Local Rules of the United States District Court Northern District of Illinois

(effective September 1, 1999, with amendments through 04/20/07)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Local Rules

LR1 through LR 2 (Reserved).

LR3.1. Designation Sheet

(a) Plaintiff's Counsel to File Designation Sheet. At the time of filing a case, plaintiff's counsel, or if the case is filed *pro se*, the plaintiff shall file with the original papers a completed designation sheet (civil cover sheet). If the case is filed by a person in custody, the staff law clerk or prisoner correspondence clerk shall complete the designation sheet.

(b) List of Associated Bankruptcy Matters. Pursuant to LR40.3.1, the person filing the petition for withdrawal of reference, report and recommendation, appeal, motion for leave to appeal, or application for a writ shall complete the designation sheet required by LR3.1 and shall include on the sheet a list of any associated bankruptcy cases, adversary proceedings, non-core proceedings, appeals or motions for leave to appeal, or application for a writ from such proceedings previously assigned to one or more district judges.

Committee Comment. To eliminate confusion, LR3.1(b) is designed to assist the Court in identifying matters that were previously adjudicated, in order to ensure continuity of bankruptcy matters. (Amended 2/25/05)

LR3.2. Notification of Affiliates–Disclosure Statement

Definition. For purposes of this rule, "affiliate" is defined to include:

A. In the case of a corporation, any entity owning more than 5% of the corporation.

B. In the case of a general partnership, joint venture, LLC, LLLP, or LLP, any member.

C. In the case of any other unincorporated association, any corporate member

If any such affiliate is itself a partnership, joint venture, LLC, LLLP, LLP or any other unincorporated association, its "affiliates" (as defined above) shall also be included within the definition of "affiliate"

(a) WHO MUST FILE. Any nongovernmental party, other than an individual or sole proprietorship, shall file a statement identifying all its publicly held affiliates. If a non-governmental party has no publicly held affiliates, a statement shall be filed to that effect.

(b) TIME FOR FILING. A party must file the statement with the complaint or answer, or upon filing a motion, response, or petition, whichever occurs first. The statement is to be attached to the document being filed. A supplement to the statement shall be filed within a reasonable period of time of any change in the information reported.

[NOTE: Rule 3.2 was amended by General Order of November 3, 2000, on December 1, 2006 by press release of November 20, 2006, by General Order of April 20, 2007]

LR3.3. Payment of Fees in Advance; *In Forma Pauperis* Matters; Sanctions

(a) DEFINITIONS The following definitions shall apply to this rule:

(1) "IFP petition" means a petition for leave to proceed *in forma pauperis,* i.e., without prepayment of prescribed fees.

(2) "Financial affidavit" means the form of affidavit of financial status prescribed by the Court.

(b) PREPAYMENT REQUIRED Any document submitted for filing for which a filing fee is required must be accompanied either by the appropriate fee or an IFP petition. Notwithstanding this provision, the clerk will file any document including a complaint in a civil action, a notice of appeal, or other document for which a filing fee is prescribed, without prepayment, but such filings shall be subject to the sanctions set forth in section (e) of this Rule.

(c) FILING IN FORMA PAUPERIS. The IFP petition and the financial affidavit shall be filed and assigned to a judge. The complaint shall be stamped received as of the date presented. The clerk shall promptly forward the IFP petition and all other papers to the judge to whom it is assigned.

(d) DATE OF FILING. If the judge grants the IFP petition, the complaint shall be filed as of the date of the judge's order except that where the complaint must be filed within a time limit and the order granting leave to file is entered after the expiration of that time limit, the complaint shall be deemed to have been filed:

(1) in the case of any plaintiff in custody, as of the time of the plaintiff's delivery of the complaint to the custodial authorities for transmittal to the court; or

(2) in the case of any other plaintiff, as of the time the complaint was received by the clerk.

(e) NOTICE OF FEES DUE; SANCTIONS. Upon denial of an IFP petition, the clerk shall notify the person filing the documents of the amount of fees due. If the required fees are not paid within 15 days of the date of such notification, or within such other time as may be fixed by the court, the clerk shall notify the judge before whom the matter is pending of the nonpayment. The court may then apply such sanctions as it determines necessary including dismissal of the action.

(f) ORDER GRANTING IFP PETITION. Where an order is entered granting the IFP petition, that order shall, unless otherwise ordered by the court, stand as authority for the United States Marshal to serve summonses without prepayment of the required fees.

LR3.4. Notice of Claims Involving Patents or Trademarks

In order to assist the clerk in complying with the requirement to notify the commissioner, any party filing a pleading, complaint, or counterclaim which raises for the first time a claim arising under the patent and trademark laws of the United States (U.S. Code, Titles 15 and 35) shall file with the pleading, complaint, or counterclaim a separate notice of claims involving patents or trademarks. That notice shall include for each patent the information required by 35 U.S.C. §290; and for each trademark the information required by 15 U.S.C. §1116(c).

