LOCAL UNIFORM CIVIL RULES

of the

UNITED STATES DISTRICT COURTS

for the

NORTHERN DISTRICT OF MISSISSIPPI

and the

SOUTHERN DISTRICT OF MISSISSIPPI

EFFECTIVE
DECEMBER 1, 2014

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PREAMBLE

The LOCAL UNIFORM CIVIL RULES OF THE UNITED STATES DISTRICT COURTS FOR THE NORTHERN DISTRICT AND THE SOUTHERN DISTRICT OF MISSISSIPPI [the LOCAL RULES] were first made effective on January 1, 1986. The Rules were amended July 1, 1992; July 1, 1996; September 1, 1998; December 1, 2000; November 1, 2004; December 1, 2010; December 1, 2011; December 1, 2012; April 30, 2013; and December 1, 2014, and they apply to pending civil actions except where injustice would result. They govern all proceedings in the United States District Courts serving the State of Mississippi, and should be cited as L.U.Civ.R.

Attorneys practicing before the district courts of Mississippi are charged with the responsibility of knowing the LOCAL RULES, the Administrative Procedures for Electronic Case Filing for both the Northern and Southern Districts of Mississippi, the Internal Operating Procedures and Standing Orders of the court and may be sanctioned for failing to comply with them. Posting of the LOCAL RULES on the Internet Websites maintained by the clerks of the district courts is sufficient delivery of the LOCAL RULES to all attorneys and the public.

All prior Local Rules of the United States District Courts for the Northern District and the Southern District of Mississippi relating to civil proceedings are hereby repealed.

All amendments to these LOCAL RULES will be by order of the court and require the approval of a majority of the district judges in each federal judicial district in Mississippi.

NORTHERN DISTRICT JUDICIAL DIVISIONS

OXFORD DIVISION
Oxford

1. Benton
2. Calhoun
3. DeSoto
4. Lafayette
5. Marshall
6. Panola
7. Pontotoc
8. Quitman
9. Tallahatchie
10. Tate
11. Tippah
12. Tunica
13. Union
14. Yalobusha

ABERDEEN DIVISION
Aberdeen

1. Alcorn
2. Chickasaw
3. Choctaw
4. Clay
5. Itawamba
6. Lee
7. Lowndes
8. Monroe
9. Oktibbeha
10. Prentiss
11. Tishomingo
12. Webster
13. Winston

GREENVILLE DIVISION
Greenville

1. Attala
2. Bolivar
3. Carroll
4. Coahoma
5. Grenada
6. Humphreys
7. Leflore
8. Montgomery
9. Sunflower
10. Washington

SOUTHERN DISTRICT JUDICIAL DIVISIONS

SOUTHERN DIVISION
Gulfport

1. George
2. Greene
3. Hancock
4. Jackson
5. Jackson
6. Pearl River
7. Stone

EASTERN DIVISION
Hattiesburg

1. Clarke
2. Covington
3. Forrest
4. Jasper
5. Jefferson Davis
6. Jones
7 Lamar
8. Lawrence
9. Marion
10. Perry
11. Walthall
12. Wayne

NORTHERN DIVISION
Jackson

1. Copiah
2. Hinds
3. Holmes
4. Issaquena
5. Kemper
6. Lauderdale
7. Leake
8. Madison
9. Neshoba
10. Newton
11. Noxubee
12. Rankin
13. Scott
14. Sharkey
15. Simpson
16. Smith

WESTERN DIVISION
Natchez

1. Adams
2. Amite
3. Claiborne
4. Lauderdale
5. Jefferson
6. Lincoln
7. Pike
8. Wilkinson

Rule 1. SCOPE AND PURPOSES OF RULES

(a) The rules of procedure in any proceeding in this court are those prescribed by the laws of the United States and the Federal Rules of Civil Procedure, along with these local rules and orders entered by the court.

(b) These rules may be known and cited as Local Uniform Civil Rule [L.U.Civ.R.].

(c) The underlying principle of the Rules is to make access to a fair and efficient court system available and affordable to all citizens.

Rule 4. CIVIL PROCESS

(a) **Preparation.** It is the responsibility of the plaintiff in each original case filed to prepare the summons to be served on each defendant and to present the process to the clerk of court at the time of the filing of the original complaint. The signed process with seal affixed will then be returned to the attorney for service.

(b) **Service.** The United States Marshal does not serve process in civil actions except on behalf of the federal government, in actions proceeding *in forma pauperis*, on writs of seizure and executions of judgments, and when otherwise ordered by a federal court.

Rule 5. ORIGINAL FILINGS AND REMOVALS

(a) **Original Filings.** In all civil actions, the plaintiff must file with the clerk of court the original complaint

(1) **Civil Cover Sheet.** A civil cover sheet (Form JS 44) must be filed with each original complaint or petition filed. A link to all national forms can be found on the courts' Websites.

(2) **Filing Fees.** Filing fees must be paid to the clerk of court upon filing of each original complaint or petition in accordance with the fee schedule maintained by the clerk of court.

(b) **Removals: Required Filing of the Entire State Court Record.** In addition to the requirements for removal set forth in 28 U.S.C. § 1446, a defendant or defendants desiring to remove any civil action or criminal prosecution from a state court must file as an exhibit to its Notice of Removal a copy of the entire state court record in the format required by the Administrative Procedures for Electronic Case Filing for the district to which it is removed. If the removing defendant or defendants cannot practicably obtain a copy of the entire state court record by the date of removal, then – and only then – the removing defendant or defendants must obtain and electronically file the complete copy in the format

required by the Administrative Procedures for Electronic Case Filing for that district no later than fourteen days from the date of removal.

(c) Electronic Filings; Signatures and Verification; Administrative Procedures. Rules 5(d)(3) and 83 of the FEDERAL RULES OF CIVIL PROCEDURE and Rule 57 of the FEDERAL RULES OF CRIMINAL PROCEDURE authorize courts to establish practices and procedures for electronically filing, signing and verifying documents. Accordingly, the district courts for the Northern District and the Southern District of Mississippi have implemented *Administrative Procedures for Electronic Case Filing* prescribing the procedures and standards governing electronically filing, signing and verifying documents.

(d) Non-Filing of Pre-Discovery Disclosures and Discovery Materials

(1) Pre-Discovery Disclosures. Pre-discovery disclosures of core information under L.U.CIV.R. 26.1(A) should not be filed with the clerk of court until the disclosures are used in a proceeding or the court orders that they be filed. The party serving disclosures must file a notice of service of pre-discovery disclosure of core information [Official Form No. 2(c)].

(2) Depositions. As depositions in civil actions are not filed, the court reporter will forward the original of a deposition to the party responsible for its taking; the party must retain the original and is its custodian. Immediately upon receipt of the original deposition, the party serving as custodian must file a copy of the cover sheet of the deposition and a notice that all parties of record have been notified of its receipt by the custodian [Official Form No. 2(a)].

(3) Discovery. Interrogatories under FED. R. CIV. P. 33, Requests for Production or Inspection under FED. R. CIV. P. 34, and Requests for Admission under FED. R. CIV. P. 36, must be served upon other counsel or parties, but not filed with the court. The party who served the discovery request or the response must retain the original and become the custodian and file a notice of service with the court [Official Form No. 2(b)].

(4) Filing for use in Relation to Motions. If disclosures under FED. R. CIV. P. 26(a)(1) or (2), interrogatories, requests, answers, responses or depositions are necessary to a pretrial motion that might result in an order on any issue, unless already of record and referenced by citation to the docket entry(ies), the moving party must file the portions to be used as an exhibit to the motion.

(5) Filing for use on Appeal. When documentation of discovery or disclosures not in the record is needed for appeal purposes, a party may apply for a court order directing or the parties may stipulate to the filing of the necessary discovery or disclosure papers.

Rule 5.2. PROTECTION OF PERSONAL AND SENSITIVE INFORMATION; PUBLIC ACCESS TO COURT FILES; REDACTED INFORMATION; SEALED INFORMATION.

Responsibilities of Counsel and Parties. Counsel should advise clients of the provisions of this rule and Fed.R.Civ.P. 5.2 so that an informed decision may be made about the inclusion of protected information.

(a) Counsel and parties must consider that the *E-Government Act of 2002* (as amended) and the policies of the Judicial Conference of the United States require federal courts eventually to make *all* pleadings, orders, judgments, and other filed documents available in electronic formats accessible over the Internet and the courts' PACER [Public Access to Court Electronic Records] systems. Consequently, personal and sensitive information and data that formerly were available only by a review of the court's physical case files will be available to the world, openly, publicly, and near-instantaneously.

(b) If a redacted document is filed, it is the sole responsibility of counsel and the parties to ensure that all pleadings conform to the redaction-related standards of this rule.

(c) Neither the court nor the clerk will review pleadings or other documents for compliance with this rule.

Rule 7 . MOTIONS AND OTHER PAPERS

(a) Trial Briefs. Whether to submit a trial brief is within the discretion of the parties, but any brief must be filed in CM/ECF and simultaneously served on all other parties.

(b) Motion Practice. Any written communication with the court that is intended to be an application for relief or other action by the court must be presented by a motion in the form prescribed by this Rule.

(1) Applicability. The provisions of this rule apply to all written motions in civil actions.

(2) Filing, Deadlines, Proposed Orders. Any motion, response, rebuttal and supporting exhibits, including memorandum briefs in support, must be filed. All affidavits, 28 U.S.C. § 1746 declarations, and other supporting

documents and exhibits, excluding the memorandum brief, must be filed as exhibits to the motion, response or rebuttal to which they relate. The memorandum brief must be filed as a separate docket item from the motion or response and the exhibits. All supporting exhibits must be denominated in the court's electronic filing system by both an exhibit letter or number *and* a meaningful description. Further, all supporting exhibits not already of record and cited in the motion, response or rebuttal by docket entry, must normally be filed under the same docket entry and denominated separately in the court's electronic filing system as exhibits to the motion, response or rebuttal to which they relate, unless doing so is not practicable, in which case supporting exhibits may be filed as separate docket item attachments, associated by the docket number of the motion, response or rebuttal to which they relate. Counsel must file a memorandum brief as a separate docket item from the motion or response to which it relates and *must not make the memorandum brief an exhibit to a motion or response*, except in the case of a motion for leave to submit the referenced memorandum brief. A proposed amended pleading must be an exhibit to a motion for leave to file such pleading.

(A) Affirmative defenses must be raised by motion. Although the affirmative defenses may be enumerated in the answer, the court will not recognize a motion included within the body of the answer, but only those raised by a separate filing.

(B) A party must file a discovery motion sufficiently in advance of the discovery deadline to allow response to the motion, ruling by the court and time to effectuate the court's order before the discovery deadline.

(C) Unless otherwise ordered by the Case Management Order, all case-dispositive motions and motions challenging an opposing party's expert must be filed no later than fourteen calendar days after the discovery deadline.

(D) Motions *in limine* other than motions challenging another party's expert must be filed no later than fourteen calendar days before the pretrial conference, and all responses must be filed no later than seven calendar days before the pretrial conference.

(E) A proposed order must be submitted to the judge for any motion that may be heard *ex parte* or is to be granted by consent. If the motion is referred to a magistrate judge, the proposed order must be submitted to the magistrate judge. The addresses for the district judges' and for the magistrate judges' chambers appear in the courts' *Administrative Procedures for Electronic Case Filings*.

(3) Responses

(A) A response to a motion, all affidavits, 28 U.S.C. § 1746 declarations, the response memorandum and other supporting materials, including any objections, must be filed of record. Within the time allowed for response, the opposing party must either respond to the motion or notify the court of its intent not to respond.

(B) A separate response must be filed as to each separately docketed motion.

(C) A response to a motion may not include a counter-motion in the same document. Any motion must be an item docketed separately from a response.

(D) A response to a motion may not be included in the body of a pleading, but rather should be a separately docketed item denominated in the record as a response and should be associated by docket number with the motion to which it responds.

(E) If a party fails to respond to any motion, other than a dispositive motion, within the time allotted, the court may grant the motion as unopposed.

(4) Memorandum Briefs; Documents Required with Motions; Time Limits' Failure to Submit Required Documents; Motions Not Reurged. At the time the motion is served, other than motions or applications that may be heard ex parte or those involving necessitous or urgent matters, counsel for movant must file a memorandum brief in support of the motion. Counsel for respondent must, within fourteen days after service of movant's motion and memorandum brief, file a response and memorandum brief in support of the response. Counsel for movant desiring to file a rebuttal may do so within seven days after the service of the respondent's response and memorandum brief. A party must make any request for an extension of time in writing to the judge who will decide the motion. Failure to timely submit the required motion documents may result in the denial of the motion. A pending nondispositive motion not reurged after discovery has been concluded and before the motion deadline, may be deemed moot and denied by operation of this rule.

(5) Length and Form of Memorandum Briefs. Movant's original and rebuttal memorandum briefs together may not exceed a total of thirty-five

pages, and respondent's memorandum brief may not exceed thirty-five pages.

(A) **Paper Size, Line Spacing, and Margins.** All memorandum briefs must be on 8 ½ by 11 inch paper. The text must be double-spaced, but quotations may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(B) **Typeface.** Either a proportionally spaced or a monospaced face may be used. A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. Text must be 12-point or larger, except that footnotes may be 11-point or larger.

(C) **Type Styles.** All memorandum briefs must be set in a plain, roman style, although italics, highlighting or boldface may be used for emphasis. Case names must be italicized or underlined.

(6) **Notice and Hearings**

(A) The court will decide motions without a hearing or oral argument unless otherwise ordered by the court on its own motion or, in its discretion, upon written request made by counsel in an easily discernible manner on the face of the motion or response.

(B) An evidentiary hearing or oral argument, where allowed, will be set at a time and place convenient to the judge. The court may, in its discretion, hear oral argument by electronic means.

(7) **Priority.** The court will give priority to discovery motions, discovery appeals, immunity defense motions, motions to remand, and other jurisdictional motions.

(8) **Urgent or Necessitous Matters.** When the motion relates to an urgent or necessitous matter, counsel for the movant must contact the courtroom deputy, or other staff member designated by the judge, and arrange a definite time and place for the motion to be heard. In such cases, counsel for movant must file a written notice to all other parties of the time and place fixed by the court for the hearing and must serve all documents upon other parties. Upon receipt of the motion, the court in its discretion may direct counsel to submit memorandum briefs for the court's consideration.

Unless a party files a motion for a protective order to limit the scope or quash the taking of a deposition within seven days of the date of the notice of deposition, the motion will not be considered urgent or necessitous.

(9) **Court Reporters.** If the hearing of a motion requires the presence of a court reporter, the party requesting a court reporter must obtain prior approval from the office of the district or magistrate judge before whom the motion is noticed.

(10) **Non-Dispositive Motions.** All non-dispositive motions must advise the court whether there is opposition to the motion.

(11) **Untimely Motions.** Any nondispositive motion served beyond the motion deadline imposed in the Case Management Order may be denied solely because the motion is not timely served.

(c) **Corporate Disclosure Statement.** A non-governmental corporate party must file a statement identifying all of its parent corporations and listing any publicly-held company that owns ten percent or more of the party's stock. The Corporate Disclosure Statement must be filed as a separate pleading with the party's initial pleading . Each party must supplement the statement within a reasonable time of any change in the disclosure information.

Rule 11. **SIGNATURES REQUIRED ON PLEADINGS, MOTIONS, AND OTHER PAPERS**

(a) Consistent with FED. R. CIV. P. 11, the filing of a signed pleading, motion, or other document by any counsel is deemed to signify approval by all co-counsel. All filed, signed documents must contain counsel's name, address, telephone number, fax number, e-mail address, and counsel's bar membership identification number. All documents filed and signed by a party not represented by an attorney must contain the party's name, address, telephone number, fax number, and e-mail address. Every attorney and every litigant proceeding without legal counsel has a continuing obligation to notify the clerk of court of address changes.

(b) **Sanctions—Unreasonable Delays.** Any delay or continuance occasioned by a party's failure to abide by these rules may result in the imposition of appropriate sanctions, including assessment of costs and attorneys' fees. In this regard, counsel must immediately notify the appropriate judge if a pending motion is resolved by the parties or if the civil action is settled.

Rule 15. **MOTIONS FOR LEAVE TO SUBMIT AMENDED AND SUPPLEMENTAL PLEADINGS.** A proposed amended pleading must be an exhibit to a motion for leave to file such pleading.

Rule 16. PRETRIAL CONFERENCES

(a) Court Order. The court will issue an Initial Order setting the deadline for the attorney conference required by FED. R. CIV. P. 26(f) and a date for a case management conference [CMC] with the magistrate judge. The court will strive to set the case management conference within sixty days of the filing of the first responsive pleading.

(b) Exceptions:

(1) Removed Civil Actions.

(A) In removed civil actions in which no motion to remand or motion to refer the action to the bankruptcy court is filed, the attorneys and unrepresented parties must confer as outlined in L.U.CIV.R. 26(e) within forty days, and all other deadlines will be determined accordingly.

(B) A motion to remand or a motion to refer an action to the bankruptcy court will stay the attorney conference and disclosure requirements and all discovery not relevant to the remand or referral issue and will stay the parties' obligation to make disclosures pending the court's ruling on the motions. At the time the remand motion or referral motion is filed, the movant must submit to the magistrate judge an order granting the stay but permitting discovery concerning only the remand or referral issue. The parties must promptly notify the magistrate judge of any order denying a motion to remand or motion to refer and must promptly submit an order lifting the stay.

(C) Within fourteen days of the order lifting the stay, the parties must confer as outlined in L.U.CIV.R. 26() and all other deadlines will be determined accordingly. A scheduling conference will be held within sixty days after the stay is lifted.

(2) Transferred Civil Actions. If the attorneys and unrepresented parties have not already conducted the conference required by FED. R. CIV. P. 26(f) in an action transferred to the district, the parties must do so within fourteen days of the action's transfer and all other deadlines will be determined accordingly.

(3) Immunity Defense or Jurisdictional Defense

(A) A motion to compel arbitration, an immunity defense or a jurisdictional defense must be raised by a separate motion as

expeditiously as practicable after service of process. A motion asserting lack of jurisdiction must be filed at least seven days before the Case Management Conference or the movant will be deemed to have waived the stay provision of subsection (B).

(B) Filing a motion to compel arbitration, an immunity defense or jurisdictional defense motion stays the attorney conference and disclosure requirements and all discovery not related to the issue pending the court's ruling on the motion, including any appeal. Whether to permit discovery on issues related to a motion asserting an immunity defense or jurisdictional defense is a decision committed to the discretion of the court.

(C) At the time the motion to compel arbitration, immunity defense or jurisdictional defense motion is filed, the moving party must submit to the magistrate judge a proposed order granting the stay .

(D) In any case that has been removed from state court, the moving party shall, within fourteen days after the Case Management Conference, file as separate docket items any motions that were filed in state court. The motions will be filed in accordance with L.U.CIV.R.7(b).

(E) The plaintiff must promptly notify the magistrate judge of a decision on the motion and must submit a proposed order lifting the stay. Within fourteen days of the order lifting the stay, the parties must confer in accordance with L.U.CIV.R. 26(c), and all other deadlines will be determined accordingly.

(F) A case management conference will be scheduled within sixty days of the order lifting the stay.

(4) Civil Asset Forfeiture Actions

(A) In civil asset forfeiture actions in which the United States files a motion challenging the claimant's standing, all discovery not relevant to the standing issue will be stayed pending the court's ruling on the standing issue.

(B) At the time the motion challenging the claimant's standing is filed, the United States must submit to the magistrate judge a proposed order granting the stay but permitting discovery on the standing issue.

(C) The parties must promptly notify the magistrate judge of a decision on the standing issue and must submit a proposed order lifting the stay if it is determined that the claimant has standing.

(D) A case management conference will be scheduled within sixty days of the order lifting the stay.

