plaintiff #2 may use the 200

series; defendant #1 may use the A1-A26 series; defendant #2 may use the B1-B26 series, etc.

(b) Stipulated Exhibits. An exhibit list must indicate stipulated exhibits. Counsel must offer stipulated exhibits for admission prior to trial.

(c) Copies of Exhibit Lists. Prior to trial, counsel must provide exhibit lists to:

(1) each party;

(2) the court;

(3) the courtroom clerk; and

(4) the court reporter.

(d) Exhibit Notebook. If possible, counsel are to prepare a notebook with copies of all exhibits for the court's use during trial.

(e) Photocopying Exhibits During Trial.

(1) ***Limited Photocopying*.** When required by the court for evidentiary purposes, trial counsel may make a limited number of photocopies (generally no more than 10 pages) at the Clerk's Office.

(2) ***Additional Photocopies*.** Photocopies made at the Clerk's Office for the convenience of counsel or parties to a case require payment at the standard judicial conference fee rate of $.50 per page. Payment may be deferred until the final day of trial.

(f) Responsibility for Exhibits.

(1) ***During Trial*.** Counsel must retain custody of all original marked exhibits throughout the trial. To admit an exhibit into evidence, counsel must give it to the courtroom clerk for confirmation of admission either during the trial (time permitting) or during a break in trial. The courtroom clerk confirms admission by placing some identifying mark on the actual exhibit sticker. Once admitted, exhibits remain in the introducing party's custody until the case is submitted to the jury or to the court. Counsel are responsible for keeping all admitted exhibits together in numerical or alphabetical

order until the case is submitted to the jury or to the court.

(2) ***After Trial.*** Responsibility for custody of all exhibits reverts back to the parties at the conclusion of the proceeding. Should any exhibits remain in court custody, the courtroom clerk will either notify counsel that the exhibits should be removed by a certain date or mail them to counsel. Without further notice, the court may dispose of exhibits that are not removed after notification.

(g) Non-permanent Diagrams as Exhibits. To make a record of a chalk or other non-permanent diagram, the court may permit counsel to copy or photograph it.

Rule 42. Consolidation of Cases; Subsequent Filings.

(a) Consolidated Cases.

(1) ***Notice.*** Counsel must inform the court of cases pending in other courts or other judicial fora related to the case before this court. A related case must be noted on the Civil Cover Sheet [form JS 44]. If a related case becomes known subsequently, the court must be apprised by separate notice.

(2) ***Consolidation.*** If two or more cases are related, the court may enter an order of consolidation on its own motion or upon motion of a party.

(3) ***Lead Case.*** The order of consolidation must list chronologically all related cases in its caption. The clerk will enter the order into the file of each affected case. Unless otherwise indicated by the judge, the oldest case is the lead case.

(b) Subsequent Filings.

(1) ***Docketing.*** After consolidation, all subsequent filings will be docketed only in the lead case.

(2) ***Format.*** The caption for all filings must list consolidated cases chronologically.

Rule 45. Subpoena of Witnesses in *In Forma Pauperis* Cases or *Pro Se* Cases.

(a) In General. At least 30 days before the trial or hearing, if a party proceeding *in forma pauperis* or *pro se* requires the attendance of any witness by subpoena or writ, the party must file:

(1) a witness list containing:

(A) the name of the witness(es);

(B) their address(es); and

(C) their inmate number(s) if applicable; and

(2) a brief statement of each witness's expected testimony.

(b) Declining to Subpoena. The court may decline to subpoena a witness whose proposed testimony is immaterial or repetitive.

(c) Subpoena Costs. In an order to subpoena witness testimony in indigent criminal cases and 28 U.S.C. §§ 2254-55 *in forma pauperis* cases, the court will direct the U.S. Marshals to pay all witness, service, and subpoena fees.

Rule 47. Jury Costs in Civil Actions.

If a case is settled or otherwise disposed of after a jury has reported for duty, the court may assess jury costs to one or more of the parties if, after a hearing, it determines that an earlier disposition was reasonably possible.

Rule 51. Requests for Jury Instructions.

(a) Requests. Requests for jury instructions must be filed at least 14 days before the scheduled trial date.

(b) Waiver. Absent exceptional circumstances, failure to file timely requests for jury instructions may result in a waiver of a party's right to file such a request.

Rule 52. Findings of Fact and Conclusions of Law by the Court.

Absent leave from the court, when trial is by the court, parties must submit proposed findings of fact and conclusions of law at least 14 days before the scheduled trial date.

Rule 54. Taxable Costs; Taxation on Appeal.

(a) Taxable Costs. Taxable costs are limited to those specified by 28 U.S.C. § 1920 and must be claimed using the Bill of Costs [Form AO-133]. All costs must be itemized and include supporting documentation, such as billing statements, invoices, or receipts for expenses.

(b) Appealed Cases. For cases on appeal, costs will be taxed under 28 U.S.C. § 1920 and Fed. R. App. P. 39(e) after the appellate court issues a final order or mandate.

Rule 55. Default Judgment.

(a) Clerk's Entry of Default. When a party is entitled to default judgment under Fed. R. Civ. P. 55(b)(1) or Fed. R. Civ. P. 55(b)(2), that party must first obtain a clerk's entry of default under Fed. R. Civ. P. 55(a). An application for a clerk's entry of default must include a statement explaining the basis for entitlement to an entry of default.

(b) By the Clerk.

(1) *Documents to Submit.* When a party is entitled to default judgment under Fed. R. Civ. P. 55(b)(1), that party must submit:

(A) an application for entry of default judgment;

(B) a proposed default judgment with a statement containing the following:

(i) the amount due, not exceeding the amount of the original demand; and crediting any payments, showing the amounts and dates of them;

(ii) a computation of accrued interest as of the proposed judgment date; and

(iii) any claimed costs and taxable disbursements.