LR4. Waiver of Service

In civil matters in which the plaintiff is authorized to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915, and in which the U.S. Marshal has been designated to effectuate service, the following time limits shall apply to waiver of service notice and requests:

(a) The notice and request for waiver of service shall allow the defendant a reasonable time to return the waiver, which shall be 60 days after the date on which the request is sent or 90 days after that date if the defendant is addressed outside any judicial district of the United States.

(b) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 90 days after the date on which the request for waiver of service was sent, or 120 days after that date if the defendant was addressed outside any judicial district of the United States.

LR5.1. Place of Filing; Division

Except as otherwise ordered, all filings shall be made in the divisional office of the division to which the case is assigned provided that a document initiating a case that should be filed in one of the divisions of this Court may be presented for filing to the assignment clerk of the other division. In such instances, the person filing the document should clearly indicate that it is to be filed in the other division. The case will be numbered and assigned as if it were filed in the proper division. Following the assignment, the clerk will promptly forward the papers to the proper divisional office.

LR5.2. Form of Documents Filed

(a) ELECTRONIC FILING PERMITTED. The court will accept for filing documents submitted, signed, or verified by electronic means that comply with procedures established by the court as set forth in the General Order on Electronic Case Filing or other similar order.

Where a document is submitted in an electronic format pursuant to procedures established by the court, submitted in both electronic and paper formats, or submitted in paper and subsequently produced in an electronic format by Court staff, the electronic version shall be the court's official record. Where a document is submitted in paper format without an electronic version being produced, the paper version shall be the court's official record. Where the electronic version of a document is a redacted version of an unredacted paper document, the unredacted paper version shall be the court's official record.

(b) PAPER AND FONT SIZE. Each paper original filed and each paper judge's copy shall be flat and unfolded on opaque, unglazed, white paper 8½ x 11 inches in size. It shall be plainly written, typed, printed, or prepared by means of a duplicating process, without erasures or interlineations which materially deface it.

Where the document is typed, line spacing will be at least 1½ lines. Where it is typed or printed,

(1) the size of the type in the body of the text shall be 12 points and that in footnotes, no less than 11 points, and

(2) the margins, left-hand, right-hand, top, and bottom, shall each be a minimum of 1 inch.

(c) BINDING AND TABS. Each paper original shall be bound or secured at the top edge of the document by a staple or a removable metal paper fastener inserted through two holes. A paper original shall not have a front or back cover. A paper original shall not have protruding tabs. Exhibits or tabs that are part of the paper original shall be indicated in bold type on a single sheet of paper placed immediately before the corresponding exhibit or attachment. Unless not reasonably feasible, exhibits to paper originals shall be 8½ x 11 inches in size. A judge's paper copy shall be bound on the left side

and shall include protruding tabs for exhibits. A list of exhibits must be provided for each document that contains more than one exhibit.

(d) DOCUMENTS NOT COMPLYING MAY BE STRICKEN. Any document that does not comply with this rule shall be filed subject to being stricken by the court.

(e) JUDGE'S COPY. Each person or party filing a paper version of a pleading, motion, or document, other than an appearance form or return of service, shall file in addition to the original a copy for use by the court. Where a filing is made electronically of a pleading, motion, or document other than an appearance form or return of service, a paper copy shall be provided for the judge within one business day, unless the judge determines that a paper copy is not required. [NOTE: Rule 5.2 was amended by General Orders of December 20, 2004 and April 20, 2006]

LR5.3. Notice of Motions and Objections

(a) SERVICE. Except in the case of an emergency or unless otherwise ordered, written notice of the intent to present a motion, or an objection to a magistrate judge's order or report under F. R.Civ.P. 72, specifying the date on which the motion or objection is to be presented, a copy of the motion or objection and any accompanying documents must be served as follows:

(1) *Personal service.* Personal service must be accomplished no later than 4:00 p.m. of the second business day preceding the date of presentment. Personal service shall include actual delivery within the time specified by this section by a service organization providing for delivery within a specified time (e.g., overnight service) or by electronic transmission pursuant to F. R.Civ.P. 5(b)(2)(D) and 5(b)(3).

(2) *Mail service.* Where the service is by mail, the notice and documents shall be mailed at least five business days before the date of presentment.

Ex parte motions and agreed motions or objections may be presented without notice.

(b) PRESENTMENT. Every motion or objection shall be accompanied by a notice of presentment specifying the date and time on which, and judge before whom, the motion or objection is to be presented. The date of presentment shall be not more than 10 business days following the date on which the motion or objection is delivered to the court pursuant to LR78.1. [NOTE: Rule 5.3 was amended by General Order of October 2, 2002 and by General Order of March 27, 2003]

LR5.4. Motions: Filing Notice & Motion

Filing of papers shall be with the clerk unless a particular judge has provided for filing in the judge's chambers. The clerk shall maintain a list of the delivery requirements of each judge and post a copy in a public area of the clerk's office.