(c) Submission of Written Proposed Case Management Plan and Scheduling Order. The magistrate judge may require the parties to submit a proposed case management order no later than fourteen days after the attorney conference. [See Official Form No. 1]. Disagreements with the content of the proposed case management order must be noted on the submitted written plan. Each party must submit to the magistrate judge a confidential memorandum, no longer than three pages, setting forth a brief explanation of the case and a candid appraisal of the prospective positions of the parties, including a candid evaluation of the possibilities for settlement.

(d) Time of Disclosures. Unless a different time is set by court order or unless a party objects during the attorney conference and states the objection in the proposed case management order, the parties must make the disclosures required by FED. R. CIV. P. 26(a) [L.U.CIV.R. 26.1(a)(1)], no later than fourteen days after the attorney conference, but in no event may they be made later than seven days before the Case Management Conference.

(e) Case Management Conference. On the date set by court order, the magistrate judge will hold a case management conference in accordance with FED. R. CIV. P. 16(b) and 26(f).

(f) Case Management Order

(1) The judicial officer will enter the case management order no more than fourteen calendar days after the case management conference. [Official Form No. 1].

(2) The court will not require the parties to reserve a period in excess of three weeks for trial following the trial date.

(g) Settlement Conference

(1) The court may schedule an initial settlement conference in the case management plan and scheduling order or by other order as the interests of justice may dictate.

(A) Counsel for any party may request at any time that the judicial officer assigned to the case schedule a settlement conference.

(B) The court may order mediation in addition to, or in lieu of, a settlement conference.

(C) The parties are required to undertake discovery necessary for meaningful settlement discussions before a settlement conference or mediation.

(2) Lead counsel for each party, individual parties not represented by legal counsel, and representatives of each corporate party, organization, or similar entity must appear at the conference. If lead counsel has been admitted *pro hac vice*, local counsel must also appear at the conference.

(A) The party representative attending the conference must have full settlement authority to bind the party for settlement purposes.

(B) If approved in advance by the court, a party or party representative may, in lieu of attending the conference in person, be immediately available by telephone during the entire settlement conference. The court may also order that a representative of any intervening party with full settlement authority also attend the conference in person or be available by telephone.

(C) At the request of any party, the court will issue a notification of the settlement conference which the party may then forward to any entity having any type of subrogation lien that would need to be considered during settlement negotiations. The failure of a party to attend a settlement conference, or to have present at the conference a representative with reasonable settlement authority, may result in the assessment of sanctions against the offending party.

(3) The notice of a settlement conference will set forth the format of the conference and will include any requirement for information or documents that must be submitted to the court before or at the conference.

(4) No statement, oral or written, made by any party to the court or counsel(s) opposite during settlement negotiations under this rule will be admissible or used in any fashion in the trial of the case or any related case.

(5) At least seven days before the settlement conference, each party must submit to the court a confidential memorandum, no longer than three pages, setting forth a brief explanation of the case and a candid appraisal of the respective positions of the parties, including the settlement negotiations to date and possible settlement figures. Plaintiff(s) must

provide an estimate of damages itemized by category. Counsel must also furnish a good faith estimate of the total expense of carrying the litigation through trial and the appellate processes, if not settled, and must have discussed and must represent to the court that they so discussed these expenses with their clients. The settlement memoranda are not to be exchanged or filed in the record, are to be viewed only by the court, and will be destroyed upon exhaustion of settlement negotiations.

(h) Cases Excluded from Scheduling and Disclosure Requirements. Those categories of proceedings appearing in FED. R. CIV. P. 26(a)(1)(B) are exempt from the scheduling and disclosure requirements of these rules.

(i) Alternative Dispute Resolution Programs. The courts have adopted a uniform Alternative Dispute Resolution Plan. That plan is appended to these Local Rules.

(j) Final Pretrial Conferences And Pretrial Orders

(1) Cases in Which Conference to be Held; Scheduling; Role of Magistrate Judge. A final pretrial conference is to be held in all civil actions, subject only to the exceptions hereinafter noted.

(A) The judicial officer assigned to try the case will attempt to conduct the pretrial conference. If the judicial officer is unable to schedule the pretrial conference in a timely manner, however, then he or she may direct that the conference be held before another judicial officer. This conference will be scheduled not more than forty-five days prior to trial.

(B) Whenever possible, a final pretrial conference will be separately scheduled at a date, place, and hour and for such period of time as the subject matter of the particular civil action may require, but in all events a final pretrial conference will be scheduled in such manner as not to cause undue or inordinate inconvenience to counsel scheduled for final pretrial conferences in other cases.

(2) When Conference May be Dispensed With; Pretrial Order Still Required; Contents. The court recognizes that a formal final pretrial conference may not be needed in all cases. The court, either on its own motion or by request of the parties made not later than fourteen days before the scheduled conference, may determine that a final pretrial conference is unnecessary and excuse the parties from attendance, but in that event the jointly agreed pretrial order must be submitted to the judge before whom the conference was to have been held and all requirements of this rule must be complied with at or before the time and date set for the final pretrial conference, unless the judge fixes another date for

submission of the pretrial order. If no formal final pretrial conference is held, counsel must submit to the appropriate judge a jointly agreed final pretrial order [Official Form No. 3] which must set forth:

(A) Any jurisdictional question.

(B) Any questions raised by pending motions, including motions *in limine*.

(C) A concise summary of the ultimate facts claimed by plaintiff(s), by defendant(s), and by all other parties.

(D) Facts established by pleadings or by stipulations or admissions of counsel.

(E) Contested issues of fact.

(F) Contested issues of law.

(G) Exhibits (except documents for impeachment only) to be offered in evidence by the parties respectively. If counsel cannot in good faith stipulate the authenticity or admissibility of a proposed exhibit, the order must identify the same and state the precise ground of objection.

(H) The names of witnesses for all parties, stating who *Will Be Called* in the absence of reasonable notice to opposing counsel to the contrary and who *May Be Called* as a possibility only. Neither rebuttal nor impeachment witnesses need be listed. The witness list must state whether the witness will give fact or expert testimony, or both, whether the witness will testify as to liability or damages, or both, and whether the witness will testify in person or by deposition.

(I) Any requested amendments to the pleadings.

(J) Any additional matters to aid in the disposition of the action.

(K) The probable length of the trial.

(L) Full name, address, and phone number of all counsel of record for each party.

(3) Submission by Magistrate Judge to Trial Judge. If the pretrial conference is held before a magistrate judge who will not try the case, the

magistrate judge will submit the agreed, approved pretrial order to the trial judge, with copies to counsel and to the clerk of court.

(4) **Duty of Counsel to Confer; Exhibits; Matters to be Considered at Conference; Sanctions.** The following provisions of this rule apply, regardless of whether the pretrial order is entered by stipulation of the parties or following a formal final pretrial conference:

(A) Counsel must resolve by stipulation all relevant facts that are not in good faith controverted and must exchange with counsel for all other parties true copies of all exhibits proposed to be offered in evidence, other than those to be used for impeachment purposes only, and must stipulate the authenticity of each exhibit proposed to be offered in evidence by any party unless the authenticity of any such exhibit is in good faith controverted.

(B) All exhibits are to be pre-marked, and lists briefly describing each are to be exchanged among counsel and presented to the court at the beginning of the trial, in quadruplicate, unless otherwise directed by the court.

(C) At any formal final pretrial conference, the judge will confer with counsel regarding proposed stipulations of facts and contested issues of fact and law, and will inquire as to the reasonableness of any party's failure to stipulate or agree as to the authenticity or admissibility of exhibits. If the court determines that any party or his attorney has failed to comply with this rule, such party or his attorney will be subject to appropriate sanctions.

(5) **Depositions.** Depositions to be introduced in evidence other than for rebuttal or impeachment purposes must be abridged before the pretrial conference or submission of the order, as follows:

(A) The offering party must designate by line and page the portions of the deposition it plans to offer.

(B) The opposing party or parties must designate by line and page any additional portions of the deposition to be offered and must identify distinctly any portions of the deposition previously designated by any other party to which objection is made.

(C) The offering party must thereafter identify distinctly any portions of the deposition previously designated by any other party to which objection is made.

(D) Videotaped depositions must be edited before trial as required by the pretrial order.

(6) Procedure at Final Pretrial Conference. In addition to the preceding provisions, the following provisions apply to the formulation of a pretrial order by formal conference before the magistrate judge, or in any appropriate case, the district judge.

(A) Counsel Must Attend; Sanctions. All scheduled conferences must be attended by counsel of record who will participate in the trial and who have full authority to speak for the party and enter into stipulations and agreements. Counsel must have full authority from their clients with respect to settlement and must be prepared to inform the court regarding the prospects of settlement. The court may require the attendance or availability of the parties, as well as counsel. Should a party or his attorney fail to appear or fail to comply with the directions of this rule, an *ex parte* hearing may be held and a judgment of dismissal or default or other appropriate judgment entered or sanctions imposed.

(B) Preparation for the Conference. Counsel must comply with the requirements of subdivisions (j)(4) and (j)(5) of this rule as soon as practicable before the pretrial conference and submit to the court and counsel opposite a proposed pretrial order setting forth his proposals for inclusion in the pretrial order in accordance with subdivision (j)(2) of this rule and any instructions which the court may in its discretion issue.

(C) Preparation of the Pretrial Order. After the final pretrial conference has concluded, a pretrial order must be prepared by counsel in conformity with Official Form No. 3 and submitted to the court for entry. Responsibility for preparation of the pretrial order and the deadline for its submission will be fixed by the judicial officer before whom the conference was held. If a magistrate judge has conducted the conference on behalf of a district judge, he or she will require counsel to make such corrections as the magistrate judge deems necessary before transmitting the order to the district judge.

(D) Additional Conferences. After the final pretrial conference has been conducted, the court will not hold an additional pretrial conference except in those exceptional situations in which the judicial officer determines that an additional conference would materially benefit disposition of the action.

(7) **Effect of Pretrial Order.** The pretrial order controls the subsequent course of the action unless modified by the trial judge at or before the trial, upon oral or written motion, to prevent manifest injustice.

(8) **Conference Scheduling; Conflicting Settings.** In scheduling all pretrial conferences of any nature, the judge will give due consideration to conflicting settings but not to the mere convenience of counsel. If a scheduling order has been entered in an action, no final pretrial conference will be held until after the discovery deadline has expired. Failure to complete discovery within such deadline is not an excuse for delaying the final pretrial conference nor for securing continuance of a case which has been calendared for trial.

(9) **Discretion of District Judge.** Notwithstanding any of the provisions of this rule to the contrary, a district judge may, in his or her discretion, in any assigned case, conduct any or all pretrial conferences and may enter or modify a scheduling order.

(k) **Conflicting Settings And Requests For Continuances.** When the court has set a case for trial, other hearing, or pretrial conference that conflicts with a court appearance of counsel in other courts, the first case having a firm setting will control, whether set by this or some other court, and other courts are expected to yield to the prior firm setting, as this court will do when other cases have prior settings in other courts, consistent with the policy adopted by the State-Federal Judicial Council. When a case has not been reached as scheduled, the court, in resetting the case, will take into account the obligations of counsel on the basis of the first-setting rule. If a conflict develops, it is the absolute duty of counsel to inform the court of the later setting in order that the conflict might be resolved and calendars cleared for other settings. It is essential for counsel and the court or courts involved to resolve potential conflicts at the earliest practical date.

Rule 23. **CLASS ACTIONS.** In all civil actions filed as class actions, the class plaintiff must, at a time directed by the case management order, move for a FED. R. CIV. P. 23 class determination. The plaintiff has the burden of establishing by way of pleadings and evidentiary materials that a class action is appropriate and of defining all relevant classes and subclasses.

Although the court may deem it necessary to schedule an evidentiary hearing on the class aspects of a civil action, usually pleadings, affidavits, other evidentiary materials, and legal memoranda submitted by both sides should be adequate bases upon which the court may make a class action determination. Interlocutory procedures, when appropriate, will be tailored to fit each action.

Counsel for all parties must be aware of the general time schedule set forth above and must promptly prepare all materials that may be relevant to class action maintainability and class definitions. Until the issue of class certification has been decided, counsel must give priority to discovery directed to the class issue.

If additional time is desired for preparation on the L.U.CIV.R. 23 issue(s), a motion stating grounds for the requested delay must be served within the above time period. Delays will be granted only for good cause.

Rule 26. DISCOVERY CONTROL

(a) Pre-Discovery Disclosures of Core Information/Other Cooperative Discovery Devices

(1) Initial Disclosure

(A) Within the time designated in the court's initial order setting the FED.R.CIV.P. 16 conference, the parties must make the disclosure required by FED.R.CIV.P. 26(a)(1). Disclosures must be made no later than seven days before the Case Management Conference unless a different time is set by court order or unless a party objects during the attorney conference and states the objection in the proposed case management order. At the time of the submission of the proposed case management order, the parties must certify that the conference required by FED.R.CIV.P. 26(f) has taken place and that the initial disclosures have been made.

(B) If the documents, electronically stored information, data compilations, and tangible things [collectively "items"] required for production are voluminous, or if other circumstances make their production unduly burdensome or expensive, the party may describe by category and location all such items in its possession, custody or control and must provide the opposing party a reasonable opportunity to review all the items at the site they are located or maintained.

(C) A party withholding information claimed privileged or otherwise protected must submit a privilege log that contains at least the following information: name of the document, electronically stored information, or tangible thing; description of the document, electronically stored information, or tangible thing, which description must included each requisite element of the privilege or protection asserted; date; author(s); recipient(s); and nature of the privilege. To withhold materials without such notices subjects

the withholding party to sanctions under FED.R.CIV.P. 37 and may be viewed as a waiver of the privilege or protection.

(2) **Expert Witnesses.** A party must make full and complete disclosure as required by FED.R.CIV.P. 26(a)(2) and L.U.CIV.R. 26(a)(2)(D) no later than the time specified in the case management order by serving the disclosure on all counsel of record and concomitantly filing a Notice of Service of Expert Disclosure with the court. Absent a finding of just cause, failure to make full expert disclosures by the expert designation deadline is grounds for prohibiting introduction of that evidence at trial.

(A) For purposes of this section, a written report is "prepared and signed" by the expert witness when the witness executes the report after review.

(B) An attempt to designate an expert without providing full disclosure information as required by this rule will not be considered a timely expert designation and may be stricken upon proper motion or sua sponte by the court.

(C) Discovery regarding experts must be completed within the discovery period. The court will allow the subsequent designation or discovery of expert witnesses only upon a showing of good cause.

(D) A party must designate physicians and other witnesses who are not retained or specially employed to provide expert testimony but are expected to be called to offer expert opinions at trial. No written report is required from such witnesses, but the party must disclose the subject matter on which the witness is expected to present evidence under FED.R.EVID. 702, 703 or 705, and a summary of the facts and opinions to which the witness is expected to testify. The party must also supplement initial disclosures.

(3) **Failure to Disclose.** If a party fails to make a disclosure required by this section, any other party must move to compel disclosure and for appropriate sanctions under FED.R.CIV.P. 37(a). The failure to take immediate action and seek court intervention when a known fact disclosure violation other than as to expert witnesses occurs will be considered by the court in determining the appropriate sanctions to be imposed regarding a subsequent motion filed under FED.R.CIV.P.37(c). Challenges as to inadequate disclosure of expert witness(es) must be made no later than thirty days before the discovery deadline or will be deemed waived. Daubert motions challenging a designated expert must be filed no later than the deadline for dispositive motions or other deadline for such

motions established by the case management order or other order, whichever is later.

(4) **Discovery Before the Case Management Conference.** Discovery before the case management conference is governed by FED.R.CIV.P. 26(d)(1). In removed actions in which written discovery was served prior to removal and has not already been responded to, the responding party(ies) will have the shorter of 30-days from the date of the Case Management Conference, or such other period set by federal court order, to serve responses and objections and to make any requested production or inspection.

(5) **Supplementation of Discovery.** A party is under a duty to supplement disclosures at appropriate intervals under FED.R.CIV.P. 26(e) and in no event later than the discovery deadline established by the case management order.

(b) **Setting Discovery Deadlines.** The Case Management Order will establish a firm discovery deadline.

(1) The discovery deadline is that date by which all responses to written discovery, including supplementation of responses, required by the Federal Rules of Civil Procedure must be made and by which all depositions must be concluded. Supplementation of disclosures must be concluded by the discovery deadline.

(2) Counsel must initiate discovery requests and notice or subpoena depositions sufficiently in advance of the discovery deadline date to comply with this rule, and discovery requests that seek responses or schedule depositions that would otherwise be answerable after the discovery deadline date are not enforceable except by order of the court for good cause shown.

(3) The parties may not extend the discovery deadline by stipulation or without the consent of the court.

(c) **Attorney/Party Signatures for Requests to Extend Discovery Deadlines.** The court in its discretion may require the requesting attorney and party to sign requests to extend discovery deadlines.

(d) **Limitations on Use of Discovery.** The court should limit the number of depositions, interrogatories, requests for production and requests for admission to the needs of each particular case. A specific interrogatory/request and its reasonably related subpart will be counted as one interrogatory/request.

(e) **FED. R. CIV. P. 26(f) Conference of the Parties**. Early Meeting of Counsel/Attorney Conference. Except in categories of proceedings exempted from initial disclosures by Fed.R.Civ.P. 26(a)(1)(E), the attorneys and any unrepresented parties must confer by telephone or in person as soon as is practicable and no later than the deadline established by the court and discuss, at a minimum, the following:

(1) Principal Issues.

(A) Identify the principal factual and legal issues in dispute;

(B) Discuss the principal evidentiary basis for claims and defenses;

(C) Determine the number of days required for trial and whether the case should be considered for ADR procedures.

(2) Disclosure

(A) Discuss the arrangements for exchanging the disclosures required by FED.R.CIV.P. 26(a)(1) and whether any changes should be made in the timing, form, or requirement for such disclosures.

(B) Confer on the following topics relating to electronically stored information [ESI]:

(i) The native format, media, and repositories of discoverable ESI;

(ii) Steps the parties will take to identify and preserve discoverable ESI to avoid a claim of spoliation;

(iii) The scope of e-mail discovery and any e-mail protocol;

(iv) Whether discoverable deleted ESI still exists, the extent to which restoration of deleted ESI is necessary, and who will bear the burden and cost of restoration;

(v) With respect to discoverable ESI, whether embedded data and metadata exist, whether they will be requested or should be produced, and how to address determinations regarding privilege and FED. R. CIV. P. 26(b)(3)-protected ESI;

(vi) Whether responsive back-up and archival ESI exists, the extent to which back-up and archival ESI is needed and who will bear the burden and costs of obtaining such ESI;

(vii) The format and media to be used in the production of ESI;

(viii) The identity of sources and types of potentially discoverable ESI that a party does not intend to subject to discovery;

(ix) Whether any discoverable ESI is not reasonably accessible and the basis for that contention;

(x) If a party intends to seek discovery of ESI from sources or of types identified as not reasonably accessible, the parties should discuss: (i) the burden and cost of accessing and retrieving such ESI; (ii) any putative good cause for requiring production of all or part of such ESI; and (iii) any mitigating conditions such as scope, time, and cost shifting that might reduce the burden or cost of producing ESI that is not reasonably accessible;

(xi) How to handle inadvertent disclosure of privileged or FED. R. CIV. P. 26(b)(3)-protected ESI considering FED.R.EVID. 502.

(3) **Motions.** Identify any motions whose early resolution would have a significant impact on the scope of discovery or other aspects of litigation.

(4) **Discovery.** Determine what discovery is required, when discovery should be completed, whether discovery should be conducted in phases or be limited to or focused upon particular issues, and what limitations should be placed on discovery.

(5) **Jurisdiction by a Magistrate Judge.** Discuss whether all parties consent to jurisdiction by a magistrate judge under 28 U.S.C. § 636.

(6) **Settlement.** Discuss the possibilities for prompt settlement or resolution of the action and whether it would be helpful to schedule an early settlement conference.