(C) an affidavit containing the following:

(i) the party against whom judgment is sought is not an infant, an incompetent person, or in the military;

(ii) the party against whom judgment is sought has defaulted by not appearing or defending;

(iii) the amount shown in the statement is justly due and no amount has been paid except as stated; and

(iv) the disbursements sought to be taxed have been made or necessarily will be made in the future.

(2) ***Consultation and Referral to District Judge.*** If the clerk determines that it may not be appropriate to enter a default judgment under Fed. R. Civ. P. 55(b)(1), the clerk may confer with a district judge. The district judge will advise the clerk whether default judgment under Rule 55(b)(1) is appropriate. If such a judgment is not appropriate, the clerk shall so notify the applicant, who may then proceed to move for default judgment under Fed. R. Civ. P. 55(b)(2), in accordance with subsection (c).

(c) By the Court. When a party requests the court enter a default judgment, that party must submit the following documents:

(1) a copy of the clerk's entry of default;

(2) a motion for entry of default judgment; and

(3) a proposed default judgment order.

Rule 56. Summary Judgment; Notice to *Pro Se* Litigants Opposing Summary Judgment.

(a) Statement of Undisputed Facts. Any motion for summary judgment, except motions concerning claims challenging administrative actions under the Administrative Procedures Act, must be accompanied by a separate and concise statement of undisputed material facts. Failure to submit a statement of undisputed facts constitutes grounds for denial of the motion.

(b) Statement of Disputed Facts. A party opposing summary judgment or a motion under Fed. R. Civ. P. 12(b)(6) or 12(c) that has been converted to a summary judgment motion must provide a separate, concise statement of disputed material facts.

(c) Support of Statement. The statement required in subsections (a) and (b) above must be supported as required by Fed. R. Civ. P. 56 (c) as effective December 1, 2010.

(d) Time for Filing. Summary judgment motions must be filed according to the schedule specified in L.R. 26(a)(4)(J).

(e) Required Notice for *Pro Se* Litigants. Any represented party filing a motion for summary judgment, or a motion to dismiss under Fed. R. Civ. P. 12(b)(6) or 12(c) that is converted to a motion for summary judgment against a *pro se* party must serve and file the document reproduced below. That document, the "Notice to *Pro Se* Litigant Opposing Motion for Summary Judgment," must be filed together with the papers in support of the motion. Where the *pro se* party is not the plaintiff, the movant must amend the form as necessary to reflect that fact.

Notice to *Pro Se* Litigant Opposing Motion for Summary Judgment

The defendant in this case has moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. This means that the defendant has asked the court to decide this case without a trial, based on written materials, including affidavits, submitted in support of the motion. THE CLAIMS YOU ASSERT IN YOUR COMPLAINT MAY BE DISMISSED WITHOUT A TRIAL IF YOU DO NOT RESPOND TO THIS MOTION by filing your own sworn affidavits or other papers as required by Fed. R. Civ. P. 56(e) and Local Rule 56(b). An affidavit is a sworn statement of fact based on personal knowledge that would be admissible as evidence at trial. The full text of Rule 56 is attached.

Briefly, Rule 56 provides that you may NOT oppose summary judgment simply by relying upon the allegations in your complaint. Rather, you must submit evidence, such as witness statements or documents, countering the facts asserted by the defendant and raising issues of fact for trial. Any witness statements, which may include your own statements, must be in the form of affidavits. You may submit affidavits that were prepared specifically in response to defendant's motion for summary judgment. Any issue of fact that you wish to raise in opposition to the motion for summary judgment must be supported by affidavits or other documentary evidence contradicting the facts asserted by the defendant. You may also file a memorandum of law in opposition to defendant's motion for summary judgment [pursuant to L.R. 7(a)(3)(A)].

Your response is due within 30 days pursuant to Local Rule 7(a)(3). If you do not respond to the motion for summary judgment on time with a statement of disputed facts and affidavits or documentary evidence contradicting the facts asserted by the defendant, the court may accept defendant's factual assertions as true. Judgment may then be entered in defendant's favor without a trial.

Rule 67. Deposit of Funds with the Court.

(a) Deposit into Court Registry Fund. Unless the parties stipulate otherwise, money paid into the court under Fed. R. Civ. P. 67 and this rule will be deposited into the court's Registry utilizing

the Court Registry Investment System (CRIS). CRIS funds are pooled nationally and are invested in U.S. Treasury securities.

(b) Alternative Deposits.

(1) *Stipulation*. A party wishing to invest funds using a private financial institution must provide the court with a stipulation and obtain the consent of all parties to the case. The stipulation must contain:

(A) the form of the interest-bearing account or instrument;

(B) the name and address of the financial institution where funds are to be invested;

(C) for IRS reporting, the name, address, and social security or taxpayer identification number of the person or party responsible for the investment earnings;

(D) if existing insurance coverage is insufficient to insure the principal invested, the form of collateral guaranteeing the investment principal, conforming to authorized Treasury standards under 31 C.F.R. Part 202; and

(E) any other information applicable to the facts and circumstances of the case that relates to the funds to be invested.

(2) *Responsibility for Opening Account.* Upon approval of the stipulation, the clerk of court or other individual designated by the court is responsible for opening the investment account and serving as custodian.

(c) Charge. A charge will be assessed for deposits made pursuant to subsection (b) of this rule under the schedule of Registry fees set forth by 28 U.S.C. § 1914.

Rule 72. Duties of Magistrate Judge; Referral of Cases to Magistrate Judge; Objections to Report and Recommendations of Magistrate Judge.

(a) Duties.

(1) *General Authorization*. The full-time United States magistrate judge is authorized to exercise all the powers and perform all duties conferred upon magistrate judges by 28

U.S.C. § 636, and to exercise the powers stated in the rules governing proceedings under 28 U.S.C. §§ 2254 and 2255.