Where a motion is delivered to the clerk that does not comply with the scheduling requirements established by the judge pursuant to LR78.1 or is scheduled before a judge who, pursuant to this rule, has directed that the motions are to be delivered to the minute clerk assigned to the judge or to the judge's chambers, the clerk shall inform the person offering the motion of the correct procedure. If the person insists on delivering it to the clerk, the clerk shall accept it and attach to it a note indicating that the person delivering it was advised of the scheduling or delivery requirements.

LR5.5. Proof of Service

(a) GENERAL. Proof of service of all papers required or permitted to be served shall, unless some other method is expressly required by these rules or the Federal Rules of Civil Procedure, be made in the following manner:

(1) if the person serving the papers is an attorney of record in the case, by certificate;

(2) if the person serving the papers is not an attorney of record in the case, by affidavit, or by written acknowledgment of service, or by any other proof satisfactory to the court.

(3) if the case is one for which the General Order on Electronic Case Filing applies, in the manner set forth in that General Order under the heading entitled "Service of Documents by Electronic Means".

(b) CERTIFICATE OF SERVICE. Each document other than one filed *ex parte* shall be accompanied by a certificate of service indicating the date and manner of services and a statement that copies of documents required to be served by Fed.R.Civ.P. 5(a) have been served. Where the service was by FAX, the certificate shall be accompanied by a copy of the transaction statement produced by the FAX machine. Such transaction statement shall include the date and time of service, the telephone number to which the documents were transmitted, and an acknowledgment from the receiving FAX machine that the transmission was received or, in the event that the receiving FAX machine did not produce the acknowledgment to the transmitting FAX machine, an affidavit or, if by an attorney, a certificate setting forth the date and time of service and telephone number to which documents were transmitted.

(c) FILING BY FAX NOT PERMITTED. Documents to be filed with the court may not be transmitted to the court by FAX. The only means of filing documents with the court by electronic means is in accordance with LR 5.2(a) and the General Order on Electronic Case Filing or other similar order.

(d) *EX PARTE* MOTION. A motion for an *ex parte* order shall be accompanied by an affidavit showing cause therefor and stating whether or not a previous application for similar relief has been made. [NOTE: Rule 5.5 was amended by General Order of December 20, 2004]

LR5.6. Filing Documents by Non-parties

No pleading, motion [except for motion to intervene], or other document shall be filed in any case by any person who is not a party thereto, unless approved by the court. Absent such an order, the clerk shall not accept any document tendered by a person who is not a party. Should any such document be accepted inadvertently or by mistake in the absence of such an order, it may be stricken by the court on its own motion and without notice.

LR5.7. Filing Cases Under Seal

(a) GENERAL. The clerk is authorized to accept a complaint for filing and treat that complaint and the accompanying papers as if they were restricted pursuant to LR26.2 where the complaint is accompanied by a written request containing the following:

(1) the name, address, and signature of the party or counsel making the request;

(2) a statement indicating that the party believes that due to special circumstance which the party will promptly bring to the attention of the judge to whom the case is to be assigned, it is necessary to restrict access to the case at filing;

(3) a statement that the party is aware that absent an order extending or setting aside the sealing, the file and its contents will become public on the fourth business day following the date of filing; and

(4) the attorney's or party's e-mail address if the attorney or party is registered as a Filing User of electronic case filing, the caption of the case, and the title of the document.

Absent any order to the contrary, the contents of the case file shall be treated as restricted documents as defined by LR26.2 for three business days following the day on which the complaint was filed. Except as otherwise ordered, on the fourth business day the file will no longer be treated as restricted.

(b) Filings Under 31 U.S.C. §3730. The procedures set forth in section (a) shall also be followed in filing complaints *in camera* pursuant to 31 U.S.C. § 3730 with the following modifications:

(1) the person presenting the complaint for filing *in camera* shall state in the instructions to the assignment clerk that the complaint is being filed pursuant to 31 U.S.C. § 3730; and

(2) unless otherwise ordered by the court, the matter shall remain restricted for the period specified in 31 U.S.C. § 3730. [NOTE: Rule 5.7 was amended by General Order of April 20, 2004]

Committee Comments

LR5.7 is amended to ensure it is in compliance with LR26.2 – Restricted Documents

LR5.8. Filing Materials Under Seal

Any document to be filed as a restricted or sealed document as defined by LR26.2 must be accompanied by a cover sheet which shall include the following:

(A) the caption of the case, including the case number;

(B) the title "Restricted Document Pursuant to LR26.2";

(C) a statement indicating that the document is filed as restricted in accordance with an order of court and the date of that order; and

(D) the signature of the attorney of record or unrepresented party filing the document, the attorney's or party's name and address, including e-mail address if the attorney or party is registered as a Filing User of electronic case filing, and the title of the document.