(7) **Preparation of a proposed case management plan and scheduling order.** The proposed order must set forth ADR recommendations, whether all parties consent to trial by a magistrate judge, the date and manner in which disclosures required under FED.R.CIV.P. 26(a) have been

made, whether any party objects to the disclosures made and, if so, on what grounds, discovery limitations, deadlines for amendments to pleadings and joinder of additional parties, completion of discovery, designation of experts; filing of motions, including motions for summary judgment, *Daubert* motions, and other motions in limine. The attorneys of record and all unrepresented parties who have appeared in the action are jointly responsible for arranging the conference and attempting in good faith to agree on the proposed case management plan and scheduling order.

(8) **Other Orders**. Discuss whether any other orders should be entered by the court under FED.R.CIV.P. 16(b) or (c).

Rule 30. **DEPOSITIONS**

(a) **Audiovisual Recording of Depositions.** A deposition may be recorded audiovisually as a matter of course in accordance with Fed.R.Civ.P. 30(b)(2).

(1) **Written Transcript Required.** The recorded deposition must also be taken in the usual manner by a qualified shorthand or machine reporter and a written transcript prepared for use in subsequent court proceedings.

(2) **Scope of Scene Viewed.** During the deposition the witness must be recorded in as near to courtroom atmosphere and standards as possible. There will not be any zoom-in procedures to unduly emphasize any portion of the testimony, but zoom-in will be allowed for exhibits and charts to make them visible to a jury. The camera must focus as much as possible on the witness. The attorneys may be shown on introduction, the beginning of examination and during objections.

(3) **Witness's Approval Not Required.** A witness need not view or approve the recording of a deposition.

(4) **Availability to Parties.** Any party may purchase a duplicate original or edited recording from the video operator technician at any time.

(5) **Editing.** Audiovisually recorded depositions must be edited before the trial as required by the pretrial order.

(6) **Expenses Recoverable as Cost.** A prevailing party may claim in its bill of costs the court reporter's expenses for audiovisually recorded depositions necessarily obtained for use in the case.

(b) Depositions of Experts. The court encourages audiovisual recording of the testimony of expert witnesses.

Rule 35. PHYSICAL AND/OR MENTAL EXAMINATION. Every motion for the physical or mental examination of persons in civil actions which is not accompanied by a consent order setting forth the time, place and scope of the examination and the person selected to perform the examination must be accompanied by a statement executed by counsel for the moving party.

Counsel's statement must recite specifically the efforts initiated by counsel to agree upon the details, time, place, and scope of the mental or physical examination and the person proposed to perform the examination, and that the efforts were not successful.

Rule 37. DISCOVERY VIOLATIONS

(a) Good Faith Certificate. Before service of a discovery motion, counsel must confer in good faith to determine to what extent the issue in question can be resolved without court intervention. A Good Faith Certificate [Official Form No. 4] must be filed with all discovery motions. This certificate must specify whether the motion is unopposed, and if opposed, by which party(ies) and the method by which the matter has been submitted to the magistrate judge for resolution. The certificate must bear the signatures/endorsements of all counsel. If a party fails to cooperate in the attempt to resolve a discovery dispute or prepare the Good Faith Certificate, the filed motion must be accompanied by an affidavit or a 28 U.S.C. § 1746 declaration by the moving party detailing the lack of cooperation and requesting appropriate sanctions.

(b) Motions Must Quote Disputed Language. Motions raising issues concerning discovery propounded under FED.R.CIV.P. 33, 34, 36, and 37, must quote verbatim each interrogatory, request for production, or request for admission to which the motion is addressed, and must state:

(1) the specific objection;

(2) the grounds assigned for the objection (if not apparent from the objection itself), and

(3) the reasons assigned as supporting the motion.

The objections, grounds and reasons must be written in immediate succession to the quoted discovery request. The objections and grounds must be addressed to the

specific interrogatory, request for production, or request for admission and may not be general in nature.

(c) Failure to comply with subsections (a) or (b) of this rule will result in a denial of the motion without prejudice to the party, who may refile the motion upon conformity with this rule.

(d) **L.U.CIV.R. 37 Motion to Limit or Quash a Deposition.** The filing of a motion for a protective order to limit or quash a deposition does not operate as a stay of the deposition. It is incumbent upon the party seeking the protection of the court to obtain a ruling on the motion before the scheduled deposition.

Rule 38. **DEMAND FOR JURY**

(a) **When Due; How Presented.** In order to exercise the right to jury trial, a party must make a demand for jury trial, including a removed or transferred action, as may be required by FED. R.CIV.P. 38(b) and 81(c)(3)(A). A designation of jury trial on the civil cover sheet is not sufficient for purposes of this rule.

(b) **Within Discretion of Court.** A request for a jury otherwise presented will be addressed to the sound judicial discretion of the court.

(c) **Removed Actions; Law and Equity Actions.** A civil action removed to federal district court from a chancery court of the State of Mississippi will be designated for non-jury trial.

Rule 42. **CONSOLIDATION OF ACTIONS.** In civil actions consolidated under FED.R.CIV. P. 42(a), the action bearing the lower or lowest docket number will control the designation of the district or magistrate judge before whom the motion to consolidate is noticed; the docket number will also determine the judge before whom the case or cases will be tried. Consolidation of actions from different divisions of a district court will be controlled by the earliest filing date. A dismissal of the action bearing the lower or lowest number before the hearing on a motion to consolidate will not affect the operation of this rule. The judge initially assigned the lower or lowest numbered action, even if that action has been dismissed, will be the judge before whom the action(s) will be tried.

Rule 45. **SUBPOENA**

(a) **Witnesses.** Witnesses for trial in paupers' cases must be compelled by subpoena or their voluntary attendance procured.

(b) **Witnesses' Attendance and Mileage Fees.** Tender of the witness fee and mileage is required even if the party requesting the subpoena has been granted leave to

proceed in forma pauperis under 28 U.S.C. § 1915, except in habeas corpus cases and proceedings under 28 U.S.C. § 2255.

(c) **Privileged Information**. Information which is claimed to be privileged may be filed under seal under the provisions of L.U.CIV.R. 79.

(d) **Non-Party ESI.** Parties issuing a subpoena duces tecum for electronically stored information from non-parties must attempt to meet and confer with the non-party (or counsel, if represented) and discuss the same issues with regard to requests for ESI as set out in L.U.CIV.R. 26.

(e) **Motions Regarding Subpoenas.** Motions regarding subpoenas will be considered discovery motions and are governed by the procedural requirements that govern discovery motions.

Rule 48. **COMMUNICATION WITH JURORS.** Upon the return of a verdict by the jury in any civil or criminal action, neither the attorneys in the action nor the parties may, in the courtroom or elsewhere, express to the members of the jury their pleasure or displeasure with the verdict. After the jury has been discharged, neither the attorneys in the action nor the parties may at any time or in any manner communicate with any member of the jury regarding the verdict. Provided, however, that if an attorney believes in good faith that the verdict may be subject to legal challenge, the attorney may apply ex parte to the trial judge for permission to interview one or more members of the jury regarding the fact or circumstance claimed to support the legal challenge. If satisfied that good cause exists, the judge may grant permission for the attorney to make the requested communication and will prescribe the terms and conditions under which it may be conducted.

Rule 51. **REQUESTS FOR JURY INSTRUCTIONS**

(a) **When Due**. Requests for instructions must be submitted not later than fourteen days before the date for which trial is set; additional and revised instructions may be admitted thereafter as the evidence may justify.

(b) **How Presented.** Each requested instruction must be on a separate document, must be numbered (as P-1, *et seq.* and D-1, *et seq.*), and must be supported by citation of authority on papers separate from the requested instruction. Copies must be furnished to opposing counsel when the special requests are submitted to the court. Where good cause is shown to exist, counsel may, with the permission of the court, submit additional written requests during the progress of the trial.

(c) **Automated Formats.** Parties registered on the court's electronic filing system must submit instructions via electronic mail to the chambers of the trial judge. Proposed instructions should *not* be docketed or filed with the court's CM/ECF system. The addresses for the district judges' and for the magistrate judges' chambers appear on the courts' Internet Websites and in the courts' *Administrative Procedures for Electronic Case Filing*.

(d) **Standard Instructions Not Required.** Counsel should not submit pattern or "boilerplate" instructions which are routinely given by the court. This rule is intended to give the court an opportunity to study requests for instructions tailored specifically for a particular trial.

Rule 52. ORDERS AND JUDGMENTS

(a) **Manner of Presentation.** All proposed orders and judgments must be submitted directly to the district or magistrate judge assigned to the case via electronic mail, in software format as may be designated by the court. The addresses for the district judges' and for the magistrate judges' chambers appear on the courts' Internet Websites and in the courts' *Administrative Procedures for Electronic Case Filings*.

(b) **Service.** The attorney providing the order or judgment must also provide a copy to each party. The clerk of court will provide a copy of the executed order or judgment to each party not in default via the court's electronic filing system.

Rule 54. JURY COSTS

(a) **Postponement in Advance of Trial.** Whenever a civil action scheduled for jury trial is required to be postponed, or is settled, or otherwise is disposed of in advance of trial, then jury costs, including mileage and per diem, may, in the court's discretion, be assessed equally against the parties and their counsel or otherwise assessed as directed by the court, unless the court is notified at least one full business day before the day on which the action is scheduled for trial so that the jurors can be notified that it will not be necessary for them to attend.

(b) **Postponement After the Case is Called.** Whenever a civil action is postponed, settled, or otherwise disposed of after the case is called and before the verdict of the jury, the court may assess jury costs, as described in subparagraph (a), equally against the parties and their counsel, or against the party responsible for the postponement or late settlement.

(c) **Bill of Costs.** In all civil actions in which costs are allowed under 28 U.S.C. § 1920 in the final judgment as defined in FED. R. CIV. P. 54(a), the prevailing party to whom costs are awarded must file the bill of costs not later than thirty days after entry of judgment. Unless the court directs otherwise, a motion for review of or objecting to the taxation of costs is subject to the requirements of L.U.CIV.R. 7(b). Except as provided by statute or rule, an appeal of the final judgment does not affect the taxation of costs.

Rule 72. MAGISTRATE JUDGES

(a) Procedures before a Magistrate Judge

(1) Appeal of Magistrate Judge's Decision

(A) A party aggrieved by a magistrate judge's ruling may appeal the ruling to the assigned district judge. The appeal is perfected by serving and filing objections to the ruling within fourteen days after being served with a copy of the ruling, specifying the grounds of error. Objections must be filed and served upon the other party or parties. The opposing party or parties must either file a response to the objection or notify the district judge that they do not intend to respond within fourteen days of service of the objections.

(B) No ruling of a magistrate judge in any matter which he or she is empowered to hear and determine will be reversed, vacated, or modified on appeal unless the district judge determines that the magistrate judge's findings of fact are clearly erroneous, or that the magistrate judge's ruling is clearly erroneous or contrary to law.

(2) Effect of Ruling by a Magistrate Judge. A magistrate judge's ruling or order is the court's ruling and will remain in effect unless and until reversed, vacated, modified, or stayed. The filing of a motion for reconsideration does not stay the magistrate judge's ruling or order, and no such stay occurs unless ordered by the magistrate judge or a district judge. A stay application must first be presented to the magistrate judge who issued the ruling or order. If the magistrate judge denies the stay, the applicant may request in writing a stay from the district judge to whom the case is assigned. Counsel for the applicant must append to the application to the district judge for a stay a certification by counsel that an application for the stay was made to and denied by the magistrate judge.

(3) Matters Upon Which a Magistrate Judge is Required to Submit a Report and Recommendations. In all matters requiring a full-time magistrate judge to make a report and recommendation to the district court, the magistrate judge must submit the report and recommendation to the district judge and to the clerk of court. After service of a copy of the magistrate judge's report and recommendations, each party has fourteen days to serve and file written objections to the report and recommendations. A party must file objections with the clerk of court and serve them upon the other parties and submit them to the assigned district judge. Within seven days of service of the objection, the opposing party or parties must either serve and file a response or notify the district judge that they do not intend to respond to the objection.

(4) Rule Not Applicable to Consent Cases. Nothing contained in this rule

applies to any civil action referred to a magistrate judge by consent of the parties under L.U.CIV.R. 73, for trial and entry of judgment after the date of reference.

(b) **Assignments to a Magistrate Judge.** All United States Magistrate Judges serving within the territorial jurisdiction of the Northern District of Mississippi and the Southern District of Mississippi are referred all the powers and duties granted them by the provisions of 28 U.S.C. § 636 within their territorial jurisdictions. In an action referred to a magistrate judge, the magistrate judge will perform the duties assigned by the court under court rule, plan, order, or other document. A magistrate judge will perform other duties when those duties are assigned by the court or a district judge under court rule, plan, order, or other document.

(c) **Notifying Parties of Non-Automatic Assignment.** If not effected directly by the clerk of court under court rule, plan, order, or other document, reference of a case or duty to a magistrate judge will be by order signed by a district judge. The clerk of court will notify all parties to the action of each reference by a district judge.

(d) **Referral to Magistrate Judge.** Pretrial motions in civil actions are hereby referred to a magistrate judge for hearing and determination, subject to the following exceptions: motions for injunctive relief; motions to remand; motions for judgment on the pleadings; motions for summary judgment; motions to dismiss or to permit maintenance of a class action; motions to dismiss for failure to state a claim upon which relief can be granted; motions to involuntarily dismiss an action; motions *in limine* regarding evidentiary matters; and motions affecting the rulings on dispositive motions (e.g., motions to amend) pending before a district judge. Upon entry of a pretrial order, all motions thereafter served must be submitted to the assigned trial judge.

(e) **Hearing of Non-dispositive Motions When Assigned Magistrate Judge Is Unavailable.** When the magistrate judge assigned to an action is unavailable because of absence from the district, illness, or other cause, or in a bona fide emergency as the result of which any party would be prejudicially delayed by presenting the matter to that magistrate judge, any other full-time magistrate judge may hear and determine any motion presented by a party, other than a motion enumerated as an exception in 28 U.S.C. § 636 (b)(1)(A) and L.U.CIV.R. 72(d).

Rule 73. PROCEDURES BEFORE A MAGISTRATE JUDGE – CIVIL CONSENT CASES

(a) **Notice of Consent Option.** Parties may consent at any time before trial to have a magistrate judge:

(1) conduct all further proceedings in the action and order the entry of final judgment; or

(2) hear and determine one or more case dispositive motions designated by the parties.

Either the assigned district judge or the assigned magistrate judge may discuss the consent option with the parties. The parties are free to withhold consent without adverse substantive consequences, and any notice or other communication from the court under authority of this rule will so advise them.

(b) **Execution of Consent.** If all parties in a civil action consent to a magistrate judge's exercise of authority described in L.U.CIV.R. 73(a)**,** plaintiff or plaintiff's counsel must file with the clerk of court a *Notice, Consent and Reference of a Civil Action to a Magistrate Judge* (Form AO 0085), signed by all parties or their attorneys. A link to this and other national forms is available on the court's website. The notice will not be docketed without all such signatures; neither the notice nor its contents may be made known or available to a judge if the notice lacks any signatures required under this rule. A party's decision regarding consent must not be communicated to a judge before a fully executed consent notice is filed.

(c) **Time for Consent.** Consent in a civil action under L.U.CIV.R. 73(a) may be entered at any time before trial of the case.

(d) **Reference of Civil Consent Action.** An executed notice of consent must be provided to the assigned district judge. The district judge may then refer the case to the magistrate judge for all further proceedings.

(e) **Party Added After Consent Occurs.** A party added to a civil action after reference to a magistrate judge on consent will be given an opportunity to consent to the continued exercise of case-dispositive authority by the magistrate judge. A later-added party electing to consent must, within twenty-one days of its appearance, file a consent, signed by the party or its attorney, with the clerk of court. If a later-added party fails or declines to consent to the magistrate judge's exercise of authority, the action will be returned to the assigned district judge for all further proceedings.

Rule 77. **COURT ALWAYS OPEN**. There are no terms of court in the United States District Courts of Mississippi.

Rule 79. **SEALING OF COURT RECORDS**

(a) **Court Records Presumptively in Public Domain.** Except as otherwise provided by statute, rule, including FED. R. CIV. P. 5.2, or order, all pleadings and other materials filed with the court ("court records") become a part of the public record of the court.

(b) **Documents Filed with the Court.** Every document used by parties moving for or opposing an adjudication by the court, other than trial or hearing exhibits, must be filed with the court. No document may be filed under seal, except upon entry of an order of the court either acting sua sponte or specifically granting a request to seal that document. Any order sealing a document must include particularized findings demonstrating that sealing is supported by clear and compelling reasons and is narrowly tailored to serve those reasons. A statute mandating or permitting the non-disclosure of a class of documents provides sufficient authority to support an order sealing documents.

(c) **Sealed Orders.** A judicial officer may seal a court order, including an order to seal documents and related findings, when sealing a court order meets the standard for sealing a document.

(d) **Stipulations, Confidentiality and Protective Orders Insufficient**. No document may be sealed merely by stipulation of the parties. A confidentiality order or protective order entered by the court to govern discovery will not qualify as an order to seal documents for purposes of this rule. Any document filed under seal in the absence of a court order to seal may be unsealed without prior notice to the parties.

(e) **Procedure for Filing Documents Under Seal**.

(1) Parties must comply with the Administrative Procedures of the court governing the physical requirements related to filing documents under seal (i.e., format of electronic media, physical versus electronic filing, etc.).

(2) A party submitting a document or portion of a document for filing under seal under a governing statute, rule, or order must note on the face of the document that it or a portion of it is filed under seal under that statute, rule, or order (specifying the statute(s), rule(s) or order(s) relied upon). The clerk will provide public notice by stating on the docket that the document contains sealed material.

(3) Any document not covered by section (e)(2) and filed with the intention of being sealed must be accompanied by a motion to seal. The clerk will provide public notice by docketing the motion in a way that discloses its nature as a motion to seal. The document and any confidential memoranda will be treated as sealed pending the outcome of the ruling on the motion. Any filing unaccompanied by a motion to seal will be treated as a public record.

(4) Any motion to seal must be accompanied by a non-confidential supporting memorandum, a notice that identifies the motion as a sealing motion, and a proposed order. A party may also submit a confidential memorandum

for in camera review. The non-confidential memorandum and the proposed order must include:

(A) A non-confidential description of what is to be sealed;

(B) A statement of why sealing is necessary, and why another procedure will not suffice;

(C) References to governing case law; and

(D) Unless permanent sealing is sought, a statement of the period of time the party seeks to have the matter maintained under seal and how the matter is to be handled upon unsealing.

(E) The proposed order must recite the findings required by governing case law to support the proposed sealing. Any confidential memoranda will be treated as sealed pending the outcome of the ruling on the motion.

(f) **Duration of Sealing.** Court records filed under seal in civil actions will be maintained under seal until otherwise ordered by the court.

(g) **Non-Filed Documents**. Nothing in this Local Rule limits the ability of the parties, by agreement, to restrict access to documents which are not filed with the court.

Rule 81. CASES EXEMPTED FROM THESE RULES

These Local Rules do not apply to petitions or actions brought by a person:

(a) who seeks a writ of habeas corpus or otherwise challenges a criminal conviction or sentence;

(b) who is proceeding without an attorney and who is in the custody of the United States, a state or a state subdivision and whose claims relate to conditions of confinement; or

(c) who is appealing a decision by the Social Security Administration.

Such actions are governed by orders entered in the particular case itself.