(2) ***Other Duties.*** A magistrate judge is also authorized to:

(A) exercise general supervision of civil and criminal calendars and decide motions to expedite or postpone trials;

(B) conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in civil and criminal cases;

(C) conduct arraignments in criminal cases not triable by the magistrate judge and take not guilty pleas in such cases;

(D) impanel grand juries and receive grand jury returns under Fed. R. Crim. P. 6(f);

(E) accept waivers of indictment under Fed. R. Crim. P. 7(b);

(F) conduct *voir dire* and select petit juries for the court;

(G) accept petit jury verdicts in civil cases in the absence of a judge;

(H) conduct necessary proceedings leading to the potential revocation, termination, or modification of supervised release;

(I) issue subpoenas, writs of habeas corpus *ad testificandum* or habeas corpus *ad prosequendum*, or other orders necessary to obtain the presence of parties, witnesses, or evidence for court proceedings;

(J) order the exoneration or forfeiture of bonds;

(K) order the withdrawal of funds from the court's registry;

(L) conduct examinations of judgment debtors in accordance with Fed. R. Civ. P. 69; and

(M) perform any additional duty consistent with the Constitution and laws of the United States.

(b) Absence or Unavailability of the Judge. During the absence or unavailability of either the chief judge or district judge, all civil and criminal cases are referred to the magistrate judge under 28 U.S.C. § 636(b)(1).

(c) Objections to Report and Recommendations. An objection to a report and recommendation of the magistrate judge must be served on all parties and upon the magistrate judge.

Rule 73. Direct Assignment of Civil Cases to the Magistrate Judge; Notification of Assignment; Voluntary Consent; Objections; Magistrate Judge's Authority; Automatic Referrals to Magistrate Judge.

(a) Direct Assignments. The clerk's office is directed to assign a percentage of civil cases directly to the magistrate judge, excluding bankruptcy appeals, cases filed pursuant to 28 U.S.C. §§ 2254 and 2255 or challenging the conditions of confinement of prisoners, and cases seeking an immediate temporary restraining order. The exact percentage of direct assignments shall be determined periodically by the judges of the court.

(b) Notification. Notification of direct assignment will be given by service of the "Notice of Assignment" form. The clerk's office will return to the plaintiff sufficient copies of the form for each party, which the plaintiff must then serve with the complaint. Each party must execute the form, indicating their consent or objection, and return it to the clerk's office.

(c) Voluntary Consent. Consent to assignment to the magistrate judge is strictly voluntary and no adverse consequences of any kind will come to any attorney or party who objects to an assignment. Return of the executed form to the clerk's office is *mandatory*, however, whether the party chooses to consent or object to the assignment.

(d) Objections. If any party objects to the assignment, the case will be reassigned to a district judge and a new case will be directly assigned to the magistrate judge as a replacement.

(e) Magistrate Judge's Authority. The magistrate judge will exercise all authority under 28 U.S.C. § 636(b) from the date the case is filed until all executed forms have been returned. Once it is confirmed that all forms have been returned and there are no objections to the assignment, the magistrate judge will exercise all authority pursuant to 28 U.S.C. § 636(c).

(f) Automatic Referrals to Magistrate Judge. Referral of any case or matter to the magistrate judge is by court order, except actions arising under 28 U.S.C. §§ 2254 and 2255 or challenging the conditions of confinement of prisoners.

Rule 74. Certifying Questions of State Law.

(a) Authorization. When authorized by state law, the court may certify to the state's highest court an unsettled and significant question of state law that will control the outcome of a pending case.

(b) Procedure.

(1) ***Who May Certify.*** The court may certify a question:

(A) on its own motion; or

(B) upon written motion of a party.

(2) ***State Law Governs Certification Procedures.*** State law or court rules govern certification procedures.

(c) Stay. The court may grant a stay pending the state court's decision whether to accept the certified question and its decision of the certified question.

Rule 77. Orders by the Clerk.

In addition to the clerk's authority to issue orders under Fed. R. Civ. P. 77(c)(2), the clerk may issue the following orders without further direction from the court:

(a) Stipulated Motions. Orders granting stipulated, non-dispositive motions that do not alter a previously established deadline; and

(b) Criminal Scheduling Orders. Scheduling orders in criminal cases if a judge is absent or unavailable.

Rule 81. Removed Actions.

(a) Filing. A notice of removal must be accompanied by:

(1) all documents required by 28 U.S.C. § 1446(a);

(2) the filing fee payable to "Clerk, U.S. District Court"; and

(3) a Civil Cover Sheet [form JS 44].

(b) State Court Record. The clerk may request the complete file directly from the state court and instruct it to bill the removing attorney for any associated costs.

Rule 83.1. Admission of Attorneys.

(a) Admission of Attorneys.

(1) ***Qualifications.*** Subject to subsection (2), the following attorneys, whose professional character is good, may be admitted to practice in this court:

(A) any attorney of the Bar of the State of Vermont; or

(B) any attorney of the Bar of a federal district court in the First and Second Circuits.

(2) ***Procedure.*** An applicant who meets the qualifications above must comply with the following procedure:

(A) Application. An attorney seeking admission to the Bar of this court must file with the clerk of this court a written application for admission in the form prescribed by the judges of this court. A certificate of good standing from the bar in the state in which the applicant has his/her primary office must be included with the application.

(B) Supporting Affidavit. The application must also be accompanied by an affidavit setting forth the following information:

(i) the applicant's residence and office address, office telephone number, fax number, and email address;

(ii) a list of courts to which the applicant has been admitted to practice;

(iii) the applicant's legal training and experience at the bar;

(iv) the applicant's representation that he or she has fully reviewed and is familiar with the Federal Rules of Civil and Criminal Procedure, the Local Rules of The United States District Court for the District of Vermont, and the Vermont Rules of Professional Conduct;

(v) the applicant has never been convicted of any crimes or violations, other than minor traffic infractions not involving damage to persons or property;

(vi) the applicant has no prior or pending disciplinary complaint(s) as to which a finding has been made that the complaint(s) should proceed to a hearing; and

(vii) the applicant has not been denied admission to, been disciplined by, resigned from, surrendered his license to practice before, or withdrawn an application for admission to practice while facing a disciplinary complaint before, this court or any other court.