Any document purporting to be a restricted or sealed document as defined in LR26.2 that is presented for filing without the cover page or copy of the order shall not be treated as a restricted or sealed document, but shall be processed like any other document. In such instances the clerk is authorized to open the sealed envelope and remove the materials for processing. [NOTE: Rule 5.8 was amended by General Order of April 20, 2004]

Committee Comments

LR5.8 is amended to ensure it is in compliance with LR26.2 – Restricted Documents

LR5.9. Service by Electronic Means

In accordance with the General Order on Electronic Case Filing and subject to the provisions of Fed. R. Civ. P. 5(b)(3), the Notice of Electronic Filing that is issued through the court's Electronic

Case Filing System will constitute service under Fed. R. Civ. P. 5(b)(2)(D) and Fed. R. Crim. P. 49(b) as to all Filing Users in a case assigned to the court's Electronic Case Filing System. [NOTE: Rule 5.9 was established by General Order of December 20, 2004]

LR6 is reserved.

LR7.1. Briefs: Page Limit

Neither a brief in support of or in opposition to any motion nor objections to a report and recommendation or order of a magistrate judge or special master shall exceed 15 pages without prior approval of the court. Briefs that exceed the 15 page limit must have a table of contents with the pages noted and a table of cases. Any brief or objection that does not comply with this rule shall be filed subject to being stricken by the court.

LR8.1. Social Security Cases: Notice of Social Security Number

Where a complaint is filed pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. §405(g) for benefits under Titles II, XVI and XVIII of the Social Security Act, the plaintiff shall attach to the copy of the complaint to be served on the Commissioner of the Social Security Administration a notice indicating one of the following Social Security numbers, as appropriate:

(1) in cases involving claims for retirement, survivors, disability, and health insurance, the social security number of the worker on whose wage record the application for benefits was filed (who may or may not be the plaintiff); or

(2) in cases involving claims for supplemental security income benefits, the social security number of the plaintiff.

Plaintiff shall include in the complaint a statement to the effect that the notice required by this rule will be attached to the copy of the complaint served on the Commissioner of the Social Security Administration.

Where a complaint covered by this rule is presented for filing to the clerk, only the last four digits of the social security number shall be included. If the complaint is presented without the required statement, the clerk shall accept it for filing. In such instances, the clerk shall notify the party filing the complaint of the requirement of the rule and the judge to whom the case is assigned that the complaint was filed without the required statement. **Amended November 20, 2006**

LR9.1. Three Judge Cases

The party instituting an action requiring a three-judge court shall advise the clerk that such a court is requested and shall specify the statute involved. In such cases counsel shall furnish the clerk with three additional copies of all pleadings filed and all briefs submitted.

LR10.1 Responsive Pleadings

Responsive pleadings shall be made in numbered paragraphs each corresponding to and stating a concise summary of the paragraph to which it is directed.

LR11 through LR15 (Reserved).

LR16.1. Pretrial Procedures

(a) STANDING ORDER & FORM. Pursuant to Fed.R.Civ.P. 16, the Court has adopted a standing order on pretrial procedures together with model pretrial order forms. Copies of the standing order and forms shall be available from the clerk [see appendix]. The procedures set forth in the standing order, except for the need to prepare the pretrial order itself, shall apply to all civil cases except for those in categories enumerated in section (b) of this rule. As to all other cases, a pretrial order shall be prepared whenever the judge to whom a case is assigned so orders.

(b) EXEMPTED CLASSES OF CASES. The pretrial procedures adopted pursuant to section (a) of this rule shall not apply to the following classes of civil cases (The statistical nature of suit ("NS") codes are shown in parentheses following the class of cases.):

(1) Recovery of overpayments and student loan cases (NS: 150, 152, 153);
(2) Mortgage foreclosure cases (NS: 220);
(3) Prisoner petitions (NS: 510, 520, 530, 540, 550);
(4) U.S. forfeiture/penalty cases (NS: 610, 620, 630, 640, 650, 660, 690);
(5) Bankruptcy appeals and transfers (NS: 420, 421);
(6) Deportation reviews (NS: 460);
(7) ERISA: Collections of Delinquent Contributions;
(8) Social Security reviews (NS: 861, 862, 863, 864, 865);
(9) Tax suits & IRS third party (NS: 870, 871);
(10) Customer challenges 12 U.S.C. §3410 (NS: 875); or
(11) cases brought under the Agricultural Acts, Economic Stabilization Act, Energy Allocation Act, Freedom of Information Act, Appeal of Fee Determination Under Equal Access to Justice Act, NARA Title II (NS: 891, 892, 894, 895, 900, 970).

Notwithstanding the provisions of this rule, a pretrial order shall be prepared whenever the judge to whom a case is assigned so orders. (Amended October 4, 2006)

LR16.2. Pretrial Conferences and Status Hearings.

At the discretion of the court pretrial conferences or status hearings held pursuant to Fed.R.Civ.P. 16(a) may be conducted by telephone or other appropriate means. The court may require parties to provide written status reports in advance of any such hearing.

LR16.3. Voluntary Mediation Program

(a) PROGRAM ESTABLISHED. A program for voluntary mediation is established for cases arising under the Federal Trademark Act of 1946, 15 U.S.C. §§ 1051-1127 ("the Lanham Act").