Rule 83.1 ATTORNEYS: ADMISSION AND CONDUCT

(a) General Admission of Attorneys

(1) Any attorney who is a member of the Mississippi Bar must satisfy the following requirements for admission to this court:

(A) the attorney must produce a photocopy of the certification of admission to practice in Mississippi either from the Mississippi Bar or the Mississippi Supreme Court, dated no later than sixty days prior to its submission;

(B) the attorney must be sponsored by a member of the bar of this court who must certify that the applicant is a member in good standing in the Mississippi Bar and is familiar with the LOCAL RULES and the MISSISSIPPI RULES OF PROFESSIONAL CONDUCT; and

(C) the attorney must be presented to the court only after filing his or her documentation with the clerk of court, paying the admission fee, and signing the oath. An applicant may then be presented to a district or magistrate judge of this court for formal admission, which may be accomplished in open court or in chambers at any time convenient to the judge. An applicant for admission may be presented for formal admission to any district or magistrate judge in either the Northern or Southern District of Mississippi.

(b) Appearances

(1) Requirement of Local Counsel. When a party appears by attorney, every complaint, answer, motion, application, notice of deposition, or other paper on behalf of the represented party must be signed, and every deposition, mediation, conference or hearing must be attended by at least one attorney of record admitted to the general practice of law in the district court in which the action is pending.

(2) Designation of Lead Counsel. In any civil action in which a single party is represented by multiple counsel, the initial pleadings filed on behalf of the party must designate at least one attorney as lead counsel.

(3) Withdrawal by Attorneys. When an attorney enters an appearance in a civil action, he or she must remain as counsel of record until released by formal order of the court. An attorney may be released only on motion signed by the client(s) or upon a duly noticed motion to all parties, including the client and presented to the judicial officer to whom the case is assigned, together with a proposed order authorizing counsel's withdrawal.

(c) Discipline and Reinstatement

(1) **Original Discipline.** The court may, after notice and an opportunity to show cause to the contrary, if requested, censure or reprimand any attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with these rules, the MISSISSIPPI RULES OF PROFESSIONAL CONDUCT, or any other rule of the court. If the conduct or failure to comply is found to be flagrant, the court may, after notice and opportunity to show cause, revoke or suspend the attorney's admission to practice before the court. Such action by the court will be reported by the clerk of the court to the executive director of the Mississippi Bar, or the appropriate official of the bar of any non-resident attorney admitted to practice before this court. If the court finds that the conduct complained of affords reasonable grounds for more stringent disciplinary action, including suspension or disbarment, the matter will, in the case of a member of the Mississippi Bar, be referred to the Mississippi Bar for appropriate action under MISS. CODE ANN. § 73-3-301, et seq. (1972) or subsequent amendments. If the attorney is not a member of the Mississippi Bar, the matter will be referred to the appropriate disciplinary authority of the bar of which he or she is a member.

Nothing herein may be construed to limit the inherent disciplinary power of the judicial officers of this court, including the power of a district judge to immediately suspend a member of the bar convicted of a felony in a case heard before him or her.

(2) **Reciprocal Discipline.** When it is shown to the court that any member of its bar has been suspended or disbarred from practice by any other court of record, the member will be subject to suspension or disbarment by the district court. The disciplinary action is initiated by a show-cause order issued by the court, notifying the attorney that disciplinary proceedings have been commenced, describing the disciplinary proceedings conducted in the other jurisdiction, and requesting that the member appear and show cause why he or she should not be suspended or disbarred from practice before the district court. The member will be afforded thirty days to show cause why he or she should not be suspended or disbarred; the time for response may be extended by the court for proper reason. The member's response to the show-cause order is limited to claims of (A) lack of procedural due process in the original proceedings or (B) lack of substantial evidence to support the factual findings. Lack of procedural due process in the original proceedings, however, does not preclude original disciplinary action by the court as provided in subparagraph 1. Upon response to the show-cause order, and after hearing, if one is requested, or upon expiration of the period allowed for response, if no response is made, the court may enter an appropriate order in which it may impose discipline, including, but not limited to, the same discipline administered by the other jurisdiction.

(3) Reinstatement. No application for relief from suspension or reinstatement after disbarment will be considered by this court unless the applicant can show that he or she is an attorney in good standing with the Mississippi Bar or with the jurisdiction in which he or she may have been suspended or disbarred. Any attack upon the denial of readmission or relief from suspension/reinstatement after disbarment is limited to claims of (A) lack of procedural due process in the reinstatement proceeding of the other jurisdiction or (B) lack of substantial evidence to support the factual findings. Upon the applicant's showing of good standing, the court may vacate or continue the disbarment or suspension, or diminish the suspension, as may be appropriate.

(d) Pro Hac Vice Admission of Attorneys:

(1) Definitions

(A) A "non-resident attorney" is a person not admitted to practice law in this state but who is admitted in another state or territory of the United States or of the District of Columbia and is not disbarred or suspended from practice in any jurisdiction.

A non-resident attorney is eligible for admission pro hac vice if that lawyer:

i. lawfully practices solely on behalf of the lawyer's client and its commonly owned organizational affiliates, regardless of where the lawyer resides or works; or

ii neither resides nor is regularly employed at an office in this state; or

iii. resides in this state but (a) lawfully practices from offices in one or more other states and (b) practices no more than temporarily in this state, whether by admission pro hac vice or in other lawful ways; or

iv. is a government attorney employed on a full time basis and is lawfully admitted to practice in another jurisdiction.

(B) A "resident attorney" is an attorney admitted to practice in either the Northern or Southern District of Mississippi after complying with L.U.CIV.R. 83.1(a).

(C) A "client" is a person for whom or entity for which the non-resident attorney has rendered services or by whom the attorney has been retained before the lawyer performs services in this state.

(D) "This state" refers to Mississippi. This rule governs proceedings before any federal court located in this state.

(2) Authority of the Court to Permit Pro Hac Vice Admissions. A federal court of this state may, in its discretion, admit an eligible non-resident attorney retained to appear in a particular civil proceeding pending before that court to appear pro hac vice as counsel in that proceeding. No admission will be effective until all required fees are received by the clerk of the court. This rule provides the only authority under which a non-resident attorney who is not a member of the Mississippi Bar and not admitted to practice before the Mississippi Supreme Court may practice in a United States District Court serving Mississippi. These rules contain no "grandfathering" provision allowing a non-resident attorney not a member of the Mississippi Bar to practice in a district court other than on a case-by-case pro hac vice admission.

(3) Association and Duties of a Resident Attorney. No eligible non-resident attorney may appear pro hac vice unless and until a resident attorney has been associated. The resident attorney remains responsible to the client and responsible for the conduct of the proceeding before the court. It is the duty of the resident attorney to advise the client of the resident attorney's independent judgment on contemplated actions in the proceedings if that judgment differs from that of the non-resident attorney. At least one resident attorney must sign every submission filed with the court and must personally appear and participate in all trials, in all pretrial conferences, case management conferences and settlement conferences, hearings and other proceedings conducted in open court, and all depositions or other proceedings in which testimony is given.

(4) Pro Hac Vice Application. A non-resident attorney seeking to appear pro hac vice in a proceeding pending in a federal court of this state must submit a verified application, as set out in Form 6, to associated counsel. Local counsel will retain the original application and file it, in the format required by the Administrative Procedures for Electronic Case Filing, in the court where the litigation is filed, accompanied by a certificate of good standing issued within ninety days of the date of the application by the licensing authority for all states, as well as the District of Columbia, where the applicant has been admitted to practice law. The application must be served on all parties who have appeared in the case and must include proof of service. The verified application must contain the following information:

(A) the applicant's residence and business address;

(B) the name, address, and phone number of each client sought to be represented;

(C) the courts before which applicant has been admitted to practice and the respective period(s) of admission;

(D) whether the applicant (i) has been denied admission pro hac vice in this state, (ii) has had admission pro hac vice revoked in this state, or (iii) has otherwise formally been disciplined or sanctioned by any court in this state in the last five years. If so, specify the nature of the allegations; the name of the authority bringing such proceedings, the caption of the proceedings, the date filed, what findings were made, and what action was taken in connection with those proceedings;

(E) whether any formal, written disciplinary proceeding has ever been brought against the applicant by a disciplinary authority in any other jurisdiction within the last five (5) years and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;

(F) whether the applicant has been formally held in contempt or otherwise sanctioned by any court in a written order in the last five (5) years for disobedience to its rules or orders, and, if so, the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substances of the court's rulings (a copy of the written order or transcript of the oral rulings must be attached to the application);

(G) the name and address of each court and a full identification of each proceeding in which the applicant has filed an application to appear pro hac vice in this state within the preceding two years; the date of each application; and the outcome of the application;

(H) the style and number of each case, including the name of the court, in which the applicant has appeared as counsel pro hac vice within the immediately preceding 12 months, is presently appearing as

counsel pro hac vice, or has pending applications for admission to appear pro hac vice;

(I) an affirmative statement that the applicant has read and is familiar with the LOCAL RULES OF THE UNITED STATES DISTRICT COURTS FOR THE NORTHERN AND SOUTHERN DISTRICT OF MISSISSIPPI and the ethics, principles, practices, customs and usages of the legal profession in the State of Mississippi, including but not limited to the MISSISSIPPI RULES OF PROFESSIONAL CONDUCT required of the members of the Mississippi Bar as well as the procedures of this court;

(J) the name, address, telephone number, e-mail address and bar number of the resident attorney whom the applicant has associated in the particular case; and

(K) the signature of the resident attorney associated by the applicant certifying the resident attorney's agreement to the association and his/her appearance of record with the non-resident attorney.

The non-resident attorney's application may provide the following optional information:

i. the applicant's prior or continuing representation in other matters of one or more of the clients the applicant proposes to represent and any relationship between those other matter(s) and the proceeding for which the applicant seeks admission;

ii. any special experience, expertise, or other factor the applicant believes to make it particularly desirable that the applicant be permitted to represent the client(s) the applicant proposes to represent in the particular case.

(5) **Application Fee.** Simultaneously with the filing of the verified application, the applicant must pay a non-refundable fee in an amount set by the court by general order. An applicant will not be required to pay the fee established by L.U.CIV.R. 83.1(b)(5) if the applicant will not charge an attorney fee to the client(s) and is:

(A) employed or associated with a pro bono project or nonprofit legal services organization in a civil case involving the client(s) of such programs; or

(B) applying to appear in a habeas corpus proceeding for an indigent defendant.

(6) **Objection to Application:** A party to the proceedings may file an objection to the application or seek the court's imposition of conditions to its being granted. The objecting party must file its written objection by way of a verified affidavit containing or describing information establishing a factual basis for the objection and may seek denial or modification of the application. If the application has already been granted, the objecting party may move that the pro hac vice admission be revoked. The court may grant or deny the application or modification of the application without the necessity of any hearing, at the court's discretion.

(7) **Standards for Admission.** The court has discretion whether to grant applications for admission pro hac vice and to set the terms and conditions of admission. An application ordinarily should be granted unless the court finds reasons to believe that:

(A) admission may be detrimental to the prompt, fair and efficient administration of justice;

(B) admission may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent;

(C) one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate the risk;

(D) the applicant has engaged in more than five (5) separate unrelated cases or other matters before the Northern and Southern Districts of the federal courts of this state within the last twelve (12) months immediately preceding the appearance in question;

(E) admission should be denied because the applicant had, before the application, filed or appeared in the federal court without having secured approval under these rules.

(8) **Revocation of Admission.** Admission to appear as counsel pro hac vice in a proceeding will be revoked if the attorney is suspended or disbarred by any other court of record during the pendency of the action in which he or she has been granted leave to appear, and lack of due process or lack of substantial evidence to support the factual findings in the original proceeding will not preclude revocation. Admission to appear as counsel pro hac vice in a proceeding may also be revoked for any of the reasons listed in Section 7(a-c) above or just cause determined by the court.

(9) **Suspension or Disbarment of Resident Attorney.** In the event the resident attorney associated by the non-resident attorney in a particular case is suspended, disbarred, or incapacitated by virtue of health or otherwise from the practice of law in the State of Mississippi, the non-resident attorney before further proceeding in the pending case, must associate a new resident attorney who is in good standing to practice law in Mississippi and admitted to practice in the Northern or Southern District federal courts for the State of Mississippi and must file an amendment to the verified application required by L.U.CIV.R. 83.1(4).

(10) **Attorneys Representing the United States.** Attorneys representing the United States or any of its departments, agencies or employees are permitted to appear on behalf of the United States government and to represent its interests in any matter in which the United States government is interested upon proper introduction to the court by the United States Attorney for the district or one of the United States Attorney's assistants

(e) Authorization to Practice Law in the Northern and Southern Districts of Mississippi Federal Court.

A law student who is enrolled in a legal internship program or a clinical legal education course in an American Bar Association accredited law school of this state and who has been granted limited admission under the Mississippi Limited Practice Act, Miss. Code Ann. §§ 73-3-201 to -211 (1972), may also be authorized to engage in limited practice in this court with the following additional conditions and limitations:

(1) The law student who applies for admission to limited practice must certify that the student is familiar with federal procedural and evidentiary rules as well as these Local Rules. The law student must take the oath and be admitted to limited practice by order of a judicial officer of this court**.**

(2) Upon filing the oath and order in the office of the clerk of court, the law student will be authorized to engage in limited practice in any federal court in the state subject to any controls and limitations ordered by the court.

(3) The authority for limited practice by a law student will continue during any regular school term during which the law student is enrolled in a legal internship or clinical legal education course, including interim sessions between terms. The court may revoke the authority granted at any time.

(4) A law student may not directly represent clients but may only assist the supervising attorney or clinical teacher, who must be admitted to practice in this court and otherwise meet the requirements of Miss. Code Ann. §73-

3-205, in representing their clients. All pleadings and entries of record in courts must be signed by the supervising attorney or clinical teacher.

(5) Law students may appear and participate in trials and hearings in court if the supervising attorney or clinical teacher is present and supervising the student.

(6) Law students assigned to prosecuting attorneys may assist the supervising attorney before grand juries subject to the same prohibitions and penalties as to disclosure and secrecy as are members of the grand jury.

(7) Law students will be subject to the same standards and rules of professional conduct and ethics and the same rules of discipline as members of the bar of this court, and each must certify in writing that the student has read and is familiar with the Mississippi Rules of Professional Conduct.

(8) A law student may not receive compensation for the student's services from the client or from any other source, directly or indirectly, for participation, other than the award of academic credit by the student's law school. This rule does not prevent the court from awarding costs and expenses which may otherwise be authorized by law to any governmental agency, legal assistance program, or law school clinical instruction program for the services provided by the student. As in all other cases, the court will determine the propriety and amount of an award of costs, including reasonable attorney's fees.

The judicial officer before whom a student is participating may, at any time and with or without cause and for any reason, revoke the authorization established by this Rule.

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Rule 83.2. **ASSIGNMENT OF JUDGES.** The assignment of judges in civil cases will be in accordance with the internal procedures adopted by each court.

Rule 83.3. **EXHIBITS**

(a) **Custody and Disposition of Exhibits.** All exhibits, including models, diagrams, or other material items, filed in a proceeding must be physically removed by the parties who filed them, in the event no appeal is perfected, within sixty days from the date of final disposition of the case by this court, or, in the event an appeal is perfected and thereafter disposed of, within thirty days after receipt of the judgment, other process, or certificate disclosing disposition of the case by that court. In the event the exhibits are not removed from the custody of the clerk

within the required time, the clerk may destroy or otherwise dispose of the exhibits.

(b) **Custody of Sensitive Exhibits.** Sensitive exhibits include, but are not necessarily limited to, drugs, weapons, currency, pornography, and items of high monetary value. Sensitive exhibits offered or received in evidence will be maintained in the custody of the clerk of court during the hours in which the court is in session. At the conclusion of each daily proceeding and at the noon recess, the clerk will return all sensitive exhibits to the offering counsel or party, who must then be responsible for maintaining custody and the integrity of such exhibits until the next session of court, at which time they must be returned to the clerk, unless otherwise ordered by the court. Following the return of a verdict in a jury case, or the entry of a final order in a non-jury case, sensitive exhibits will be handled or disposed of in the same manner as other exhibits under this rule.

Rule 83.4. **CAMERAS AND ELECTRONIC DEVICES**

(a) **Photography and Broadcasting Prohibited**. Taking photographs, video or audio recordings or broadcasting by radio, television or other means in or from the courtroom or its environs is prohibited, regardless of whether the court is actually in session. The environs of the courtroom extend to all portions of the building in which a courtroom is located, including hallways, stairs, and elevators.

(b) **Electronic Devices Prohibited.** Electronic devices capable of transmitting images or messages are prohibited in the courtroom except when such equipment is being utilized by parties, attorneys and support personnel directly involved in the litigation before the Court. Cellular telephones must be turned off or in the vibrate/silent mode in the courtroom.

(c) These provisions may be relaxed or modified in the discretion of the presiding judge, unless otherwise prohibited by statute, rule or Judicial Conference policy.

Rule 83.5. **MISSISSIPPI RULES OF PROFESSIONAL CONDUCT.** An attorney who makes an appearance in any case in the district court is bound by the provisions of the MISSISSIPPI RULES OF PROFESSIONAL CONDUCT and is subject to discipline for violating them.

Rule 83.7 **ALTERNATIVE DISPUTE RESOLUTION**

(a) **Introduction and Purpose.** The United States District Courts for the Northern and Southern Districts of Mississippi developed this alternative dispute resolution

("ADR") Local Rule to implement the Alternative Dispute Resolution Plan (the "Plan") mandated by the Alternative Dispute Resolution Act of 1998, 28 U.S.C. § 651, et seq. The Plan is designed to provide access to effective ADR techniques and to encourage mutually satisfactory resolutions of disputes in all stages of civil litigation.

(b) **Administration of ADR Plan.** The chief judge of each district will designate a judicial officer, knowledgeable in ADR practices, to implement, administer, oversee, and evaluate the ADR Plan. In addition, the court may from time to time solicit recommendations from state and federal bar associations, committees and organizations interested in ADR regarding ADR programs and efficient methods of coordinating ADR resources in the state and federal courts.

(c) **Voluntary Use of Other Methods.** Nothing in this Local Rule prohibits parties from voluntarily engaging in any form of ADR, such as arbitration, mediation, early neutral evaluation, mini-trial or other appropriate ADR processes at any time.

(d) **Definitions.**

(1) An "ADR Action" is any activity in which the parties mutually engage by consent or directive of the court using ADR methods such as mediation or a settlement conference in an effort to resolve issues short of a trial.

(2) Mediation is a process in which impartial persons assist parties in reaching settlements. Mediators facilitate communications between the parties and assist them in their negotiations. When appropriate, mediators may also offer objective evaluations of cases and may make settlement recommendations.

(3) A settlement conference is a mediation conducted by the court.

(e) **Cases Appropriate for ADR**.

(1) **Discretion of Court.** The determination of whether a matter should be referred for ADR is addressed to the sound discretion of the judicial officer assigned to the case. One of the ADR methods set forth in this Local Rule must be used in all cases, unless exempted by this Local Rule or, at the discretion of the court, waived in a particular case for just cause.

(2) **Actions Exempted from Consideration for ADR.** The following categories of proceedings are exempt from consideration for ADR: an action for review on an administrative record; a petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence; and an

action brought without counsel by a person in custody of the United States, a state, or a state subdivision.

(f) Procedures for ADR.

(1) Early Conferral Regarding ADR. In the FED. R. CIV. P. 26(f) Conference, counsel must confer regarding any discovery or other conditions precedent which they believe are needed for a meaningful and effective mediation or settlement conference, as well as the time **necessary to** complete them. Counsel must inform the magistrate judge in their respective Confidential Settlement Memoranda of any discovery and other conditions precedent which they believe are necessary for meaningful ADR, as well as an estimate of the time necessary to complete them. Any party who believes there is just cause to forego ADR in a case must detail the basis for that belief in the Confidential Settlement Memorandum.

(2) Case Management Order Provision Regarding ADR. After considering the parties' positions on ADR, the magistrate judge will incorporate an ADR deadline in the Case Management Order. The ADR deadline will be a date no later than the close of the discovery period and preferably sooner, subject to the particularities of the case. The ADR deadline should permit sufficient time for discovery necessary to enable the parties to have an effective mediation or settlement conference, but be sufficiently in advance of the discovery deadline to encourage early discovery and the avoidance of unnecessary expense. No later than the ADR deadline, the parties must report to the magistrate judge all ADR efforts the parties have undertaken.