If the applicant cannot so state as to (B)(v), (vi) and (vii), then the applicant must describe in full the circumstances of any conviction, complaint, denial, discipline, resignation, surrender, or withdrawal, including the reasons therefor. The applicant must also describe any penalty, sanction, or other discipline imposed, whether the discipline was satisfied, and whether the attorney is currently in good standing in the relevant jurisdiction(s). The judges of this district or their designee shall make an inquiry as they deem appropriate. It shall take a majority vote of the judges to admit the applicant to this Bar. For the purpose of this Rule, "minor traffic infractions" will mean motor vehicle violations which are neither felonies nor misdemeanors.

(C) Sponsoring Attorney. The application and affidavit of the applicant must be accompanied by an affidavit of a sponsoring member of the Bar of this court. The sponsoring attorney's affidavit must attest:

(i) where and when the sponsor was admitted to practice in this court;

(ii) that the sponsor has known the applicant in a professional legal capacity for at least six months;

(iii) that the applicant has good professional character;

(iv) that the applicant is experienced at the bar;

(v) how long and under what circumstances the sponsor has known the applicant's professional character and experience as an attorney; and

(vi) that the sponsor knows of no fact which would call into question the integrity or character of the applicant.

(D) Fee. A non-refundable fee (see Fee Schedule), payable to "Clerk, U.S. District Court," must accompany the application for admission.

(E) Verification. The clerk will examine the application and affidavits and, if found to be in compliance with this Rule, the application for admission will be presented to the court at a time and place selected by the clerk.

(F) Oath. When a hearing is held on an application, a member of the Bar of this district shall move the admission of the applicant. The applicant must take an oath in open court to support the Constitution and laws of the United States of America, and to discharge faithfully the duties of an attorney according to the law and the recognized standards of ethics of the profession.

(3) *Certificate.* If the application for admission is granted by the court, the attorney will receive by mail a formal certificate of admission and a letter containing the attorney's federal bar number.

(4) *Duty to Notify.* Any attorney admitted to the bar of this court must promptly disclose to the court any discipline imposed by any other court of the United States, by a court of any state, territory, or commonwealth of the United States, or by a bar of any jurisdiction.

(b) Admission of Attorneys *Pro Hac Vice.*

(1) *Application for Admission.* Subject to subsection (2), an attorney who is a member in good standing of the Bar of any federal court, or of the highest court of any state, may apply for *pro hac vice* admission.

(2) *Procedure.* An attorney seeking *pro hac vice* admission to this court who satisfies the above requirements must comply with the following procedure:

(A) Motion. A member in good standing of the Bar of this court who is actively associated with the attorney seeking *pro hac vice* admission must file a motion making the request.

(B) Supporting Affidavit. The attorney seeking admission must attach to the motion an affidavit containing the following information:

(i) the proposed visiting attorney's office address, telephone number, fax number, and e-mail address;

(ii) the bar of each court the attorney is and has ever been a member, and his or her corresponding bar identification number(s);

(iii) the attorney has no pending disciplinary complaints as to which a finding has been made that the complaint should proceed to a hearing;

(iv) the attorney has not been denied admission to, been disciplined by, resigned from, surrendered his or her licence to practice before, or withdrawn an application for admission to practice before this court or any other court, while facing a disciplinary complaint; or, if the visiting attorney cannot so state, then the visiting attorney must describe in full the circumstances of any complaint, denial, discipline, resignation, surrender, or withdrawal, including the reasons therefor, any penalty, sanction or other discipline imposed, whether the discipline was satisfied, and whether the attorney is currently in good standing in the relevant jurisdiction(s);

(v) the attorney has fully reviewed and is familiar with the Federal Rules of Civil and Criminal Procedure, the Local Rules of The United States District Court for the District of Vermont, and the Vermont Rules of Professional Conduct; and

(vi) designating the sponsoring attorney as his or her agent for service of process and the District of Vermont as the forum for the resolution of any dispute arising out of said attorney's admission.

(C) Fee. A non-refundable fee (see Fee Schedule), payable to "Clerk, U.S. District Court," must accompany the motion for *pro hac vice* admission.

(D) Certificate of Good Standing. A certificate of good standing from the court of the state in which the attorney has his or her primary office must be included with the motion.

(3) ***Revocation.*** The court may revoke a *pro hac vice* admission for good cause at any time without a hearing.

(4) ***Required Association with Local Counsel.***

(A) An attorney admitted *pro hac vice* must remain associated in the action with a member of the Bar of this court at all times.

(B) The local attorney must also sign all filings and attend all court proceedings.

(C) The court may waive the provision in (B) for good cause shown.

(5) ***Special Allowance for Original Pleadings*.** An attorney seeking *pro hac vice* admission may file original pleadings, but the time for filing a responsive pleading does not commence until the court receives the associated local attorney's notice of appearance.

(c) Admission of Attorneys for the United States. An attorney employed by an agency of the United States Government may be admitted to practice in this court if:

(1) the United States Attorney for the District of Vermont files a motion;

(2) the attorney takes the proper oath;

(3) the attorney is admitted to practice before a United States district court;

(4) the attorney's professional character is good; and

(5) the attorney is not subject to any pending disciplinary proceedings.

(d) Fee Waived for Attorneys for the United States. An attorney employed by an agency of the United States Government applying to practice before this court under section (a), (b), or (c) will be admitted without payment of an application fee.

(e) Law Student Internship and Law Clerk Practice.

(1) ***Requirements to Appear*.** An eligible law student or law clerk may appear on behalf of a party if the student or law clerk:

(A) registers as an intern under the requirements of the Rules of Admission to the Bar of the Vermont Supreme Court;

(B) is supervised by a member of the bar of this court; and

(C) has the party's written consent.