(b) PROCEDURES. The voluntary mediation program shall follow the procedures approved by the Executive Committee. The procedures outline the responsibilities of counsel and the parties in cases that are eligible for the mediation program. Copies of the procedures may be obtained from the clerk. [see appendix]

(c) CONFIDENTIALITY All mediation proceedings, including any statement made by any party, attorney or other participant, shall, in all respects, be privileged and not reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission. No party shall be bound by anything done or said at the conference unless a settlement is reached, in which event the settlement shall be reduced to writing and shall be binding upon all parties.

LR17.1. Actions By or On Behalf of Infants or Incompetents

Any proposed settlement of an action brought by or on behalf of an infant or incompetent shall not become final without written approval by the court in the form of an order, judgment or decree.

The court may authorize payment of reasonable attorney's fees and expenses from the amount realized in such an action.

LR18 through LR23 (Reserved).

LR24.1. Notice of Claims of Unconstitutionality

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

LR 25 is reserved.

LR26.1. Scheduling Conference

Rule 26(f) meetings may be conducted by telephone. Unless otherwise ordered by the court (1) parties need not present a written report outlining the discovery plan at the preliminary pretrial conference, and (2) the initial status hearing shall be the scheduling conference referred to in Fed.R.Civ.P. 26(f). [NOTE: Rule 26.1 was amended by General Order of November 30, 2000]

LR26.2. Restricted Documents

(a) DEFINITIONS. As used in this rule the term:

"Restricted document" means a document or an exhibit to which access has been restricted either by a written order or by a rule;

"Sealed document" means a restricted document which the court has directed be maintained within a sealed enclosure such that access to the document requires breaking the seal of the enclosure;

"Document awaiting expunction" means a document or an exhibit which the court has ordered held for possible expunction but for which the period for holding prior to final destruction has yet to pass; and

"Restricting order" means any order restricting access to one or more documents filed or to be filed with the court.

(b) Terms of a Restricting Order. The court may for good cause shown enter an order directing that one or more documents be restricted. No attorney or party may file a restricted document without prior order of court specifying the particular document or portion of a document that may be filed as restricted. The final paragraph of the order shall state the following information: (1) the identity of the persons, if any, who are to have access to the documents without further order of court; and (2) instructions for the disposition of the restricted documents following the conclusion of the case.

(c) Filing restricted documents. A copy of the restricting order must be included with any restricted document presented for filing. The attorney or party submitting a restricted document must file it in a sealed enclosure that conspicuously states on the face of the enclosure the attorney's or party's name and address, including e-mail address if the attorney is registered as a Filing User of electronic case filing, the caption of the case, and the title of the document; or

(d) At the discretion of the judge, the court may order the parties to retain copies of all documents containing confidential information which are provided in discovery under the protective order. Documents containing the confidential information shall **not** be filed with the clerk of court. Documents requiring the court's review shall be submitted to chambers *in camera* in a sealed envelope bearing the caption of the case, case number, the title of the motion or response to which the submitted confidential information pertains, and the name and telephone number of counsel submitting the documents. The producing party shall maintain the original documents intact for any further review. A redacted copy of all documents containing confidential information shall be filed with the clerk of court for the record.

(e) **Docket Entries.** The court may on written motion and for good cause shown enter an order directing that the docket entry for a restricted document show only that a restricted document was filed without any notation indicating its nature. Absent such an order a restricted document shall be docketed in the same manner as any other document except that the entry will indicate that the document is restricted.

(f) Inspection of Restricted Documents. The clerk shall maintain a record in a manner provided for internal operating procedures approved by the Court of persons permitted access to restricted documents. Such procedures may require anyone seeking access to show identification and to sign a statement to the effect that they have been authorized to examine the restricted document.

(g) Disposition of Restricted Documents. When a case is closed in which an order was entered pursuant to section (b) of this rule, the clerk shall maintain the documents as restricted documents for a period of 63 days following the final disposition including appeals. Except where the court in response to a request of a party made pursuant to this section or on its own motion orders otherwise, at the end of the 63 day period the clerk shall return the restricted documents in the sealed enclosure to the attorney or party who or which filed it. [NOTE: Rule 26.2 was amended by General Orders of April 20, 2006 and May 26, 2006 (technical amendment).

Committee Comments

The amendment specifies what is required in order to file with the clerk of court materials to which access is restricted. Fed. R. Civ. P. 26(c) authorizes protective orders that limit disclosure of material produced in discovery. The current version of LR 26.2 allows for entry of a protective order that identifies categories of documents entitled to restricted status, and for parties thereafter to file documents with the clerk's office under seal without further court order. The amendment to LR 26.2(b) (and the addition of new LR 26.2(c)) changes the existing rule by making clear that only the particular document that has been previously determined by the court to be deserving of protection may be filed under seal. Parties are not to file briefs or compilations of exhibits as restricted or under seal unless the court has expressly so ordered, with respect to the particular briefs or exhibits. The courtesy copy provided for the judge's use in chambers may include a copy of the restricted documents.