(3) Report Regarding ADR Required before Final Pre-Trial Conference. Before the Final Pre-Trial Conference, the parties must report to the magistrate judge all efforts the parties have made to comply with this Local Rule or provide sufficient facts to support a finding of just cause for failure to comply.

(4) Pre-ADR Procedures. If the parties elect to mediate a case, the pre-mediation procedures, including those relating to any position statements, will be determined by the mediator selected by the parties. Alternatively, should the parties utilize a settlement conference, the judicial officer conducting the conference will direct the pre-settlement conference procedures at the time the settlement conference is scheduled. At a minimum, the parties must submit new Confidential Settlement Memoranda by a deadline set by the judicial officer.

(g) Authority to Settle.

(1) **Disclosure.** Fourteen days before any mediation or settlement conference, the parties will disclose to all other parties and the mediator or the judge conducting the settlement conference the identities of all entities and persons required to be present for meaningful mediation to take place, including those persons or entities having authority to settle the case, as well as non-party persons or entities whose presence would be required in order to fully resolve all issues in the case (such as persons or entities who may hold a subrogated interest in one or more claims).

(2) **Appearance at Mediation or Settlement Conference.** Counsel, including lead trial counsel for all parties, must appear at the mediation or settlement conference unless otherwise ordered by the court. If the case involves attorneys admitted pro hac vice, local counsel must also attend. If there is the potential for insurance coverage for one or more claims, and if the judicial officer has excused their presence, a representative of each insurance company involved, with full authority to settle the case, nevertheless, must be on standby and available by phone for the duration of the entire mediation or settlement conference.

(3) **Attendance of Parties.** All parties, including representatives of corporate parties, organizations or other entities, as well as individual parties, must appear in person at the mediation or settlement conference throughout the entire mediation or settlement conference unless excused in advance by the court. If a judicial officer permits any party or representative of a party to participate in the mediation or settlement conference by remote electronic means, that party or representative must be available throughout the entire mediation or settlement conference. Office closings and time zone differences do not excuse a company representative from continued participation under this Local Rule. **Each Party representative must have full authority to settle the case.**

(4) **Post-Mediation Report to Court.** Within seven days of the completion of a mediation conducted under this Local Rule, counsel must inform the magistrate judge in writing, using Form No. 7, whether or not the case was resolved, and, if settled, any remaining conditions precedent to entry of an agreed order of dismissal.

(h) **Sanctions.** If a party, party representative or attorney fails to appear or be available at a scheduled mediation or settlement conference as required by this Local Rule, or if a party, party representative or attorney is substantially unprepared to participate in the mediation or settlement conference, or if a party, party representative or attorney fails to participate in good faith during a mediation or settlement conference, a judicial officer upon motion or upon the judicial officer's own initiative, may impose appropriate sanctions including reasonable expenses and attorneys' fees incurred.

(I) Mediators.

(1) Court-Appointed Panels. In lieu of a unique federal panel of mediators, the court refers parties to the persons offering their services as mediators who meet the qualifications for inclusion on the List of Mediators provided for in Section X of the Court-Annexed Mediation Rules for Civil Litigation issued by the Mississippi Supreme Court on October 8, 1998 in *In Re: Authorization of Court-Annexed Mediation in Chancery, Circuit and County Courts*, No. 89-R-99026 S. Ct., and the Order of March 22, 1999 establishing minimum qualifications for inclusion on the list.

(2) Use of Non-Panel Mediators. Parties may use any person as a mediator, whether or not that person is on the List of Mediators referenced in this Local Rule, unless the mediator is disqualified by this Local Rule, ethical rules or by law.

(3) Immunity. Any mediator serving under this Local Rule is performing quasi-judicial functions and is entitled to the immunities and protections that the law accords to persons serving in such capacity.

(4) Codes of Ethics and Standards of Conduct. Any mediator serving under this Local Rule is subject to all ethical rules and standards of conduct set by statute, by the Judicial Conference of the United States, and by other professional organizations to which the mediator may belong or that may be approved or adopted by the court. If a mediator discovers a circumstance requiring disqualification, then the mediator must promptly inform the parties and the court of those circumstances in writing.

(5) Disqualification. No person may serve as a mediator:

(A) in violation of the standards set forth in 28 U.S.C. § 455;

(B) in violation of any applicable standard of professional responsibility or rule of professional conduct;

(C) in violation of any additional standards adopted by the court; or

(D) if the mediator discovers a circumstance requiring disqualification.

(j) Confidentiality of Proceedings.

(1) General Rule of Confidentiality. Except as otherwise provided in L.U.Civ.R. 83.7(j)(4) or required by law, all communications made in mediation or settlement conference are confidential. Mediation- and settlement conference-related communications are not subject to

disclosure and may not be used as evidence against any party or participant in any judicial or administrative proceeding.

(2) **No Compelled Disclosure.** Except as provided in L.U.Civ.R. 83.7(j)(4) or required by law, no party, party's attorney, party's representative, mediator or judicial officer is subject to process requiring disclosure of confidential information or data related to a mediation or settlement conference conducted under this Local Rule, nor may such persons be compelled to testify in any proceeding related to matters occurring during a mediation or settlement conference.

(3) **Limitations on Communications with Court.** Except as provided in L.U.Civ.R. 83.7(j)(4) or required by law, a person participating in mediation or settlement conference under this Local Rule may not be compelled to disclose to the court any communication made, position taken, or opinion formed by any party or mediator in connection with mediation or settlement conference.

(4) **Exceptions to the General Rule of Confidentiality.** The only circumstances which may make it appropriate for a party, a party's attorney, a party's representative, a mediator or a judicial officer to disclose a confidential communication arising from proceedings governed by this Local Rule is a finding by the court that such testimony or other disclosure is necessary to:

(A) prevent a manifest injustice;

(B) enforce a settlement;

(C) help establish a violation of criminal law; or

(D) prevent harm to the public health or safety.

Rule 83.8. RICO CASES

(a) In all cases in this court in which claims are asserted under the Racketeer Influenced and Corrupt Organization Act ("RICO"), 18 U.S.C. § 1961, a RICO Statement, conforming to the requirements of this order, must accompany the filing of the RICO complaint.

(b) This Statement must include the facts that the Plaintiff is relying upon to initiate this RICO complaint as a result of the "reasonable inquiry" required by FED. R. CIV. P. 11. This Statement must be in a form which uses both the numbers and letters as set forth below and must, in detail and with specificity:

(1) State whether the alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c), and/or (d).

(2) List each Defendant and state the alleged misconduct and basis of liability of each Defendant.

(3) List the alleged wrongdoers, other than the Defendant(s) listed above, and state the alleged misconduct of each wrongdoer.

(4) List the alleged victims and state how each victim was allegedly injured.

(5) Describe in detail the pattern of racketeering activity or collection of unlawful debts alleged for each RICO claim. A description of the pattern of racketeering must include the following information:

(A) List the alleged predicate acts and the specific statutes which were allegedly violated;

(B) Provide the dates of the predicate acts, the participants in the predicate acts, and a description of the facts surrounding the predicate acts;

(C) If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities, the "circumstances constituting fraud or mistake shall be stated with particularity." FED. R. CIV. P. 9(b). Identify the time, place, and contents of the alleged misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made;

(D) State whether there has been a criminal conviction for violation of the predicate acts;

(E) State whether civil litigation has resulted in a judgment in regard to the predicate acts;

(F) Describe how the predicate acts form a "pattern of racketeering activity"; and,

(G) State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe in detail.

(6) Describe in detail the alleged enterprise for each RICO claim. A description of each enterprise must include the following information:

(A) State the names of the individuals, partnerships, corporations, associations, or other legal entities which allegedly constitute the enterprise;

(B) Describe the structure, purpose, function, and course of conduct of the enterprise;

(C) State whether any Defendants are employees, officers, or directors of the alleged enterprise;

(D) State whether any Defendants are associated with the alleged enterprise;

(E) State whether the Plaintiff is alleging that the Defendants are individuals or entities separate from the alleged enterprise, or that the Defendants are the enterprise itself, or are members of the enterprise; and,

(F) If any Defendants are alleged to be either the enterprise itself or members of the enterprise, explain whether such Defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.

(7) State whether the Plaintiff is alleging that the pattern of racketeering activity and the enterprise are separate or have merged into one entity. In either event, describe in detail.

(8) Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.

(9) Describe what benefits, if any, the alleged enterprise receives from the alleged pattern of racketeering.

(10) Describe the effect of the activities of the enterprise on interstate or foreign commerce.

(11) If the complaint alleges a violation of 18 U.S.C. § 1962(a), provide the following information:

(A) State who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and,

(B) Describe the use, investment, or locus of such income.

(12) If the Complaint alleges a violation of 18 U.S.C. § 1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.

(13) If the Complaint alleges a violation of 18 U.S.C. § 1962(c), provide the following information:

(A) State who is employed by or associated with the enterprise; and,

(B) State whether the same entity is both the liable "person" and the "enterprise" under § 1962(c).

(14) If the Complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the alleged conspiracy.

(15) Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.

(16) List the actual damages for which Defendant is allegedly liable.

(17) List all other federal causes of action, if any, and provide citations to the relevant statute(s).

(18) List all pendent state claims, if any.

(19) Provide any additional information that you feel would be helpful to the Court in considering your RICO claim.

ADMIRALTY AND MARITIME RULES
DISTRICT COURTS OF MISSISSIPPI

Rule A. SCOPE AND GENERAL PROVISIONS

(1) Applicability. These rules apply to the procedures in admiralty and maritime claims within the meaning of Fed. R. Civ. P. 9(h), which in turn are governed by the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure [Admiralty Supplemental Rules] in the United States District Courts in the State of Mississippi. As used in these Local Admiralty Rules, the term "judicial officer" or "court" means either a United States District Judge or a United States Magistrate Judge.

(2) Citation Format.

(a) The Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure should be cited as "Supplemental Rule [_____]."

(b) The Local Admiralty and Maritime Rules must be cited as "Local Admiralty Rule (L.A.R. [_____])."

(3) Application of Local Admiralty and Maritime Rules. The Local Admiralty Rules apply to all actions governed by L.A.R. A(1), and to the extent possible should be construed to be consistent with the other local rules of this court. To the extent that a Local Admiralty Rule conflicts with another local rule of this court, the Local Admiralty Rule controls.

(4) Designation of "In Admiralty" Proceedings. All pleadings filed in a Fed. R. Civ. P. 9(h) action should set forth the words, "IN ADMIRALTY" following the designation of the court. See Admiralty Form 28 on the courts' Websites.

(5) In Rem Admiralty and Maritime Jurisdiction. In any action brought in rem under the admiralty and maritime jurisdiction of this court, a plaintiff may present a motion and order for the arrest of property to any judicial officer within the district, in the event that the judicial officer assigned to the matter is not readily available to review the pleadings. If a plaintiff has procured a person, firm, or corporation to serve as a substitute custodian of seized property, any judicial officer in the district may sign an order, supported by a motion, permitting the United States Marshal to deliver the property seized to the substitute custodian, assuming the motion is joined by all parties or is being submitted before the appearance of any opposing party. In addition to any other supporting reasons, a plaintiff petitioning to transfer seized property to a substitute custodian must show, by means of a Certificate of Insurance or other sufficient proof of insurance, that there is sufficient insurance coverage for the vessel/property while in the possession of the substitute custodian, and must maintain the coverage in place during the pendency of the case. The insurance must comply with the mandates of the United States Marshal and specifically name the substitute custodian as a named insured.

(6) Verification of Pleadings. Every complaint or claim made under the Admiralty Supplemental Rules must be verified on oath or affirmation by a party, or an officer of a corporate party. If no party or corporate officer is within the district, verification of a complaint or claim may be made by an agent, attorney-in-fact, or attorney of record, who declares the sources of the signer's knowledge or the contents of the verified document, that the document verified is true to the best of the signer's knowledge, the reason why verification is not made by the party or corporate officer, and that the signer has signatory authority. The verification will be deemed to be that of the party, as if verified personally. Any interested party may move, with or without a request for stay, for a personal oath of a party

or all parties, or that of a corporate officer. If required by the court, verification must be procured by commission or as otherwise ordered.

(7) **Amendment of Pleadings to Add or Delete Rule 9(h) Designations.** In any case in which a plaintiff makes a maritime claim within the meaning of Fed. R. Civ. P. 9(h), but the plaintiff could also bring all or a portion of the claims under a different source of jurisdiction and thereby request a trial by jury, the plaintiff's motion to amend the pleadings to either add or delete the Rule 9(h) designation must be made by the general deadline set for amendments to all pleadings. Likewise, in any case in which a plaintiff makes a maritime claim within the meaning of Rule 9(h) and also demands a jury trial, the plaintiff must designate the division of those claims by the deadline set for amendment to pleadings, in the absence of a designation, the entire case will proceed under Rule 9(h) and be set for trial without jury. If a plaintiff elects to drop a Rule 9(h) designation entirely, any vessel or other property previously seized under the Admiralty Supplemental Rules must be immediately released from the custody of the U.S. Marshal or the substitute custodian, upon the motion of any party.

(8) **Issuance of Process.** Except as limited by Supplemental Rules (B)(1) or (C)(3) and L.A.R. B(3) or C(2), or in suits prosecuted in forma pauperis and sought to be filed without pre-payment of fees or costs, or without security, all process will be issued by the court without further notice of the court.

(9) **Publication of Notices.** Unless otherwise required by the court or applicable Local Admiralty or Supplemental Rule, whenever a notice is required to be published by any statute of the United States or by any Supplemental Rule or Local Admiralty Rule, the notice must be published in a newspaper of general circulation in the district where the lawsuit is pending, once a week for three consecutive weeks. If the action involves a marine casualty and is pending in a district other than where the marine casualty occurred, then the plaintiff must also publish the required notice in a newspaper of general circulation where the casualty occurred. All plaintiffs must use due diligence to provide direct notice to all known or reasonably anticipated claimants.

(10) **Form and Return of Process in In Personam Actions.** Unless otherwise ordered by the court, Fed. R. Civ. P. 9(h) process must be by civil summons, and must be returnable twenty-one (21) days after service of process; except that process issued in accordance with Supplemental Rule (B) must conform to the requirements of that rule.

(11) **Taxation of Costs.** If costs are awarded to any party, the following may be taxed as costs in the case, in the manner provided for a civil action:

(a) The reasonable premium or expenses paid on all bonds or stipulations or other security by the party to whom costs are awarded.

(b) Reasonable wharfage or storage charges while in custody of the court.

(c) Costs of publication of notices under applicable rules of court.

(d) Any other reasonable expenses determined by the court, on motion and after hearing, to have been necessarily incurred and proper as costs.

(12) Forms - Admiralty and Maritime Rules. Examples of forms which may be used in admiralty and maritime actions are located on the courts' Websites under "Admiralty Forms." These forms provide illustrations of format and content, but they are neither mandatory nor exhaustive.

Rule B. ATTACHMENT AND GARNISHMENT: SPECIAL PROVISIONS

(1) Definition of "Not Found Within the District." In an action in personam filed under Supplemental Rule (B), a defendant will be considered "not found within the district" if the defendant does not have a physical address locatable within the district where the action is filed by means of typical reference sources such as a telephone directory or listing with the Secretary of State or if there is evidence that despite the listing of a physical address within the district, no individual is present at any reasonable time to receive a summons and complaint as contemplated by Fed.R.Civ.P. 4(d). The plaintiff or the plaintiff's attorney must sign and file with the complaint an affidavit setting forth the basis for classifying the defendant as "not found within the district." See Admiralty Form 28 on the courts' Websites.

(2) Pre-seizure Requirements. In accordance with Supplemental Rule (B)(1), the process of attachment and garnishment shall issue only after one of the following conditions has been met:

(a) Judicial Review Before Issuance. Except as provided in L.A.R. B(3)(b), a judicial officer must review the verified complaint and any other relevant case papers before the clerk issues the requested process of attachment and garnishment. No notice of this pre-arrest judicial review is required to be given to any person or prospective party.

If the judicial officer finds that probable cause exists to issue the process of attachment and garnishment, plaintiff must prepare an order that substantially conforms to Admiralty Form 1 on the courts' Websites for the judicial officer's signature directing the clerk to issue the process.

Upon receipt of the signed order, the clerk will enter the order and issue the summons and process of attachment and garnishment as contemplated by L.A.R. B(3)(c). Thereafter the clerk may issue supplemental process without further order of court.

(b) **Certification of Exigent Circumstances.** If the plaintiff files a written certification that exigent circumstances make review by the court impracticable, the clerk will issue a summons and the process of attachment and garnishment in accordance with L.A.R. B(2)(c).

(c) **Preparation and Issuance of the Process of Attachment and Garnishment.** Plaintiff must prepare the summons and the process of attachment and garnishment and deliver the documents to the clerk for filing and issuance.

The process of attachment and garnishment must substantially conform to Admiralty Form 2 on the courts' Websites and must give adequate notice of the post-seizure provisions of L.A.R. B(4).

(d) **United States Marshal's Return of Service.** The United States Marshal must file a return of service indicating the date and manner in which service was perfected and, if service was perfected upon a garnishee, the United States Marshal shall indicate on the return the name, address, and telephone number of the garnishee.

(e) **Use of Substitute Custodian.** If a substitute custodian is used in an attachment or garnishment proceeding, the plaintiff must follow the same requirements of L.A.R A(5).

(3) **Notification of Seizure to Defendant.** In an in personam action under Supplemental Rule (B), plaintiff or garnishor must initially attempt to perfect service of the notice in accordance with Supplemental Rule (B)(2)(a) or (b).

However, when service of the notice cannot be perfected in accordance with Supplemental Rule(B)(2)(a) or (b), plaintiff or garnishor must by affidavit offer proof required by Supplemental Rule (B)(2)(c) that the plaintiff or the garnishor has tried diligently to give notice of the action to the defendant, but has been unable to do so.

(4) **Post-attachment Review Proceedings.**

(a) **Filing a Required Answer.**

(i) **By Defendant.** In accordance with Supplemental Rule (E)(4)(f), any person who claims an interest in property seized under Supplemental Rule (B) must file an answer and claim against the property within thirty (30) days after service of process has been executed, whether by attachment or service on the garnishee. The answer and claim must describe the nature of the claimant's

interest in the property and articulate reasons why the seizure should be vacated. The claimant must serve a copy of the answer and claim upon plaintiff's counsel, the United States Marshal, and any other party to the litigation, along with a Certificate of Service indicating the date and manner in which service of the answer and claim was made.

(ii) **By Garnishee.** The garnishee must file an answer to the Complaint and respond to any discovery served with the Complaint within twenty-one days after service.

(b) **Hearing on the Answer and Claim.** The claimant may be heard before a judicial officer not less than three days after the answer and claim has been filed and served on the plaintiff.

If the court orders that the seizure be vacated, the judicial officer may also award reasonable attorney's fees, costs and other expenses incurred by any party as a result of the seizure.

If the seizure was predicated upon a showing of "exigent circumstances" under L.A.R. B(3)(b), and the court finds that exigent circumstances did not exist, the court may award reasonable attorney's fees, costs, and other expenses incurred by any party as a result of the seizure.

(5) **Procedural Requirement for the Entry of Default.** In accordance with Fed.R.Civ.P. Rule 55, a party seeking the entry of default in a Supplemental Rule (B) action must file a motion and supporting legal memorandum and offer other proof sufficient to demonstrate that due notice of the action and seizure have been given in accordance with L.A.R. B(4).

Upon review of the motion, memorandum, and other proof, the clerk should, where appropriate, enter the default of a party in accordance with Fed.R.Civ.P. Rule 55(a), and will serve notice of the entry of default upon all parties who have appeared in the action.