(2) ***Law Student Eligibility*.** A law student is eligible to appear if the student:

(A) is enrolled in good standing in a law school approved by the American Bar Association;

(B) has completed legal studies equivalent to two semesters of credit in a law school approved by the American Bar Association; and

(C) is not employed or compensated by a client. This rule does not prevent an attorney, legal aid bureau, law school, public defender, or other agency from compensating a law student.

(3) ***Law Clerk Eligibility*.** A law clerk is eligible to appear if the clerk:

(A) graduated from a law school approved by the American Bar Association and is in the process of completing the clerkship law study requirements of the Rules of Admission to the Bar of the Vermont Supreme Court; or

(B) completed legal clerkship and studies amounting to at least three years under the Rules of Admission to the Bar of the Vermont Supreme Court under the supervision of a member in good standing of the Bar of the State of Vermont;

(C) is not employed or compensated by a client. This rule does not prevent an attorney, legal aid bureau, law school, public defender, or other agency from compensating a law clerk; and

(D) in the case of a law clerk described in part (e)(3)(B), appears only in matters involving Titles 2 and 16 of the Social Security Act as amended.

(4) ***Supervising Attorney*.** The attorney who supervises a law student or law clerk must:

(A) be a member of the Bar of this court or of the United States District Court for the district in which the intern's law school is located;

(B) assume personal professional responsibility for the student's or law clerk's work;

(C) assist the student or law clerk to the extent necessary;

(D) introduce the student or law clerk to the court at the person's first appearance;

(E) appear with the student or law clerk at all subsequent court appearances unless the court waives this requirement;

(F) give written consent to supervise the student or law clerk;

(G) sign any filed document prepared by the student or law clerk; and

(H) notify the court in writing when the student or law clerk's eligibility has terminated under subsection (6).

(5) ***Eligible Duties*.** A law student or law clerk who meets the requirements of this section may:

(A) appear as counsel in court or at other proceedings; and

(B) prepare and sign court filings and other documents in connection with these matters.

(6) ***One Year Limit.*** A law student or law clerk's eligibility to appear under these rules expires:

(A) One year after the law student has graduated from a law school approved by the American Bar Association; or

(B) after the law clerk has pursued four years of legal studies in Vermont under the supervision of a practicing Vermont attorney under Rule 6(g)(1) of the Rules of Admission to the Bar of the Vermont Supreme Court.

Rule 83.2. Security.

The purposes of this Local Rule are to promote security for all persons who enter federal courthouses (or the portions of federal buildings occupied by the District Court), to protect the integrity of judicial proceedings, to facilitate legitimate use of electronic devices for communication or for the storage, retrieval, or presentation of information, and to comply with the mandates of the Federal Rules of Criminal Procedure and the policies of the Judicial Conference of the United States.

(a) Courthouse Security.

(1) ***Screening and Search.*** All persons entering a federal courthouse in this district and all items carried by them are subject to appropriate screening and search by a law enforcement officer. Persons may be requested to provide identification and to state the nature of their business in the courthouse. Anyone refusing to cooperate with these security measures may be denied entrance to the courthouse.

(2) ***Photographs and Broadcasting.*** Unless the court grants permission, no person may take photographs or use broadcast equipment within a federal courthouse. This prohibition does not apply to non-court federal agency tenants within their space. When use is necessary, tenants must coordinate use of such equipment with the United States Marshals Service.

(3) ***Weapons Prohibited.*** No weapons are permitted in a courtroom, except:

(A) when carried by United States Marshals Service personnel or a person

specifically authorized by the United States Marshals Service; or

(B) when they are used as exhibits. The custodian must render the weapon inoperative and present it for a safety check by United States Marshals Service personnel before introducing the weapon as an exhibit.

(4) ***Other Prohibited Items.*** Unless the court gives permission, the following are prohibited in a courtroom:

(A) cameras;

(B) video cameras;

(C) recording equipment;

(D) dictaphones;

(E) pagers;

(F) cellular phones and smartphones;

(G) personal digital assistants; and

(H) computers and tablets.

(5) ***Grand Jury Security.*** The secrecy of the grand jury proceedings is a matter of preeminent concern. When a grand jury is convened, the surrounding area is restricted to law enforcement officers, participating attorneys, witnesses, and court employees. The United States Marshals Service and Court Security Officers may secure the floor of the grand jury session as necessary to preserve the secrecy and protect witnesses from any unwanted interference.

(b) Possession and Use of Electronic Devices.

Possession and use of electronic devices is prohibited except in accordance with this Local Rule.

(1) ***Federal Rules and Judicial Conference Policy.*** The Federal Rules of Criminal Procedure prohibit the taking of photographs in the courtroom during judicial proceedings or the broadcasting of judicial proceedings from the courtroom. Judicial Conference Policy states that courtroom proceedings in civil and criminal cases may not be broadcast, televised, recorded, or photographed for the purpose of public dissemination.

As technology advances, there are an ever-growing number of wireless communication devices that have the capability of recording and/or transmitting sound, pictures, and video. Many of these devices are also capable of wireless Internet access. In order to

enforce the Federal Rules of Criminal Procedure and Judicial Conference Policy, this Local Rule sets forth the limitations on the use of electronic devices inside United States Courthouses within the District of Vermont.

(2) ***Definition of Electronic Devices.*** As used in this Local Rule, the phrase "electronic device" embraces all equipment (regardless of how it is powered or operated) that can be used for:

(A) wireless communication; or

(B) receiving, creating, capturing, storing, retrieving, sending, or broadcasting any signals or any text, sound, or images; or

(C) accessing the Internet or any other network or off-site system or equipment for communicating or for storing or retrieving information.