The practice that is currently permitted under LR 26.2 is consistent with Seventh Circuit law. *See Citizens First Nat'l Bank of Princeton v. Cincinnati Insurance Co.*, 178 F.3d 943, 946 (7th Cir. 1999) ("there is no objection to an order that allows the parties to keep their trade secrets (or some

other properly demarcated category of legitimately confidential information) out of the public record, provided the judge (1) satisfies himself that the parties know what a trade secret is and are acting in good faith in deciding which parts of the record are trade secrets and (2) makes explicit that either party and any interested member of the public can challenge the secreting of particular documents"). That said, the amendment addresses two matters of increasing concern under the current rule.

First, Seventh Circuit precedent makes clear that particular care should be exercised when restricting access to materials that are filed with the court, for example, as an exhibit to a motion. While parties may have property or privacy interests that warrant the filing of certain documents under seal, "the public at large pays for the courts and therefore has an interest in what goes on at all stages of a judicial proceeding." *Citizens First Nat'l Bank*, 178 F.3d at 945. By requiring a court order specifying that a particular document may be filed under seal, the amendment will discourage parties from being overly-generous in designating documents to be filed under seal, and thereby will better protect against the filing under seal of documents that should be in the public domain.

Second, the amendment will address the substantial volume of materials filed under seal that are accumulating in the clerk's storage. The undue accumulation of materials filed under seal imposes a substantial cost on the court. That was an important consideration leading to the changes to Fed. R. Civ. P. 5(d) and to the predecessor to LR 26.2 eliminating the former practice of routinely filing in the clerk's office discovery requests and responses. That consideration also weighs in favor of requiring specific court authorization before a particular document may be filed under seal.

The amendment to LR 26.2(e) (now redesignated at LR 26.2(f)) also addresses the burden on the clerk's office in dealing with documents filed under seal. The amendment makes clear that the clerk is not required to retain documents more than 63 days following the disposition of the case and, in addition, directs that at that end of that period, the clerk simply return the documents under seal to the attorney or party filing them.

The amendment to LR26.2(d) offers a second option regarding protective orders. This option is a result of comments received from the general bar in response to the publication of the proposed amendment. The court noted that offering two options for protective orders will allow the court to test the proposal in which the parties maintain the sealed records and only provide redacted information to the clerk's office. The general bar compared the proposed procedure to the current procedure for maintaining exhibits and felt this may be a more efficient way of keeping the volume of restricted documents manageable in the clerk's office. Each judge has a web page that allows the judge to post which option will be used in the management of protective orders.

LR26.3. Discovery Materials Offered in Evidence as Exhibit

Except as provided by this rule, discovery materials, including disclosure of expert testimony, shall not be filed with the court. The party serving the discovery materials or taking the deposition shall retain the original and be custodian of it. The court, on its own motion, on motion of any party, or on application by a non-party, may require the filing of any discovery materials or may make provisions for a person to obtain a copy at that person's own expense.

Where discovery materials are offered into evidence as an exhibit, the attorney producing them will retain them unless the court orders them deposited with the clerk. Where the court orders them deposited, they will be treated as exhibits subject to the provisions of LR79.1.

LR26.4. Testimony for Use in Foreign Tribunals

Anyone desiring to take the testimony or statement of any person pursuant to 28 U.S.C. §1782 may apply *ex parte* to the emergency judge for the appropriate order.

LR27.1. Depositions: Fees for Attorneys Appointed to Represent Absent Party

An order appointing an attorney to represent the absent expected adversary party and to cross-examine the proposed witness pursuant to Fed.R.Civ.P. 27(a)(2) shall set the attorney's compensation including expenses. The compensation so set shall be paid by the petitioner prior to the appearance of the appointed attorney at the examination.

LR28 through LR32 (Reserved).

LR33.1. Interrogatories; Form of Answer; Objections

A party answering interrogatories shall set forth immediately preceding each answer a full statement of the interrogatory to which the party is responding. When objecting to an interrogatory or to the answer to an interrogatory, a party shall set forth the interrogatory or the interrogatories and answer thereto immediately preceding the objection.

LR34 through LR36 (Reserved).

LR37.1. Contempts

(a) COMMENCING PROCEEDINGS. A proceeding to adjudicate a person in civil contempt of court, including a case provided for in Fed.R.Civ.P. 37(b)(2)(D), shall be commenced by the service of a notice of motion or order to show cause. The affidavit upon which such notice of motion or order to show cause is based shall set out with particularity the misconduct complained of, the claim, if any, for damages occasioned thereby, and such evidence as to the amount of damages as may be available to the moving party. A reasonable counsel fee, necessitated by the contempt proceeding, may be included as an item of damage. Where the alleged contemnor has appeared in the action by an attorney, the notice of motion or order to show cause and the papers upon which it is based may be served upon that attorney; otherwise service shall be made personally, in the manner provided for by Fed.R.Civ.P. 4 for the service of a summons. If an order to show cause is sought, such order may, upon necessity shown therefor, direct the United States marshal to arrest the alleged contemnor. The order shall fix the amount of bail and shall require that any bond signed by the alleged contemnor include as a condition of release that the alleged contemnor will comply with any order of the court directing the contemnor to surrender.