(6) **Procedural Requirements for the Entry of Default Judgment.** Not later than thirty days after notice of the entry of default, the party seeking the entry of default judgment must file a motion with appropriate exhibits and supporting legal memorandum sufficient to support the entry of default judgment. The moving party must serve these papers upon every other party to the action and file a Certificate of Service indicating the date and manner in which service was made.

A party opposing the entry of default judgment must file written opposition to the motion within seven days of receipt of the motion. Unless otherwise ordered by the court, the motion for the entry of default judgment will be heard without oral argument.

Unless a motion to be continued is granted, a default judgment establishes a right on the part of the party or parties in whose favor it is entered and will be considered prior to any claims of the owner of the defendant property against which it is entered and to the remnants and surpluses thereof but does not establish plaintiff's priority of entitlement to possession of defendant property over non-possessory lien claimants. Obtaining a judgment by default shall not preclude the party in whose favor it is entered from contending and proving that all, or any portion, of the claim or claims encompassed within the judgment are entitled to priority over any non-possessory lien claims.

Rule C. ACTIONS IN REM

(1) **Verification Requirements.** Every complaint and claim filed in an in rem proceeding under Supplemental Rule (C) must be verified in accordance with L.A.R. A(6) and B(2).

(2) **Pre-seizure Requirements.** In accordance with Supplemental Rule (C)(3), the process of arrest in rem may issue only after one of the following conditions has been met:

(a) **Judicial Review Before Issuance.** Except as provided in L.A.R. C(2)(b), no seizure warrant may be issued until a judicial officer has reviewed the verified complaint and any other relevant case papers and entered an order directing the clerk to issue the warrant for arrest or summons in rem. No notice of this pre-seizure judicial review is required to be given to any person or prospective party.

The plaintiff must submit a proposed order to the judicial officer directing the clerk to issue a warrant of arrest or summons to be entered in the event that the court finds that probable cause exists for an action in rem. The order must substantially conform to Admiralty Form 3 on the courts' Websites.

After entry of the signed order, the clerk will issue the warrant for arrest or summons in accordance with L.A.R. C(2)(c). The warrant must conform to Admiralty Form 4 on the courts' Websites. Thereafter, the clerk may issue supplemental process without further order of the court.

(b) **Certification of Exigent Circumstances.** If the plaintiff files a written certification that exigent circumstances make review by the court impracticable, the Clerk will issue a warrant of arrest or summons.

At any post-arrest proceedings under Supplemental Rule (E)(4)(f) and L.A.R. C(7), plaintiff has the burden of showing that probable cause existed for the issuance of process and that exigent circumstances existed which precluded judicial review in accordance with L.A.R. C(2)(a).

(c) **Preparation and Issuance of the Warrant for Arrest or Summons.** Plaintiff must prepare the warrant for arrest or summons, and deliver them to the clerk for filing and issuance.

The warrant for arrest must substantially conform to Admiralty Form 4 on the courts' Websites and must give adequate notice of the post-arrest provisions of L.A.R. C(7) to all parties including, but not limited to, any person or entity known to plaintiff to have a claim or interest in the vessel or property seized.

(3) **Special Requirements for Actions Involving Freight, Proceeds or Intangible Property.**

(a) **Instructions to Be Contained in the Summons.** Unless otherwise ordered by the court, the summons must order the person having control of the freight, proceeds or intangible property to either:

(i) File a claim within fourteen days after service of the summons in accordance with L.A.R. C(6)(a); or

(ii) Deliver or pay over to the United States Marshal the freight, proceeds or intangible property, in the form that the property is typically represented, or a part of the property which is sufficient to satisfy plaintiff's claim.

The summons must also inform the person having control of the freight, proceeds or intangible property that service of the summons has the effect of arresting the property and prohibiting the release, disposal or other distribution of the property without prior order of the court.

(b) **Requirements for Claims to Prevent the Delivery of Freight, Proceeds or Intangible Property to the United States Marshal.** Any claim filed in accordance with Supplemental Rule (E)(4) and L.A.R. C(6)(a) must

describe the nature of claimant's interest in the property and articulate reasons why the seizure should be vacated.

The claim, accompanied by a certificate of service, must be served upon the plaintiff, the United States Marshal, and all other parties to the litigation.

(c) Delivery or Payment of the Freight, Proceeds or Intangible Property to the United States Marshal. Unless a claim is filed in accordance with Supplemental Rule (E)(4)(f), and L.A.R. C(6)(a), any person served with a summons issued under L.A.R. C(2)(a) or (b) must, within fourteen days after execution of service, deliver or pay over to the United States Marshal all, or part of, the freight, proceeds or intangible property sufficient to satisfy plaintiff's claim. Between the time that the summons is served and the property delivered or the court rules on a motion to prevent the delivery of the property, the person served with the summons may not remove the property from the district or otherwise transfer or dispose of it.

Unless otherwise ordered by the court, the person tendering control of the freight, proceeds or intangible property shall be excused from any further duty with respect to the property in question.

(4) Publishing Notice of the Arrest as Required by Supplemental Rule (C)(4).

(a) Time for Publication. If the property is not released within fourteen days after the execution of process, the notice required by Supplemental Rule (C)(4) must be published by the plaintiff in accordance with L.A.R. A(9), and must begin not later than twenty-one days after execution of process. The notice must substantially conform to Admiralty Form 5 on the courts' Websites. See also Admiralty Forms 6, 7 and 8.

(b) Proof of Publication. Not later than fourteen days after the last day of publication plaintiff must file a copy of the actual notice and proof of publication in the form of a sworn statement by or on behalf of the publisher or editor indicating the dates of publication.

(5) Undertaking in Lieu of Arrest. If, before or after the commencement of an action, a party accepts any written undertaking to respond on behalf of the vessel or other property in consideration of plaintiff's refraining from seeking arrest of the vessel or other property, the undertaking will only respond to orders or judgments in favor of the party accepting the undertaking and any parties expressly named in it, and only to the extent of the benefit conferred in the undertaking. See Admiralty Form No. 9 on the courts' Websites.

(6) **Time for Filing Claim or Answer.** Unless otherwise ordered by the court, any claimant of property subject to an action in rem must:

(a) File the claim within fourteen days after process has been executed. See Admiralty Form Nos. 10 and 11 on the courts' Websites; and

(b) Serve an answer within twenty-one days after filing the claim.

(7) **Post-arrest Proceedings.** Upon filing a claim, the claimant may also file a motion and proposed order directing plaintiff to show cause why the arrest should not be vacated, and if after a hearing on the motion the court vacates the arrest because the plaintiff did not have a reasonable basis to seize the claimant's property, the court may award attorney's fees, costs, and other expenses incurred by any party as a result of the arrest.

Additionally, if the seizure was predicated upon a claim of "exigent circumstances" under L.A.R. C(2)(b), and the court finds that exigent circumstances did not exist, the court may award attorneys' fees, costs and other expenses incurred by any party as a result of the seizure.

(8) **Procedural Requirements for Entry of Default.** In accordance with Fed.R.Civ.P. 55(a), a party seeking the entry of default judgment in rem must first move for entry of default and then file its motion and supporting legal memorandum.

The party seeking the entry of default must also file proof sufficient to demonstrate that due notice of the action and arrest have been given by:

(a) Service upon the master or upon the person having custody of the property; and

(b) Delivery, personally or by certified mail, return receipt requested (or international effective equivalent), to every other person, entity, including any known owner, who has not appeared or intervened in the action, and who is known to have, or claims to have, a possessory interest in the property.

The party seeking entry of default judgment under Local Rule C(8) may be excused for failing to give notice to such "other person" upon a satisfactory showing that diligent effort was made to give notice without success; and

(c) Publication as required by Supplemental Rule (C)(4) and L.A.R. C(4).The clerk may, where appropriate, enter default in accordance with Fed.R.Civ.P. 55(a). The clerk will serve notice of the entry of default upon all parties represented in the action.

(9) Procedural Requirements for Entry of Default Judgment. Not later than thirty days after notice of the entry of default, the moving party must file a motion, and supporting legal documents, for the entry of default judgment under Fed.R.Civ.P. 55(b). The moving party may also file as exhibits to the motion such other documentation as may be required to support the entry of default judgment.

(a) When No Person Has Filed a Claim or Answer. Unless otherwise ordered by the court, the motion for default judgment will be considered by the court without oral argument.

(b) When Any Person Has Filed an Appearance, But No Claim or Answer, or Has Filed a Claim or Intervention But Has Not Answered. If any person has filed an appearance, claim or intervention in accordance with L.A.R. C(6), but does not join in the motion for entry of default judgment, the party seeking the entry of default judgment must serve notice of the motion upon the party not joining in the motion, and any opposing party will have seven days from receipt of the notice to file written opposition with the court.

A default judgment establishes a right on the part of the party or parties in whose favor it is entered and will be considered prior to any claims of the owner of the defendant property against which it is entered, as to the remnants and surpluses thereof, but does not establish the priority over, or ranking among, non-possessory lien claimants. Ranking in priority may subsequently be established on the motion of any party.

Rule D. POSSESSORY, PETITIORY AND PARTITION ACTIONS

In possessory actions filed under Supplemental Rule (D), process should issue as provided by L.A.R. A(8), B(3)(c), and C(2)(c). Notice requirements must follow L.A.R. A(9), B(4) and C(4). Likewise, a plaintiff may demonstrate exigent circumstances under L.A.R. B(3)(b) by an affidavit setting out that the vessel or other property is in danger of being lost, taken from the jurisdiction of the court, or that other good cause exists for granting expedited proceedings.

A plaintiff who obtains a summons on the basis of exigent circumstances will also be subject to the provisions of L.A.R. C(2)(b) and C(7).

Rule E. ACTIONS IN REM AND QUASI IN REM; GENERAL PROVISIONS

(1) Statement of Damages and Expenses Required. Every complaint filed in a Supplemental Rule (B) and (C) action must state the known amount of the debt, damages, or salvage for which the action is brought, or in the case of a Rule (D) action, the precise nature of the plaintiff's interest and the percentage of the interest claimed. In addition, the complaint should also specify the amount of any unliquidated claims, including attorney's fees and expenses, as well as the legal basis upon which the plaintiff seeks the unliquidated damages, including the right to recover attorney's fees and expenses.

(2) Advance Arrangements for Substitute Custodian. Plaintiffs are admonished to make every reasonable advance effort to secure a substitute custodian and to coordinate issues concerning the appointment of a substitute custodian with the United States Marshal, and to arrange for advance compliance with L.A.R. A(5), whenever practical, before filing any complaint which seeks the issuance of warrant for arrest or execution by the United States Marshal.

(3) Requirements and Procedures for Effecting Intervention. Whenever a vessel or other property is arrested or attached under a Supplemental Rule, and the vessel or property is in the custody of the United States Marshal or duly authorized substitute custodian, any person with a claim against the vessel or property must present the claim as provided in this rule:

(a) Intervention of Right When No Sale of the Vessel or Property is Pending, and Where Security Has Not Been Posted but the Vessel is Released. Except as limited by L.A.R. E(3)(b), any person with a claim against a vessel or property which has been arrested or attached may, as a matter of right, file an intervening complaint at any time before entry of an order scheduling the vessel or property for sale. The intervening party must also prepare and submit to the clerk a supplemental warrant for arrest or a supplemental process of attachment and garnishment.

The clerk will file the intervening complaint and issue the supplemental process. The intervening party must deliver a copy of the intervening complaint and the original of the supplemental process to the United States Marshal, who will re-arrest or re-attach the vessel or property in the name of the intervening plaintiff. If the United States Marshal has on deposit sufficient funds to maintain the previous seizure, the intervening plaintiff need not post additional funds. However, any party may subsequently move to pro-rate the costs of maintaining the seizure among all of the intervening plaintiffs, as provided in Subsection 5 of this rule.

(b) **Permissive Intervention When the Vessel or Property Has Been Scheduled for Sale by the Court.** Except as indicated below and subject to any other rule or order of this court, no person has an automatic right to intervene in an action once the court has ordered the sale of the vessel or property, and the sale is scheduled to occur within fifteen (15) days from the date the party moves for permission to intervene under this subsection. In such cases, the person seeking permission to intervene must:

(i) File a motion to intervene and indicate in the caption of the motion a request for expedited hearing when appropriate;

(ii) Include a copy of the proposed intervening complaint as an exhibit to the motion to intervene;

(iii) Submit a supplemental warrant for arrest or a supplemental process of attachment and garnishment;

(iv) Serve copies of the motion to intervene, with exhibits and proposed supplemental process, upon every other party to the litigation;

(v) Indicate in the motion to intervene whether the intervening party is seeking to delay the sale of the vessel and, if so, the justification for doing so; and

(vi) File a certificate of service indicating the date and manner of service of the motion and accompanying documents.

The court may permit intervention under terms which it deems equitable to the interests of all parties. If the court permits intervention it will direct the clerk to issue the supplemental process.

The clerk will enter the order, file the original intervening complaint and issue the supplemental process with a copy of the intervening complaint.

The intervening party must deliver a copy of the intervening complaint and the original of the supplemental process to the United States Marshal, who will re-arrest or re-attach the vessel or property in the name of the intervening plaintiff.

Counsel for the intervening party must also serve a copy of the intervening complaint, exhibits, and supplemental process upon every other party of record and file a Certificate of Service indicating the manner and date of service.

(4) Special Requirements for Salvage Actions. In cases of salvage, the complaint must also state to the extent known the value of the hull, cargo, freight, and other property salvaged, the amount claimed, the names of the principal salvors, and whether the suit is instituted on their behalf and on behalf of all other persons associated with them.

Plaintiff must also attach as exhibits to the complaint a list of all known salvors and persons believed entitled to share in the salvage, including any crewmembers who are not parties to the complaint, and a copy of any salvage agreement or other contract previously entered into by the plaintiff in connection with the actions that are being shown as the basis for entitlement to a salvage award

(5) Deposit of United States Marshal's Fees and Expenses Required Before Effecting Arrest, Attachment or Garnishment

(a) Deposit Required Before Seizure. Any party seeking the arrest of a vessel or attachment of property under Supplemental Rule (E) must deposit a sum with the United States Marshal sufficient to cover the United States Marshal's or substituted custodian's estimated fees and expenses of arresting and keeping the property for at least ten (10) days. The United States Marshal is not required to execute process until the deposit is made.

(b) Proration of United States Marshal's or Substitute Custodian's Fees and Expenses upon Intervention. When one or more parties intervene under L.A.R. E(3)(a) or (b), the burden of advancing sums to the United States Marshal or substituted custodian sufficient to cover the United States Marshal's or substituted custodian's fees and expenses will be allocated equitably between the original plaintiff and the intervening party or parties as indicated below:

(i) Stipulation for the Allocation and Payment of the United States Marshal's or Substituted Custodian's Fees and Expenses. Immediately upon the filing of an intervening complaint, counsel for the intervening plaintiff must arrange for a conference between all other parties to the action, at which time the parties must make a good faith effort to allocate fees and expenses among the parties. Any resulting stipulation must be filed with the court and a copy served upon the United States Marshal.

(ii) **Allocation of Costs and Expenses in the Event that Parties Cannot Stipulate.** The court expects counsel to resolve the allocation of costs and expenses in accordance with the preceding paragraph, but if an arrangement cannot be made, the parties will share in the fees and expenses of the United States Marshal or substitute custodian in proportion to their claims as stated in the original and intervening complaints.

To determine each party's proportionate share, counsel for the last intervening plaintiff must determine the total amount claimed by each party from the original or amended complaint and all other intervening complaints filed in accordance with L.A.R. E(3)(a) or (b), then deliver to the United States Marshal a list which summarizes each party's claim and the proportion which each party's claim bears to the aggregate claims asserted in the litigation, determined to the nearest one-tenth of one percent. The United States Marshal will then determine the total expenses incurred to date and estimate the expenses to be incurred during the next fourteen days. For the purpose of making this calculation, the total fees and expenses must be calculated from the date when continuous and uninterrupted arrest or attachment of the property began and not from the date a particular party's intervening complaint was filed.

The United States Marshal will then apply the percentage determined in the listing compute the amount of each intervening party's initial deposit requirements. The United States Marshal will use this percentage to compute any additional deposit requirements which may be necessary under L.A.R. E(5)(c).

After the United States Marshal determines of each party's percentage share of the deposit requirements, the intervening party must either post his deposit with the United States Marshal or substitute custodian or move to set aside that requirement. If the intervenor fails to comply with this requirement within two days, the intervenor's attachment will be vacated.

(c) **Additional Deposit Requirements.** Until the property arrested or attached and garnished has been released or otherwise disposed of in accordance with Supplemental Rule (E), the United States Marshal may require from any party who has caused the arrest or attachment and garnishment to post additional deposits which the United States Marshal determines necessary to cover any additional estimated fees or expenses.

(d) **Judicial Relief from Deposit Requirements.** Any party who contends that the deposit requirements of this rule impose a burden disproportionate to the aggrieved party's potential recovery in light of the relative priorities of the claims asserted against the vessel or other property may apply to the court for relief.

Although the judicial officer may adjust the deposit requirements upon motion, the proportion required of an aggrieved party may not be reduced to a percentage less than that imposed upon the claimant whose claim is the smallest among that of claims which the movant stipulates have priority over its claim or, in the absence of a stipulation, the greatest percentage imposed upon any claimant participating in the deposit requirements.

(e) **Failure to Comply with Additional Deposit Requirements.** Any party who fails to make the additional deposit requested by the United States Marshal may not participate further in the proceeding, except to seek relief from this rule. The United States Marshal will notify the court in writing whenever any party fails to make additional deposits as required by L.A.R. E(5)(c).

If a party questions its obligations to advance monies required by this rule, the United States Marshal may apply to the court for instructions concerning that party's obligation.

(6) **Property in Possession of a United States Officer.** Whenever the property to be arrested or attached is in custody of a United States officer, the United States Marshal must serve the appropriate process either upon the officer or employee or, if the officer or employee is not found within the district, then, the custodian of the property within the district.

The United States Marshal must direct the officer, employee or custodian not to relinquish custody of the property until further order of the court.

(7) **Process held in Abeyance.**

(a) **When Permitted.** If a plaintiff asks the clerk to hold issuance of process in abeyance under Supplemental Rule (E)(4)(b), the clerk will docket the request and will not be responsible for ensuring that process is issued at a later date.

(b) **When Intervention Is Subsequently Required.** It is the intention of these rules that a vessel or other property should be arrested or attached by

process issued and effected in only one civil action. Therefore, if while process is held in abeyance on one action, the vessel or property is arrested or attached in another action, the plaintiff who originally requested process be held in abeyance in the first action should voluntarily dismiss, without prejudice, the first action, (insofar as that action seeks to proceed against the property arrested or attached in the second action) and promptly intervene in the second action under L.A.R. E(3)(a) or (b).

Motions to consolidate in rem actions against the same vessel or property will be granted only in exceptional circumstances to prevent undue hardship or manifest injustice.

(8) Release of Property Under Supplemental Rule (E)(6).

(a) Release by Consent or Stipulation. Release under Supplemental Rule (E)(6) must be secured by cash, cashier's check, or money order, a surety bond issued by an underwriter licensed to issue such bonds in the State of Mississippi, or a Letter of Undertaking submitted on behalf of the parties' underwriter which is approved by order of the court. The authorizing instrument must be signed by the party on whose behalf the property is detained or the party's attorney and the attorney-in-fact for a licensed surety. See Admiralty Form Nos. 9, 12, 13 and 14 forth on the courts' Websites.

The party seeking release must also submit a proposed order substantially conforming to Admiralty Form No. 16 on the courts' Websites.

Unless otherwise agreed by all parties and approved by court order, the stipulation, bond, or other security must be posted in an amount equal to, or greater than, the amount required for the following types of action:

(i) Actions Entirely for a Sum Certain. Actions for a sum certain may be secured by cash, a cashier's check or money order in the amount claimed in the complaint, with interest at six percent (6%) per annum from the date claimed to be due to a date twenty-four (24) months after the date the claim was filed, or by filing an approved stipulation or bond for the amount alleged plus interest as computed in this subsection.