(3) ***Possession of Electronic Devices.*** Subject to court security screening procedures, court officials, law enforcement, members of the Bar of the United States District Court for the District of Vermont, and credentialed members of the media in possession of Media Identification Cards issued by the Clerk of the Court may bring electronic devices into the courthouse. Devices must remain in the possession of the permitted individual. Jurors will be allowed to bring their cell phones into a courthouse; however, all cell phones must be turned over to the Court Security Officers.

(4) ***Use of Electronic Devices.*** Subject to court security screening procedures and to other provisions of this Local Rule, permitted individuals may use electronic devices in a non-disruptive manner in the common areas of the building. With the exception of court personnel, court reporters, Court Security Officers, and U.S. Marshals, **no electronic device may be used to record or photograph any judicial proceeding or courtroom for any purpose without express permission, in advance, from the presiding judge**.

(A) Counsel who wish to use electronic devices in any courtroom during and in connection with judicial proceedings must secure permission, in advance, from the presiding judge.

(B) Cell phones, pagers, and other electronic communication devices may not be activated inside courtrooms. Such devices may also not be used in any mode that uses any sound to alert the user to incoming communication.

(C) Except as authorized for the taking of the official record of judicial

proceedings or grand jury deliberations by a court reporter or court recording operator, no part of any judicial proceedings or any deliberations by a petit jury or a grand jury may be recorded or transmitted.

(D) Petit Jurors may not use or possess any electronic device during or in connection with any proceeding. On a case-by-case basis, access to a juror's cellphone may be allowed by the presiding judge for specific purposes, such as arranging transportation or child care.

(E) Grand jurors may not use or possess any electronic device during or in connection with any proceeding.

(F) Requests to bring electronic devices into a courtroom by a pro se party to a case will be allowed only upon application to and permission from the presiding judge.

(G) At the discretion of the presiding judge, in certain cases where the use of an overflow room is necessary for spectators and the media, the court may permit the use of closed-circuit television linking the courtroom with another location. The restrictions on the use of electronic devices as outlined in this Local Rule will apply to the overflow rooms.

(H) The court may allow the use of cameras and other equipment during ceremonial proceedings, including naturalization proceedings, mock trials, or a judge's investiture. Permission to bring this equipment into the courthouse for these proceedings must be arranged through the United States Marshals Service or the Clerk of Court.

(I) Except as provided in Section (b)(4)(H), photographs and video may not be taken and images may not be captured by any means in the courthouse except in non-court federal agency tenant space and chambers as coordinated through the United States Marshals Service.

(5) ***Sanctions.*** Unauthorized use of an electronic device during a court proceeding may be subject to contempt proceedings before the presiding judge or another judicial officer designated by the presiding judge. Any person violating this policy in a courtroom shall be immediately removed from the courtroom and may lose the privilege of keeping an electronic device on his or her person while at the federal courthouses in the District.

(6) ***Media Identification Card.*** A non-transferable Media Identification Card allows members of the media who have been issued such cards to possess electronic devices for use in designated areas within the courthouse. Media Identification Cards will be valid for three years unless requested and issued for the duration of a particular event or case. Cards will be issued to approved members of a recognized media provider who have a need for an identification card in order to fulfill their various assignments. Media Identification Cards will not be granted to individuals who are employed in the business, advertising, or circulation departments of media providers.
Application instructions, requirements and an application form for Media Identification Cards are available at any Clerk's Office location or from the court's website, www.vtd.uscourts.gov.

Rule 83.3. Judicial Misconduct.

Complaints alleging judicial misconduct or disability are governed by 28 U.S.C. § 351(a) and the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability. Additional information is provided at the circuit court website: www.ca2.uscourts.gov at the link Judicial Misconduct.

Rule 83.4. Miscellaneous Fees.

Fees not otherwise listed in these rules have been established by the Judicial Conference of the United States Courts and are set forth at the fee schedule incorporated by 28 U.S.C. § 1914. The court's official fee schedule can also be found at the court's website: www.vtd.uscourts.gov.

Rule 83.5. Communication with Jurors

Parties, attorneys, their agents and representatives shall not contact jurors before, during, or after a trial without first obtaining the written permission of the trial judge.

Rule 84. Availability of Forms.

All forms referenced in these rules are available from each of the court's three court locations (Burlington, Brattleboro or Rutland) or from the court's website: http://www.vtd.uscourts.gov.

Rule 85. Title and Citation.

Refer to these rules as the “Local Rules of the United States District Court for the District of Vermont.” Cite local civil rules as “L.R.____.” Cite local criminal rules as “L.Cr. R.____.”

Rule 86. Effective Date; Relationship to Prior Rules.

(a) Effective Date. These local rules become effective as revised on April 15, 2013.

(b) Relationship to Prior Rules. These local rules govern all actions filed after the effective date and supersede all previous local rules and related orders. They do not apply to pending actions unless justice requires.

II. CRIMINAL RULES

Rule 1. Scope and Purpose; Applicability of the Rules of Civil Procedure.

(a) Scope and Purpose. These local rules are in addition to and supplement the Federal Rules of Criminal Procedure.

(b) Applicability of Rules of Civil Procedure. The Local Rules of the United States District Court for the District of Vermont and the Federal Rules of Civil Procedure, to the extent that they are applicable directly or by analogy, govern criminal procedures unless they conflict with any United States statute or a Federal Rule of Criminal Procedure. If a conflict exists, the statute or Federal Rule of Criminal Procedure governs. Any party asserting a conflict must call it to the Court's attention in writing and suggest an equitable resolution.

Rule 16. Discovery.

At the time of arraignment, the court will issue to all parties a standard Criminal Pretrial Order, which sets forth this court's criminal discovery procedures.