(b) TRIAL. If the alleged contemnor puts in issue the alleged misconduct giving rise to the contempt proceedings or the damages thereby occasioned, the alleged contemnor shall upon demand therefor be entitled to have oral evidence taken thereon, either before the court or before a master appointed by the court. When by law the alleged contemnor is entitled to a trial by jury, unless a written jury demand is filed by the alleged contemnor on or before the return day or

adjourned day of the application, the alleged contemnor will be deemed to have waived a trial by jury.

(c) ORDER WHERE FOUND IN CONTEMPT. In the event the alleged contemnor is found to be in contempt of court, an order shall be entered—

(1) reciting or referring to the verdict or findings of fact upon which the adjudication is based;

(2) setting forth the amount of damages to which the complainant is entitled;

(3) fixing the fine, if any, imposed by the court, which fine shall include the damages found, and naming the person to whom such fine shall be payable;

(4) stating any other conditions, the performance whereof will operate to purge the contempt; and

(5) directing the arrest of the contemnor by the United States marshal and the confinement of the contemnor until the performance of the condition fixed in the order and the payment of the fine, or until the contemnor be otherwise discharged pursuant to law.

Unless the order otherwise specifies, the place of confinement shall be either the Chicago Metropolitan Correctional Center in Chicago, Illinois, or the Winnebago County jail in Rockford, Illinois. No party shall be required to pay or to advance to the marshal any expenses for the upkeep of the prisoner. Upon such an order, no person shall be detained in prison by reason of non-payment of the fine for a period exceeding 6 months. A certified copy of the order committing the contemnor shall be sufficient warrant to the marshal for the arrest and confinement. The aggrieved party shall also have the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.

(d) DISCHARGE WHERE NO CONTEMPT. Where a finding of no contempt is entered, the alleged contemnor shall be discharged from the proceeding. The court may in its discretion for good cause shown enter judgment against the complainant and for the alleged contemnor for the latter's costs and disbursements and a reasonable counsel fee.

LR37.2 Motion for Discovery and Production; Statement of Efforts to Reach an Accord

To curtail undue delay and expense in the administration of justice, this court shall hereafter refuse to hear any and all motions for discovery and production of documents under Rules 26 through 37 of the Federal Rules of Civil Procedure, unless the motion includes a statement (1) that after consultation in person or by telephone and good faith attempts to resolve differences they are unable to reach an accord, or (2) counsel's attempts to engage in such consultation were unsuccessful due to no fault of counsel's. Where the consultation occurred, this statement shall recite, in addition, the date, time and place of such conference, and the names of all parties participating therein. Where counsel was unsuccessful in engaging in such consultation, the statement shall recite the efforts made by counsel to engage in consultation.

LR38 through LR39 (Reserved).

LR40.1. Assignment of Cases: General

(a) GENERAL. The rules of this Court and any procedures adopted by the Court that deal with the assignment and reassignment of cases shall be construed to secure an equitable distribution of cases, both in quantity and kind, among the judges. Except as specifically provided

by the rules of this Court or by procedures adopted by the Court, the assignment of cases shall be by lot.

(b) SUPERVISION OF ASSIGNMENT SYSTEM. The assignment of cases to calendars and judges and the preparation of calendars and supplements thereto shall be done solely under the direction of the Executive Committee by the clerk or a deputy clerk who is designated by the clerk as an assignment clerk.

(c) CONTEMPT. Any person who violates the case assignment procedures shall be punished for contempt of court.

(d) CONDITION OF REASSIGNMENT. No case shall be transferred or reassigned from the calendar of a judge of this Court to the calendar of any other judge except as provided by the rules of this Court or as ordered by the Executive Committee.

(e) CALENDARS. In each Division of the Court there shall be criminal, civil and Executive Committee calendars. The cases on the criminal and civil calendars of the court shall be assigned among the judges in the manner prescribed by the rules of this Court. The cases so assigned shall constitute the calendars of the judges. The calendar of the Executive Committee shall consist of the following classes and categories of cases:

(1) civil cases to be transferred to another judge or district for multidistrict litigation pursuant to procedures adopted by the Court;

(2) criminal cases to be held on the Committee's Fugitive Calendar pursuant to procedures adopted by the Court;

(3) such cases as are assigned to the Executive Committee for purposes of reassignment; and

(4) such other cases as the Executive Committee directs be assigned to its calendar.

(f) CALENDAR OF DEPARTING JUDGE. Cases on the calendar of a judge who dies, resigns, or retires ("departing judge") shall be reassigned as soon as possible under the direction of the Executive Committee, *pro rata* by lot among the remaining judges, provided that the Committee may direct that such calendar be transferred in its entirety or in part to form the calendar of a newly-appointed district judge where the departing judge was a district judge, or to form the calendar of a newly-appointed magistrate judge where the departing judge was a magistrate judge. Referrals pending before a departing magistrate judge shall be considered returned to the calendar of the district judge before whom the underlying case is pending, provided that the Executive Committee may direct that they be maintained as a calendar for a newly-appointed magistrate judge. Where a judge wishes to re-refer a case returned to that judge's calendar pursuant to this section, the procedure set forth in LR72.1 shall be followed except that where the Executive Committee approves the referral, it shall direct the clerk to assign it by lot.