The stipulation or bond must be conditioned to abide by all orders of the court, and to pay the amount of any final judgment, with interest.

(ii) **Actions Other Than Possessory, Petitory or Partition.** Unless otherwise ordered by the court, these actions must be secured by the amount of the appraised or agreed value of the property seized, with interest. If the parties cannot agree upon an appraised value, the court will order an appraisal.

The stipulation or bond must be conditioned to abide by all orders of the court, and to pay the amount of any final judgment, with interest.

The person who consents or stipulates to the release must also file a claim in accordance with L.A.R. E(3)(a) or (b).

(iii) **Possessory, Petitory or Partition Actions.** The United States Marshal may release property in these actions only upon court order and upon the subsequent deposit of security and compliance with the terms or conditions that the court deems appropriate.

(b) **Upon the Dismissal or Discontinuance of an Action.** If the complaint is dismissed or discontinued by court order, a plaintiff must coordinate with the United States Marshal to ensure that all costs and charges of the court and its officers have first been paid.

(c) **Release After the Posting of a General Bond.**

(i) **Requirements of a General Bond.** General Bonds under Supplemental Rule (E) (6) (b) must identify the vessel by name, nationality, dimensions, official number or registration number, hailing port and port of documentation.

(ii) **Responsibility for Maintaining a Current Listing of General Bonds.** The clerk will maintain a current listing of all general bonds in alphabetical order by name of the vessel. The listing will be available for inspection during normal business hours.

(iii) **Execution of Process**. Although the subsequent arrest of a vessel for which a general bond already has been posted will be stayed under Supplemental Rule (E) (5) (b), the United States Marshal must still serve a copy of the complaint upon the master or other person in whose charge or custody the vessel is found. If neither the master nor another person in charge of custody is found aboard the vessel, the United States Marshal should make the return accordingly.

Plaintiff must promptly advise the owner or designated agent, at the address furnished in the general bond, of (1) the case number, (2) nature of the action and amount claimed; (3) the plaintiff and name and address of plaintiff's attorney; and (4) the return date for the filing of a claim of owner.

(9) Application to Modify Security for Value and Interest. At any time, any party who claims an interest in the subject matter of the action may file an application to increase or decrease the security, and any order granting the application may be enforced by attachment or as otherwise provided by law. Supplemental Rule F(7) establishes the procedure to increase the security.

(10) Custody and Safekeeping.

(a) Initial Responsibility. The United States Marshal will initially take custody of any vessel, cargo or other property arrested or attached in accordance with these rules. Thereafter, and until a substitute custodian is authorized in accordance with L.A.R. E(10)(c), the United States Marshal is responsible for providing adequate and necessary security for the safekeeping of the vessel or property. In the discretion of the United States Marshal, adequate and necessary security may include the placing of keepers on or near the vessel or the appointment of a facility or person to serve as a custodian of the vessel or property. Absent exceptional circumstances, the plaintiff should have a substitute custodian appointed by the court at the time of filing the complaint as set forth in L.A.R. E(2).

(b) Limitations on the Handling, Repairing and Subsequent Movement of Vessels or Property. After the arrest or attachment of a vessel or property on a vessel, and except as provided in L.A.R. E(10)(a), no person may handle cargo, conduct repairs, or move a vessel without prior order of court. The custodian or substitute custodian must, however, comply with any orders issued by the Captain of the Port, United States Coast Guard, including an order to move the vessel, and must comply with any applicable federal, state, or local laws or regulations pertaining to vessel and port safety, but must not remove the vessel from the District and must report the vessel's movement to the court within twenty-four (24) hours of the movement.

(c) Procedures for Changing Custody Arrangements. Any party may apply to the court to dispense with keepers, remove or place the vessel, or other property seized on or about the vessel at a specified facility, designate a substitute custodian for the property, or for other similar relief. The application must substantially conform to Admiralty Form No. 17 on the courts' Websites.

(i) **Notification of the United States Marshal Required.** When an application for change in custody arrangements is filed, either before or after the United States Marshal has taken custody of the vessel or property, the filing party must serve notice of the application on the United States Marshal in sufficient time to permit the United States Marshal to review the indemnification and insurance arrangements proposed by the applicant and substitute custodian. The application must also be served upon all other parties to the litigation.

(ii) **Indemnification Requirements.** An application for the appointment of a substitute custodian or facility must include as an exhibit to the motion, a consent and indemnification agreement signed by both the applicant or the applicant's attorney and the proposed substitute custodian. The application must substantially conform to Admiralty Form No. 17 on the courts' Websites.

The consent and indemnification agreement must expressly release the United States Marshal from any and all liability and responsibility for the care and custody of the property while in the hands of the substitute custodian and must expressly hold the United States Marshal harmless from all claims arising from the substitute custodianship. See Admiralty Form No. 18 on the courts' Websites.

(iii) **Court Approval Required.** The application to change custody arrangements and indemnification and consent agreement must be submitted to a judicial officer who will determine whether the facility or substitute custodian is capable of safely keeping the seized property. The proposed order granting the application should substantially conform to Admiralty Form No. 19 on the courts' Websites.

(d) **Insurance Requirements.** At the time of the arrest or attachment of a vessel or property, the United States Marshal will obtain insurance to protect itself and its custodians from liability arising from the arrest, attachment or custody. The cost of the insurance will be paid by the plaintiff from the funds posted with the Marshal before the seizure, until otherwise taxed as cost. The insurance may be discontinued upon court approval of a consent custodian under L.A.R. A(5).

(11) **Preservation, Humanitarian and Repatriation Expenses.**

(a) **Limitations on Reimbursement for Services or Supplies Provided to a Vessel or Property in Custody.** Except in cases of emergency or undue hardship, no person may claim as an expense of administration the costs of services or supplies furnished to a vessel, seized property unless the services or supplies have been furnished to the United States Marshal or

substitute custodian upon order of this court or of the United States Marshal.

Any order issued under this subsection should require the person furnishing the services or supplies to file a weekly invoice.

(b) Preservation Expenses for the Vessel or Property under Seizure. The United States Marshal or substitute custodian is authorized to incur expenses reasonably deemed necessary to prevent loss or undue deterioration of the vessel, or other property while in custody.

(c) Expenses for Care and Maintenance of a Crew. Except in an emergency or upon the authorization of a judicial officer, neither the United States Marshal nor substitute custodian may incur expenses for feeding or otherwise maintaining the crew.

Emergency applications for providing food, water and necessary medical services for the maintenance of the crew may be submitted and decided *ex parte.* Thereafter, any party may bring a motion to challenge or modify the court's order, and, unless otherwise provided, the expenses will be taxed as a cost of administration and not as an expense of custody

(d) Repatriation Expenses. Absent an order of court expressly ordering the repatriation of the crew or passengers and directing that the expenses be taxed as a cost of administration, no person will be entitled to claim these expenses as expenses of administration.

(e) Claim by a Supplier for Payment of Charges. Any person who claims payment for furnishing services or supplies in compliance with L.A.R. E(11) must submit an invoice to the United States Marshal's office for review and approval before the vessel is released.

The United States Marshal will review the claim, make adjustments or recommendations to the claim as are appropriate and forward the claim to the court for approval. The court may postpone the hearing on an individual claim until a hearing can be set to consolidate other claims against the property.

(12) Property in Incidental Custody and Otherwise not Subject to the Arrest or Attachment.

(a) Authority to Preserve Cargo in Incidental Custody. The United States Marshal or an authorized substitute custodian is responsible for securing,

maintaining and preserving all property incidentally taken into custody as a result of the arrest or attachment of a vessel or property. Incidental property may include but is not limited to laden cargo not itself the subject of the arrest or attachment.

The United States Marshal or substitute custodian must maintain a separate account of all costs and expenses associated with the care and maintenance of property incidentally taken into custody.

Any person claiming entitlement to possession of property incidentally taken into custody must, as a precondition of receiving possession, reimburse the United States Marshal or substitute custodian for such separately accounted expenses, reserving a right to seek payment of said expenses from any other party.

(b) **Separation, Storage and United States Preservation of Property in Incidental Custody.** Any party, the United States Marshal, or substitute custodian may petition the court to permit the separation and storage of property in incidental custody from the property actually arrested or attached.

If the court orders separation of the incidentally seized property to protect it from undue deterioration, to provide for safer storage, to meet an emergency, to reduce the expenses of custody or to facilitate a sale of the vessel or other property under L.A.R. E(17), the costs of that separation will be treated as an expense of preservation and taxed as a cost of custody.

(c) **Disposal of Unclaimed Property.** Property incidentally in custody and not subsequently claimed by any person entitled to possession will be disposed of in accordance with the laws governing the disposition of property abandoned to the United States of America.

Except when prohibited by federal statute, the resulting net proceeds associated with the disposition of abandoned property will be applied to offset the expense of administration with the remainder escheating to the United States of America as provided by law.

(13) **Dismissal.**

(a) **By Consent.** An action may not be dismissed under Fed.R.Civ.P. 41(a) unless all costs and expenses of the court and its officials have been paid.

In the case of multiple plaintiffs or an intervening plaintiff(s), the plaintiff or intervening plaintiff may not dismiss its claims unless it has paid its proportionate share of costs and expenses in accordance with L.A.R. E(8).

(b) Involuntary Dismissal. An order of dismissal under Fed.R.Civ.P.41(b) should also designate the costs and expenses to be paid by the party or parties so dismissed.

(14) Judgments.

(a) Expenses of Sureties as Costs. If costs are awarded to any party, then all reasonable insurance premiums or expenses previously paid by the prevailing party on bonds, stipulations or other security may be taxed as costs in the case.

(b) Costs of Arrest or Attachment. If costs are awarded to any party, then all reasonable expenses paid by the prevailing party incidental to or arising from the arrest or attachment of any vessel, property or cargo may be taxed as costs in the case.

(15) Stay of Final Order.

(a) Automatic Stay for Fourteen Days. In accordance with Fed.R.Civ.P. 62(a), a party may not execute upon a judgment, and seized property may not be released until fourteen days after the entry of the judgment or order of dismissal.

(b) Stays Beyond the 14-Day Period. If within the 14-day period established by Fed.R.Civ.P. 62(a) a party files either a motion contemplated in Fed.R.Civ.P. 62(b) or a notice of appeal, then unless otherwise ordered by the court, the stay will be extended for a period not to exceed thirty days from the date of the filing of the motion or notice of appeal to permit the court to consider an application for the establishment of a supersedeas bond, and when this bond must be filed with the court.

(16) Notice of Sale.

(a) Publication of Notice. In an action in rem or quasi in rem, and except in suits filed on behalf of the United States of America where notice is prescribed by statute, the United States Marshal must publish notice in any of the newspapers approved under L.A.R. Rule A(9).

(b) Duration of Publication. Unless otherwise ordered by the court, applicable Supplemental Rule, or Local Admiralty Rule, publication of the notice of sale must be made at least twice; the first publication must be at least one (1) calendar week before the date of the sale, and the second at least three calendar days before the date of the sale.

(17) Sale of a Vessel or Property.

(a) Payment of the Purchase Price. Unless otherwise provided in the order of sale, the person whose bid is accepted must pay the United States Marshal the purchase price in the manner provided below:

(i) If the Bid is Not More Than $500.00. The successful bidder must immediately pay the full purchase price.

(ii) If the Bid is More than $500.00. The bidder must immediately deposit with the United States Marshal $500.00, or 10% of the bid, whichever sum is greater, and must pay the remaining purchase price within three days.

If an objection to the sale is filed within the time permitted by L.A.R. Rule E(17)(g), the successful bidder need not pay the remaining purchase price until three days after the court confirms the sale.

(b) Method of Payment. Unless otherwise ordered by the court, payments to the United States Marshal must be made in cash, certified check or cashier's check.

(c) Custodial Costs Pending Payment. When a successful bidder fails to pay the balance of the bid within the time allowed by L.A.R. E(17)(a)(2) or within the time permitted by court order, the United States Marshal will charge the successful bidder for the cost of keeping the property from the date payment of the balance was due to the date the bidder takes delivery of the property.

The United States Marshal may refuse to release the property until these additional charges have been paid.

(d) Default for Failure to Pay the Balance. A person who fails to pay the balance of the bid within the time allowed will be deemed to be in default, and a judicial officer may then either order that the sale be awarded to the second highest bidder or may order a new sale, as appropriate.

Any sum deposited by the bidder in default will be forfeited and applied by the United States Marshal to any additional costs incurred because of the forfeiture and default, including costs incident to resale. The balance of the deposit, if any, will be retained in the registry and subject to further order of the court.

(e) **United States Marshal's Report of Sale.** At the conclusion of the sale, the United States Marshal must file a written report of the sale to include the date of the sale, the price obtained, and the name and address of the buyer.

(f) **Confirmation of Sale.** Unless an objection is timely filed in accordance with this rule, or the bidder is in default for failing to pay the balance of the purchase price, plaintiff must have the sale confirmed on the day following the last day for filing objections.

To confirm the sale, plaintiff's counsel must file a "Request for Confirmation of Sale" on the day following the last day for filing an objection. The "Request for Confirmation of Sale" must substantially conform to Admiralty Form No. 20 on the courts' Websites. Plaintiff's counsel must also prepare and offer for filing a "Confirmation of the Sale." The "Confirmation of the Sale" must substantially conform to Admiralty Form No. 21 on the courts' Websites. The clerk will file and docket the confirmation and promptly transmit a certified copy of the "Confirmation of Sale" to the United States Marshal's office.

Unless otherwise ordered by the court, if the plaintiff fails timely to file the "Request for Confirmation of Sale" and proposed "Confirmation of Sale," the United States Marshal will assess any continuing costs or expenses for custody of the vessel or property against the plaintiff.

(g) **Objections to Confirmation.**

(i) **Time for Filing Objections.** Unless otherwise permitted by the court, an objection must be filed within seven days following the sale. The person who objects must serve a copy of the objection upon the United States Marshal and all other parties to the action, along with a Certificate of Service indicating the date and manner of service. Opposition to the objection must be filed within seven days after receipt of the objection to the sale.

The court will consider the objection and any opposition to the objection and confirm the sale, order a new sale, or grant other relief as appropriate.

(ii) Deposition of Preservation or Maintenance Costs. Any person who objects to the sale must also deposit with the United States Marshal the cost of keeping the property for at least seven days. Proof of the deposit with the United States Marshal's office must be delivered to the clerk's office for filing. The court will not consider the objection without proof of this deposit.

If the objection is sustained, the objector will be reimbursed for the expense of keeping the property from the proceeds of any subsequent sale, and any remaining deposit will be returned to the objector upon court order.

If the objection is denied, the sum deposited by the objector will be applied to pay the fees and expenses incurred by the United States Marshal in keeping the property from the date the objection was filed until the sale is confirmed. Any remaining deposit will be returned to the objector upon court order.

(h) Confirmation of Title. Any claim of failure of a party to give the required notice of an action to arrest of a vessel, or other property or, or failure to give required notice of a sale may afford grounds for objecting to the sale, but does not affect the title of a good faith purchaser.

(18) Post-sale Claim. Except for seamen's wages, unless otherwise ordered by the court, any claims filed after the date of the sale will be limited to the remnants and surplus, if any, arising from the sale, will not be admitted on behalf of lienors who file their claims after the sale.

Rule F. ACTIONS TO LIMIT LIABILITY

(1) Security. Upon filing a complaint, the plaintiff must deposit with the court a sum equal to the amount or value of the plaintiff's interest in the vessel and pending freight, if any (see Admiralty Form No. 22 on the court's website), or approved security for that amount such as a Letter of Undertaking or an Ad Interim Stipulation for Value which substantially conforms to Admiralty Form No. 23 on the courts' Websites.

(2) Submission of Proposed Order and Enjoining of Suits. After the plaintiff complies with Supplemental Rule F(1), plaintiff may move for an injunction against further prosecution of all claims against the plaintiff or the plaintiff's property. The plaintiff must submit with the motion a proposed order that substantially conforms to Admiralty Form No. 24 on the courts' Websites.

(3) Publication of the Notice. After entry of an Order Approving Ad Interim Stipulation for and Enjoining Suits, plaintiff must ask the clerk to issue the notice contemplated by Supplemental Rule (F)(4), to be published as required by that Rule. Plaintiff must use diligence to make publication in a manner reasonably calculated to give notice to all known or reasonably anticipated claimants. (See Admiralty Form No. 25 on the courts' Websites.)

(4) Proof of Publication. Plaintiff may make proof of publication by filing a sworn statement by or on behalf of the publisher or editor indicating the dates of publication, along with a copy of the actual publication.

Rule G. FORFEITURE ACTIONS IN REM

(1) Scope. This rule applies to all civil forfeiture in rem actions arising from a federal statute. To the extent that this rule does not address an issue, Local Admiralty Rules C and E apply. If neither this rule nor L.A.R. C or E address an issue, then Supplemental Rule G applies.

(2) Verification of the Complaint. A complaint filed in any civil forfeiture action in rem action arising from a federal statute must be verified by affirmation of a person having knowledge, firsthand or otherwise, of the facts alleged in the complaint.

(3) Forfeiture of Real Property.

(a) If the defendant in an in rem civil forfeiture action is real property, the government must proceed in accordance with 18 U.S.C. § 985.

(b) After a complaint is filed, and on the request of the government, a judicial officer will issue a writ of entry to allow inspection and inventory of the property.

(c) If the court issues a seizure warrant for real property before the entry of an order of forfeiture under 18 U.S.C. § 985(d)(1)(B)(ii), it will conduct a prompt post-seizure hearing during which the property owner may contest the basis for the seizure.

(4) Forfeiture of Other Property. Arrest Warrant In Rem.

(a) If property other than real property is already in the possession, custody, or control of the government when the complaint for forfeiture is filed, the clerk of the court will issue a warrant to arrest the property.

(b) If property other than real property is not already in the possession, custody, or control of the government, upon a finding of probable cause by a judicial officer, the court will issue a warrant to arrest the property.

(c) A warrant is not necessary if the property is already subject to a judicial restraining order.

(5) Notice.

(a) **Generally.** The plaintiff must provide notice of any civil forfeiture action in rem in accordance with Supplemental Rule G(4). The government may publish notice on an official government forfeiture website for at least thirty consecutive days.

(b) **Known Potential Claimants.** The government must send notice of the action and a copy of the complaint to any person who reasonably appears to be a potential claimant.

(c) **Property Valued at Less than $1,000.00.** Publication is not required as long as direct notice is sent to all known potential claimants under Supplemental Rule G(4)(b).

(6) Responsive Pleadings.

(a) **Strict Compliance Required.** All claims and answers must be filed within the filing deadlines established by Supplemental Rule G(5), unless the court, for good cause, grants an extension of time to file a claim or answer before the expiration of those deadlines.

(b) **Excuse.** Failure to file a timely claim or answer will not prevent a claimant from petitioning the court to excuse the failure to strictly comply with Supplemental Rule G(5).

(c) **Claim Form.** A claim form should substantially conform to Admiralty Form 27 on the courts' Websites.

(7) Special Interrogatories. The number of Special Interrogatories propounded under Rule G(6) will not count toward the limits imposed on interrogatories under Fed.R.Civ.P. 33 or L.U.Civ.R. 26.

(8) Default; Default Judgment.

(a) **Entry of Default.** The government may, under Fed. R. Civ. P. 55(a), seek the entry of a default against any person or entity that has failed to plead or otherwise defend against any civil forfeiture action in rem commenced by the government. Any request for entry of a default must be accompanied by proof of publication of notice and proof of all direct notices sent to known potential claimants.

(b) **Default Judgment; Complete or Partial.** Not later than thirty days after entry of default, the government must file a motion for entry of a default judgment. The government may request entry of either a complete default judgment or a default judgment against all persons or entities that have failed to file a timely claim and answer within the time stated in any direct or published notice.