(a) Discovery from the Government. Unless the court orders otherwise, the government must make the following materials available to the defendant for inspection and copying within 14 days of arraignment:

(1) ***Fed. R. Crim. P. 16(a) and Fed. R. Crim. P. 12(b)(4) Information.*** All discoverable information within the scope of Fed. R. Crim. P. 16(a) and notice of the government's intent to use this evidence pursuant to Fed. R. Crim. P. 12(b)(4), so the defendant has an opportunity to file motions to suppress evidence;

(2) ***Brady Material.*** All information and material known to the government that may be favorable to the defendant on the issues of guilt or punishment, as provided by *Brady v. Maryland*, 373 U.S. 83 (1963);

(3) ***Names and Addresses of Witnesses.*** A list of the names and addresses of witnesses the government intends to call in its case in chief. The government may withhold the names and/or addresses of those witnesses about whom it has substantial concerns. If names and/or addresses are withheld, the government must notify the defense of the

number that have been withheld;

(4) ***Search Warrant and Objects.*** All warrants, applications with supporting affidavits, testimony under oath, returns, and inventories for search and/or seizure of the defendant's person, property, or items that the defendant may have standing to move to suppress; and

(5) ***Electronic Surveillance Documents and Objects.*** Notice of any electronic surveillance conducted pursuant to 18 U.S.C. Chapter 119, plus all authorizations, applications, orders, returns, inventories, logs, transcripts, and recordings obtained pursuant to such surveillance that the defendant may have standing to move to suppress.

(b) Discovery from Defendant.

Unless within 5 days of arraignment a defendant refuses discoverable materials under Fed. R. Crim. P. 16(a)(1)(E) - (G) in writing, the defendant must make available to the government, within 21 days of arraignment:

(1) ***Fed. R. Crim. P. 16(b) Material.*** All discoverable information within the scope of Fed. R. Crim. P. 16(b); and

(2) ***Names and Addresses of Witnesses.*** The names, addresses, and birth dates of all witnesses the defendant plans to call in its case in chief.

(c) Notice Required of Defendant. Within 21 days of arraignment, the defendant must provide written notice as required by Fed. R. Crim. P. 12.1, 12.2, and 12.3.

(d) Government Pretrial Disclosures. Unless the court orders otherwise for good cause, the government must provide to the defendant not less than 14 days prior to the start of jury selection:

(1) ***Giglio Material.*** All material within the scope of *United States v. Giglio*, 405 U.S. 150 (1972), including but not limited to information relating to:

(A) the existence and substance of any payments, promises of immunity, leniency, preferential treatment, or other inducements made to a testifying witness;

(B) the content of substantially inconsistent statements that a witness has made concerning issues material to guilt or punishment; and

(C) any criminal conviction of a witness or other instance of misconduct, of which the government has knowledge, and which may be used to impeach a witness

pursuant to Fed. R. Evid. 608 and 609.

(2) ***Fed. R. Evid. 404(b) Notice.*** The government must advise the defendant of its intention to introduce Fed. R. Evid. 404(b) evidence in its case in chief. This requirement replaces the defendant's duty to demand such notice.

(e) Continuing Duty to Disclose. Prior to or during trial, each party must promptly notify opposing counsel if the party discovers additional evidence or material required to be provided or disclosed pursuant to this Rule; each party must provide notice and access to the evidence or material for inspection and copying.

(f) Discovery Motions. No attorney may file a discovery motion or a request for a bill of particulars without first conferring with opposing counsel and providing the court with a certification stating the names of all participating parties and the date, time, and place of the conference. This rule does not apply to motions pursuant to Fed. R. Crim. P. 16(d)(1).

(g) Motions to Continue. No continuance or extension will be granted under 18 U.S.C. § 3161 (the Speedy Trial Act) unless a party submits a motion or stipulation.

(1) ***Motion or Stipulation Requirements.*** The motion or stipulation must set forth the following:

(A) the appropriate exclusionary provision of the Speedy Trial Act;

(B) the facts that would warrant the court to grant the requested relief; and

(C) a statement that defendant recognizes that any additional time granted will be excluded from computation under the Speedy Trial Act.

(2) ***Proposed Order Requirement.*** Counsel must also submit a proposed order stating the time to be excluded and the basis for the exclusion. If the exclusion affects the trial date, the stipulation or proposed order must include a space for the court to enter a new trial date in accordance with the excludable time period.

(h) Pretrial Filing and Stipulation Requirements.

(1) ***Exchange and File.*** Within 3 days of the trial date, counsel for each party must exchange and file with the court:

(A) *voir dire* requests;

(B) requests to charge, the need for which was not apparent prior to trial (such requests do not prejudice the parties' right to submit additional requests at the conclusion of the evidence); and

(C) a proposed exhibit list following the format provided in L.R. 38.

(2) ***Stipulations.*** Within 3 days of the trial date, counsel for each party must make every effort to enter into stipulations of fact, including stipulations as to the admissibility of evidence, in order to limit issues for trial.

(i) Sentencing Discovery.

(1) ***Review of Materials.*** A list of the materials provided by a party to the Probation Office as part of the presentence investigation shall be provided to opposing counsel. Either party may examine those materials at the Probation Office. If any party wishes to obtain copies of those materials, those materials shall be provided by the other party upon request. However, if the government has substantial concerns that production of those materials to opposing counsel may create a substantial risk of injury to or intimidation of a witness or any other person, the government may withhold such materials. Opposing counsel is then free to file a motion to compel production of those materials with the court.

(2) ***Exchange of Information.*** On the day objections to the draft presentence report are due, the government and defendant must exchange:

(A) all information within the scope of Fed. R. Crim. P. 16(a) and (b) not previously disclosed relating to issues to be raised at the sentencing hearing; and

(B) the names and addresses of witnesses, including experts, who have not previously been disclosed and who will be called at the sentencing hearing. The defendant must provide the dates of birth of such witnesses. The government must provide the criminal records, if any, of such witnesses.

Rule 32. Sentencing Procedure.

(a) Time of Sentencing.

(1) Sentencing must occur without unnecessary delay after a plea or finding of guilty or nolo contendere. Sentencing occurs pursuant to Fed. R. Crim. P. 32 and any procedural and scheduling orders.

(2) The court may change procedural and scheduling order time limits for good cause.

(b) Defense Counsel's Presence at Presentence Investigation Interview. Defense counsel is entitled to attend any interview of the defendant by the probation officer. Defense counsel must be available for an interview within 10 days after conviction or guilty plea, unless the court grants an extension.

(c) Presentence Investigation Report. Defense counsel is responsible for ensuring that the defendant has reviewed and understands the presentence report.

(1) Counsel is prohibited from providing (by any means) a draft, copy or final Presentence Report ("PSR") to the defendant unless the following categories of information have been redacted from the PSR:

(A) statements regarding the defendant's cooperation, including references to USSG §5K1.1. motions and USSG §5C1.2. proffers;

(B) statements regarding any other person's cooperation including but not limited to post-arrest statements, proffers, grand jury testimony, and trial testimony.

Counsel is not prohibited from reviewing the unredacted PSR with the defendant.

(2) Counsel receiving the report may not disclose the contents to others.

(d) Nondisclosure to Parties of Probation Officer's Recommendation. The probation officer's sentence recommendation must not be disclosed to the parties.

Rule 57.1. Disclosure of Pretrial Services; Presentence or Probation Records.

(a) Authorized Disclosure. The probation officer prepares and maintains pretrial service reports, presentence reports, and supervision records for the court's benefit. These records are confidential and may be disclosed only if:

(1) the sentencing court authorizes disclosure;

(2) the court determines there is a compelling need for disclosure; or

(3) explicit authority authorizes disclosure.

(b) Probation Officer Not to Testify. Unless compelling reasons are brought to the court's attention before a hearing, probation officers must not testify about the contents of any pretrial services, presentence report or other reports requested by the court and prepared in the course of the probation officer's duties.

(c) Questioning by the Court. Unless the court directs otherwise, only the court may question a probation officer.

(d) Request for Pretrial Services Information. When a probation officer receives a request to disclose pretrial service records by way of subpoena or other judicial process, the probation officer must inform the Chief Probation Officer, who must follow the regulations approved by the Judicial Conference of the United States (*The Guide to Judiciary Policy, Vol. 20, Ch. 8*).

(e) Request for Presentence or Probation Records.

(1) ***Generally.*** When a probation officer receives a request to disclose presentence and probation records by way of subpoena or other judicial process, the probation officer must notify the Chief Probation Officer, who must follow the regulations approved by the Judicial Conference of the United States (*The Guide to Judiciary Policy, Vol. 20, Ch. 8*).

(2) ***Request by Correctional Agency.*** When a correctional agency requests presentence or probation information about a defendant or an offender who is or has been under supervision, the Chief Probation Officer must review the request and may release the information.

(f) Continuing Confidentiality When Sent to Other Agencies. Any copy of the presentence report and information needed to classify a defendant (e.g., psychiatric reports, violation of probation reports, etc.) which the court makes available to the U.S. Parole Commission or the Bureau of Prisons remains a confidential court document. The Bureau of Prisons and the U.S. Parole Commission must comply with their regulations for the safekeeping and disclosure of confidential court/agency documents.

Rule 57.2. Pretrial Services.

(a) Authority. Pretrial services are performed by the Probation Office and supervised by the Chief Probation Officer pursuant to 18 U.S.C. § 3152(a).

(b) Confidentiality. Pretrial service records are confidential court records. Disclosure of information obtained during a pretrial service investigation or supervision is governed by the Pretrial Services Confidentiality Regulations issued by the Director of the Administrative Office of the United States Courts.

(c) Pretrial Interview. If the defendant has counsel, Pretrial Services must attempt to coordinate a joint interview with the defendant's counsel. If the defendant does not have counsel, or counsel is unable to attend, Pretrial Services may interview the defendant without counsel present provided that the defendant gives informed consent.

(d) Pretrial Services Report. Counsel must not redisclose the pretrial services report to other persons such as government agents, family members, or the defendant's friends.

(e) After Hearing. All pretrial services reports must be returned to the pretrial service officer at the conclusion of the hearing.

(f) Disclosure to Probation Officers. Pretrial service information, including any amendments or supplements, must be made available to probation officers for the purpose of preparing a presentence report.

(g) Violations of Conditions. Unless pretrial service officers seek immediate revocation or modification of pretrial release conditions, defense counsel may ordinarily obtain a copy of the violation report.

(h) Notification to Pretrial Services Officer. Counsel must provide copies of motions to modify release conditions to the opposing counsel and the pretrial service officer.

Rule 83.5. Collateral Forfeiture Procedure.

Forfeiture of collateral in lieu of an appearance by a person charged with a petty or misdemeanor offense must comply with the following procedures:

(a) By Consent. A person charged with an offense listed in the Collateral Forfeiture Schedule available from the court's website: http://www.vtd.uscourts.gov (and available from any clerk's office) may, in lieu of appearance, post collateral in the amount indicated for the offense, waive appearance before a U.S. Magistrate Judge and consent to the forfeiture of collateral in lieu of payment of a criminal fine.

(b) Punishment. Should a person charged with an offense as specified by the Collateral Forfeiture Schedule fail to post and forfeit collateral, the court may impose any punishment within the limits established by law upon conviction after trial, including fine, imprisonment or probation.

(c) Appearance May Be Required. If, within the discretion of the law enforcement officer, the offense is of an aggravated nature, the law enforcement officer may require a mandatory appearance before a United States Magistrate Judge of the person charged with the offense. Additionally, some offenses as shown on the Collateral Forfeiture Schedule require a mandatory appearance before a United States Magistrate Judge, and as such, may not be adjudicated solely through the posting and forfeiture of collateral.

(d) Possible Arrest. Nothing in this rule or the Collateral Forfeiture Schedule shall prohibit a law enforcement officer from arresting a person for committing an offense, including those for which collateral may be posted and forfeited, and requiring the person charged to appear before a United States magistrate judge or, upon arrest, taking the person immediately before a United States Magistrate Judge.