(9) **Taxation of Costs.** Costs awarded to a claimant are limited to those costs authorized by 28 U.S.C. § 2465.

OFFICIAL FORMS

Form 1 CASE MANAGEMENT ORDER

Form 2(a) NOTICE OF RECEIPT OF ORIGINAL DEPOSITION

Form 2(b) NOTICE OF SERVICE OF INTERROGATORIES OR REQUESTS FOR PRODUCTION OF DOCUMENTS OR RESPONSES THERETO

Form 2(c) NOTICE OF SERVICE OF PRE-DISCOVERY DISCLOSURE INFORMATION

Form 3 PRETRIAL ORDER

Form 4 GOOD FAITH CERTIFICATE

Form 5 [RESERVED]

Form 6 APPLICATION FOR ADMISSION PRO HAC VICE

Form 7 REPORT OF MEDIATION

NOTE: These forms are available on the Courts' websites in a format that may be downloaded or completed online. In the Southern District, a separate link to the forms appears on the page where these Local Rules are found, titled "Southern District of Mississippi Forms."

THIS FORM WILL APPEAR ON THE WEBSITE IN A FILLABLE PDF FORMAT

UNITED STATES DISTRICT COURT
(CHOOSE DISTRICT) DISTRICT OF MISSISSIPPI
(CHOOSE DIVISION)

Enter Plaintiff(s) here:

CIVIL ACTION NO.

Enter Defendant(s) here:

CASE MANAGEMENT ORDER

This Order, including all deadlines, has been established with the participation of all parties and can be modified only by order of the Court on a showing of good cause supported with affidavits, other evidentiary materials, or reference to portions of the record.

IT IS HEREBY ORDERED:

1. **ESTIMATED DAYS OF TRIAL:** _____

ESTIMATED TOTAL NUMBER OF WITNESSES: _____

EXPERT TESTIMONY EXPECTED: Yes/No **NO. OF EXPERTS:** ___

Enter explanation (if necessary) here.

2. **ALTERNATIVE DISPUTE RESOLUTION [ADR].** (Pick one)

(Alternative dispute resolution techniques appear helpful and will be used in the civil action as follows:)

(At the time this Case Management Order is offered it does not appear that alternative dispute resolution techniques will be used in this civil action.)

3. CONSENT TO TRIAL BY UNITED STATES MAGISTRATE JUDGE. (Pick one)

(The parties consent to trial by a United States Magistrate Judge.)

(The parties do not consent to trial by a United States Magistrate Judge.)

4. DISCLOSURE. (Pick one)

(The following additional disclosure is needed and hereby ordered:)

(The pre-discovery disclosure requirements of L.U.CIV.R. 26(a)(1) have been complied with fully.)

5. MOTIONS; ISSUE BIFURCATION. (Pick one)

(Staged resolution, or bifurcation of the trial issues will assist in the prompt resolution of this action. Accordingly, the Court orders that:)

(Staged resolution/bifurcation of the trial issues will not assist in the prompt resolution of this action.)

(Pick one)

(Early filing of the following motion(s) might significantly affect the scope of discovery or otherwise expedite the resolution of this action:)

(Statement not applicable.)

6. DISCOVERY PROVISIONS AND LIMITATIONS.

A. Interrogatories are limited to _____ succinct questions.

B. Requests for Production and Requests for Admission are limited to _____ succinct questions.

C. Depositions are limited to the parties, experts, and no more than _____ fact witness depositions per party without additional approval of the Court.

D. The parties have complied with the requirements of L.U.CIV.R. 26(e)(2)(B) regarding discovery of electronically stored information and have concluded as follows:

E. The Court imposes the following further discovery provisions or limitations: (Pick one)

(There are no further discovery provisions or limitations.)

___ **1.** Defendant may have a FED.R.CIV.P. 35(L.U.CIV.R. 35) medical examination of the plaintiff (within subpoena range of the Court) by a physician who has not examined the plaintiff. The examination mus be completed in time to comply with expert designation discovery deadlines.

___ **2.** Pursuant to FED.R.EVID. 502(d), the attorney-client privilege and the work-product protections are not waived by any disclosure connected within this litigation pending before this Court. Further, the disclosures are not waived in any other federal or state proceeding.

___ **3.** Plaintiff must execute an appropriate, HIPAA-compliant medical authorization.

Additional information:

7. SCHEDULING DEADLINES.

A. Trial. This action is set for (JuryTrial/Non-Jury) during a (term of court/statement not applicable) beginning on: _____, at _____, a.m./p.m., in (Choose city), Mississippi, before United States (District/Magistrate) Judge _____.

THE ESTIMATED NUMBER OF DAYS FOR TRIAL IS _____. ANY CONFLICTS WITH THIS TRIAL DATE MUST BE SUBMITTED IN WRITING TO THE TRIAL JUDGE IMMEDIATELY UPON RECEIPT OF THIS CASE MANAGEMENT ORDER.

B. Pretrial. The pretrial conference is set on: _____, at _____ a.m./p.m., in (choose city) Mississippi, before United States (District/Magistrate) Judge _____.

C. Discovery. All discovery must be completed by: _____.

D. Amendments. Motions for joinder of parties or amendments to the pleadings must be filed by: _____.

E. Experts. The parties' experts must be designated by the following dates:

1. Plaintiff(s): _____.

2. Defendant(s): _____.

8. MOTIONS. All dispositive motions and *Daubert*-type motions challenging another party's expert must be filed by _____. The deadline for motions *in limine* is fourteen days before the pretrial conference; the deadline for responses is seven days before the pretrial conference.

9. SETTLEMENT CONFERENCE. (Pick one)

(No setting at this time.)

(Early Settlement Conference.)

(Early Settlement Conference and additional Settlement Conference.)

(If the parties desire judicial assistance to settle the case after initial discovery, they will contact the Court to request a date for a settlement conference when they have obtained the discovery necessary to make the conference effective.)

10. **REPORT REGARDING ADR.** On or before (7 days before the pretrial conference) _____, the parties must report to the undersigned all ADR efforts they have undertaken to comply with the Local Rules or provide sufficient facts to support a finding of just cause for failure to comply. *See L.U.CIV.R. 83.7(f)(3).*

SO ORDERED:

_____ _____

DATE UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
_____ DISTRICT OF MISSISSIPPI

Plaintiff

v. **CIVIL ACTION NO.**

Defendant

NOTICE OF RECEIPT OF ORIGINAL DEPOSITION

TO: All Counsel of Record

1. Pursuant to L.U.CIV.R. 5(d)(2), notice is hereby given that I have received, and will retain as the custodian thereof, the original of the following deposition:

Deponent: _____

Taken at the instance of: _____

2. Pursuant to L.U.CIV.R. 5(d)(2), a copy of the cover sheet accompanying this deposition is attached hereto as "Exhibit A."

_____
Date Signature

_____
Typed Name & Bar Number

Attorney for: _____

UNITED STATES DISTRICT COURT
_____ DISTRICT OF MISSISSIPPI

Plaintiff

v. **CIVIL ACTION NO.**

Defendant

NOTICE OF SERVICE OF INTERROGATORIES OR REQUESTS FOR PRODUCTION OF DOCUMENTS OR RESPONSES THERETO

TO: All Counsel of Record

Pursuant to L.U.CIV.R. 5(d)(3), notice is hereby given that on the date entered below I served the following discovery device(s):

(✔) Check as appropriate:

_____ Interrogatories to: _____

_____ Requests for Production of Documents to: _____

_____ Requests for Admissions to: _____

_____ Responses to Interrogatories of: _____

_____ Responses to Requests for Production of Documents of: _____

_____ Responses to Requests for Admissions of: _____

Pursuant to L.U.CIV.R. 5(d)(3), I acknowledge my responsibilities as the custodian of the original(s) of the documents(s) identified above.

_____

Date Signature

_____

Typed Name & Bar Number

FORM 2(c) (ND/SD MISS. DEC. 2011)

UNITED STATES DISTRICT COURT
_____ DISTRICT OF MISSISSIPPI

Plaintiff

v. **CIVIL ACTION NO.**

Defendant

NOTICE OF SERVICE OF PRE-DISCOVERY DISCLOSURE INFORMATION

TO: All Counsel of Record

Notice is hereby given that, on the date entered below, _____

disclosed to _____, the information required by L.U.CIV.R. 26(a).

_____
Date Signature

_____
Typed Name & Bar Number

Attorney for: _____

UNITED STATES DISTRICT COURT
_____ DISTRICT OF MISSISSIPPI

Plaintiff

v. **CIVIL ACTION NO.**

Defendant

PRETRIAL ORDER

1. Choose [by a ✔ mark] one of the following paragraphs, as is appropriate to the action:

If a pretrial conference was held

A pretrial conference was held as follows:

Date: _____ Time: _____

United States Courthouse at: _____, Mississippi,

before the following judicial officer:

_____.

If the pretrial conference was dispensed with by the court pursuant to L.U.Civ.R. 16(j)(2)

The final pretrial conference having been dispensed with by the judicial officer, the parties have conferred and agree upon the following terms of this pretrial order:

2. The following counsel appeared:

a. For the Plaintiff:

Name	Postal and Email Addresses	Telephone No.

b. For the Defendant:

Name	Postal and Email Addresses	Telephone No.

c. For Other Parties:

Name	Postal and Email Addresses	Telephone No.

3. The pleadings are amended to conform to this pretrial order.

4. The following claims (including claims stated in the complaint, counterclaims, crossclaims, third-party claims, etc.) have been filed:

5. The basis for this court's jurisdiction is:

6. The following jurisdictional question(s) remain(s) [If none, enter "None"]:

7. The following motions remain pending [If none, enter "None"] [Note: Pending motions not noted here may be deemed moot]:

8. The parties accept the following **concise** summaries of the ultimate facts as claimed by:

a. Plaintiff:

b. Defendant:

c. Other:

9. **a.** The following facts are established by the pleadings, by stipulation, or by admission:

b. The contested issues of fact are as follows:

c. The contested issues of law are as follows:

10. The following is a list and brief description of all exhibits (except exhibits to be used for impeachment purposes only) to be offered in evidence by the parties. **Each exhibit has been marked for identification and examined by counsel.**

a. To be offered by the Plaintiff:

The authenticity and admissibility in evidence of the preceding exhibits are stipulated. If the authenticity or admissibility of any of the preceding exhibits is objected to, the exhibit must be identified below, together with a statement of the specified evidentiary ground(s) for the objection(s):

b. To be offered by the Defendant:

The authenticity and admissibility in evidence of the preceding exhibits are stipulated. If the authenticity or admissibility of any of the preceding exhibits is objected to, the exhibit must be identified below, together with a statement of the specified evidentiary ground(s) for the objection(s):

11. The following is a list and brief description of charts, graphs, models, schematic diagrams, and similar objects which will be used in opening statements or closing arguments, but which **will not** be offered in evidence:

Objections, if any, to use of the preceding objects are as follows:

If any other objects are to be used by any party, such objects will be submitted to opposing counsel at least three business days before trial. If there is then any objection to use of the objects, the dispute will be submitted to the court at least one business day before trial.

12. The following is a list of witnesses Plaintiff anticipates calling at trial (excluding witnesses to be used solely for rebuttal or impeachment). All listed witnesses must be present to testify when called by a party unless specific arrangements have been made with the trial judge before commencement of trial. The listing of a **WILL CALL** witness constitutes a professional representation, upon which opposing counsel may rely, that the witness will be present at trial, absent reasonable written notice to counsel to the contrary.

Name	Will/ May Call	[**F**]act/ [**E**]xpert [**L**]iability/ [**D**]amages	Business Address & Telephone Number

Will testify live.

Will testify by deposition:

State whether the entire deposition, or only portions, will be used. Counsel **must** confer, no later than twenty-one days before the commencement of trial, to resolve **all** controversies concerning **all** depositions (electronically recorded or otherwise). All controversies not resolved by the parties **must** be submitted to the trial judge not later than fourteen days before trial. All objections not submitted within that time are waived.

13. The following is a list of witnesses Defendant anticipates calling at trial (excluding witnesses to be used solely for rebuttal or impeachment). All listed witnesses must be present to testify when called by a party unless specific arrangements have been made with the trial judge before commencement of trial. The listing of a **WILL CALL** witness constitutes a professional representation, upon which opposing counsel may rely, that the witness will be present at trial, absent reasonable written notice to counsel to the contrary.

Name	Will/ May Call	[**F**]act/ [**E**]xpert [**L**]iability/ [**D**]amages	Business Address & Telephone Number

Will testify live.

Will testify by deposition:

State whether the entire deposition, or only portions, will be used. Counsel **must** confer, no later than twenty-one days before the commencement of trial, to resolve **all** controversies concerning **all** depositions (electronically recorded or otherwise). All

controversies not resolved by the parties **must** be submitted to the trial judge not later than fourteen days before trial. All objections not submitted within that time are waived.

14. This (✔) _____ is_____ is not a jury case.

15. Counsel suggests the following additional matters to aid in the disposition of this civil action:

16. Counsel estimates the length of the trial will be _____ days.

17. As stated in paragraph 1, this pretrial order has been formulated (a) at a pretrial conference before a judicial officer, notice of which was duly served on all parties, and at which the parties attended as stated above, or (b) the final pretrial conference having been dispensed with by the judicial officer, as a result of conferences between the parties. Reasonable opportunity has been afforded for corrections or additions prior to signing. This order will control the course of the trial, as provided by FED.R.CIV.P. 16, and it may not be amended except by consent of the parties and the court, or by order of the court to prevent manifest injustice.

ORDERED, this the _____ day of _____, 20_____.

_____

UNITED STATES DISTRICT JUDGE

_____

Attorney for Plaintiff

_____

Attorney for Defendant

Entry of the preceding Pretrial Order is recommended by me on this, the _____ day of

_____, 20_____.

_____

UNITED STATES MAGISTRATE JUDGE

FORM 4 (ND/SD MISS. DEC. 2011)

UNITED STATES DISTRICT COURT
_____ DISTRICT OF MISSISSIPPI

Plaintiff

v. **CIVIL ACTION NO.**

Defendant

GOOD FAITH CERTIFICATE

All counsel certify that they have conferred in good faith to resolve the issues in question and that it is necessary to file the following motion:

Counsel further certify that:

✔ as appropriate:

_____ 1. The motion is unopposed by all parties.

_____ 2. The motion is unopposed by:

_____ 3. The motion is opposed by:

4. The parties agree that replies and rebuttals to the motion will be submitted to the magistrate judge in accordance with the time limitations stated in L.U.Civ.R. 7(b)(4).

This the _____ day of _____ 20

_____

Signature of Plaintiff's Attorney

_____

Typed Name and Bar Number

_____

Signature of Defendant's Attorney

_____

Typed Name and Bar Number

FORM 6 (ND/SD MISS. DEC. 2011)

UNITED STATES DISTRICT COURT
DISTRICT OF MISSISSIPPI

Plaintiff

v. **CIVIL ACTION NO.**

Defendant

APPLICATION FOR ADMISSION PRO HAC VICE

(A) Name: _____

Firm Name: _____

Office Address: _____

City: _____ State_____ Zip_____

Telephone: _____ Fax:_____

E-Mail: _____

(B) Client(s): _____

Address: _____

City: _____ State _____ Zip _____

Telephone: _____ Fax: _____

The following information is optional:

Has Applicant had a prior or continuing representation in other matters of one or more of the clients Applicant proposes to represent and is there a relationship between those other matter(s) and the proceeding for which Applicant seeks admission?

Does Applicant have any special experience, expertise, or other factor that Applicant believes makes it particularly desirable that Applicant be permitted to represent the client(s) Applicant proposes to represent in this case?

(C) Applicant is admitted to practice in the:

_____ State of _____
_____ District of Columbia

and is currently in good standing with that Court. A certificate to that effect, issued within ninety days of the date of this Application, is enclosed; the physical address, telephone number and website/email address for that admitting Court are:

_____
_____
_____
_____
_____

All other courts before which Applicant has been admitted to practice:

Jurisdiction Period of Admission

_____
_____
_____

_____

_____

_____

		Yes	No
(D)	Has Applicant been denied admission pro hac vice in this state?	☐	☐
	Has Applicant had admission pro hac vice revoked in this state?	☐	☐
	Has Applicant been formally disciplined or sanctioned by any court in this state in the last five years?	☐	☐

If the answer was "yes," describe, as to each such proceeding, the nature of the allegations, the name of the person or authority bringing such proceedings; the dates the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings:

		Yes	No
(E)	Has any formal, written disciplinary proceeding ever been brought against Applicant by a disciplinary authority in any other jurisdiction within the last five years?	☐	☐

If the answer was "yes," describe, as to each such proceeding, the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings.

		Yes	No
(F)	Has Applicant been formally held in contempt or otherwise sanctioned by any court in a written order in the last five years		

for disobeying its rules or orders? ☐ ☐

If the answer was "yes," describe, as to each such order, the nature of the allegations, the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substances of the court's rulings (a copy of the written order or transcript of the oral rulings must be attached to the application).

(G) Please identify each proceeding in which Applicant has filed an application to proceed pro hac vice in this state within the preceding two years, as follows:

Name and Address of Court	Date of Application	Outcome of Application

(H) Please identify each case in which Applicant has appeared as counsel pro hac vice in this state within the immediately preceding twelve months, is presently appearing as counsel pro hac vice, or has pending applications for admission to appear pro hac vice, as follows:

Name and Address of Court	Style of Case

_____

_____

_____

_____

_____

_____

		Yes	No
(I)	Has Applicant read and become familiar with all the LOCAL UNIFORM CIVIL RULES OF THE UNITED STATES DISTRICT COURTS FOR THE NORTHERN AND SOUTHERN DISTRICTS OF MISSISSIPPI?	☐	☐
	Has Applicant read and become familiar with the MISSISSIPPI RULES OF PROFESSIONAL CONDUCT?	☐	☐

(J) Please provide the following information about the resident attorney who has been associated for this case:

Name and Bar No: _____

Firm Name: _____

Office Address: _____

City: _____ State _____ Zip _____

Telephone: _____ Fax: _____

E-Mail: _____

(K) The undersigned resident attorney certifies that he/she agrees to the association with Applicant in this matter and to the appearance as attorney of record with Applicant.

_____

Resident Attorney

I certify that the information provided in this Application is true and correct.

Date _____ Applicant's Signature _____

Unless exempted by Local Rule 83.1(d)(5), the application fee established by this Court must be enclosed with this Application.

CERTIFICATE OF SERVICE

The undersigned Applicant certifies that a copy of this Application for Admission Pro Hac Vice has been mailed or otherwise served on this date on all parties who have appeared in this case.

This the _____ day of _____, 20__.

_____
Applicant

IN THE UNITED STATES DISTRICT COURT
_____ DISTRICT OF MISSISSIPPI

PLAINTIFF

VS. **CIVIL ACTION NO.**

DEFENDANT

REPORT OF MEDIATION

The parties in the above-styled and numbered cause engaged in mediation on the ___ day of _____, 20__. Counsel for the parties report that:

(✓ as appropriate)

_____ 1. The parties reached a compromise settlement of all issues and a complete settlement was reached regarding all pending claims.

_____ 2. The parties reached a compromise settlement of some issues and a partial settlement was reached regarding the following claims:

_____

_____

_____ 3. The parties were unable to reach a settlement of any claims despite engaging in mediation.

_____ 4. The mediation progressed, but was not completed and has been recessed with further mediation to be conducted.

___ (a) On the ___ day of _____, 20__, or _____.

___ (b) Via telephone or other means of communication and the parties will advise the court of the result of those communications no later than the ___ day of _____, 20__.

_____ 5. The mediation failed to occur or was suspended because one or more of the parties refused to participate in the mediation.

This the ___ day of _____, 20__.

_____
Plaintiff's Counsel

_____
Defendant's Counsel