(g) CALENDAR FOR NEW JUDGE. A calendar shall be prepared for a newly-appointed judge ("new judge") to which cases shall be transferred by lot, under the direction of the Executive Committee in such number as it may determine. Where the new judge is a magistrate judge, the calendar shall include referrals made pursuant to LR72.1 and LCrR50.3(d) and cases assigned pursuant to LR73.1 which shall be transferred by lot, under the direction of the Executive Committee in such number as it may determine. The new magistrate judge will be the designated magistrate judge in all matters on that judge's calendar. Where a magistrate judge is appointed to succeed a leaving magistrate judge, the Executive Committee may direct that the new judge be the designated

magistrate judge in all cases in which the former was the designated magistrate judge at the time of the former's death, retirement, or resignation. Once a referral has been transferred to a newly appointed judge, as part of the new calendar, it remains with the new judge "as the designated judge".

Committee Comment. 28 U.S.C. §137 provides in part as follows:

> The business of the court having more than one judge shall be divided among the judges as provided by the rules and orders of the court. The chief judge of the district shall be responsible for the observance of such rules and orders, and shall divide the business and assign the cases so far as such rules and orders do not otherwise prescribe.

This Court has used a random assignment system for more than 50 years. As stated in section (a), an important goal of the system is to achieve "an equitable distribution of cases, both in quantity and kind, among the judges." Over the years the system grew in complexity. In part, this was a result of increases in the size of the Court, the complexity of its organization and the size of its caseload. It was also a result of a more sophisticated understanding of how the "equitable distribution" should be achieved.

An equally important goal is implicit in the sanctions found in section (c). This is that no one should be able to manipulate the assignment system in order to determine in advance which judge will get a case where the assignment is by lot.

As part of the process of renumbering the rules to comply with the uniform system adopted by the Judicial Conference of the United States in March 1996, the Court significantly revised its assignment rules. Much of the detail formerly included in local General Rules 2.00 and 2.44, the former assignment rules, has been moved from the rules to procedures adopted by general order. Because of the importance of the assignment system, the Court included this summary to provide parties and counsel with a basic overview of the way in which cases are assigned in this Court.

The Court is divided into two divisions: the Eastern at Chicago and the Western at Rockford. Eastern and Western Division cases can be distinguished by their case numbers. Case numbers in the Eastern Division start with the number 1 each year. In the Western Division they start with 50,001.

There are 22 district judgeships and 10 magistrate judgeships authorized for the Court. One district judgeship and one magistrate judgeship are authorized for the Western Division, the remainder are all authorized for the Eastern Division. Cases filed in the Western Division are generally assigned to the Western Division judge. The magistrate judge of that division usually supervises pretrial matters in civil cases.

Most of the provisions of the random assignment system apply only to the Eastern Division. For assignment purposes civil cases are grouped into categories, usually by the type of case. The case types chosen for each category are expected over the long run to generate about the same amount of judicial work. Criminal cases are grouped in a similar fashion.

The current assignment system is computer based. A separate assignment deck is kept for each category. (Prior to the introduction of the computerized assignment system, physical decks of assignment cards were used. The terms "assignment deck" and even "assignment card" continue in use as metaphors to describe the manner in which the computer operates.) In the deck the name of

each regular active judge on full assignment appears an equal number of times. The name of the chief judge appears half as often as a regular active judge. The ratios for senior judges depend on the caseloads they are carrying, varying from being no different from that of a regular active judge, to a one-half share less than all of the categories.

As part of filing a new case, the assignment clerk enters the case category information into the assignment system. The system keeps track of cases processed and automatically shows the next available case number.

Once the case number and category are verified, the computer uses a shuffle procedure to pick a name from one of the unused names remaining in the assignment deck for the category selected. For obvious security reasons, the deputies assigning the cases do not have access to the software that sets up the assignment decks. The deputies responsible for setting up the decks do not assign cases. This system together with the changes in the make up of the deck due to equalization and the shuffling of the names prior to the actual assignment assures that staff cannot determine in advance the name of the judge to whom a case will be assigned.

The assignment system also handles the reassignment of cases. Cases are reassigned for a variety of reasons. The most frequent is the need to reassign a case because it is related to one pending on another judge's calendar. Recusals result in reassignments or equalization. When a new judge takes office, cases are reassigned from the calendars of sitting judges to form a new calendar. When a judge leaves, the cases on the judge's calendar are reassigned among sitting judges. There are even provisions in the procedures for reassignments due to errors made at assignment.

When a judge is appointed to the Court an initial calendar is prepared. It consists of civil cases equal in number to the average number of civil and criminal cases pending on the calendars of sitting judges. The new judge gets only civil cases in the initial calendar. A civil case that was twice previously reassigned to form a new calendar cannot be reassigned a third time for that reason. Any civil case in which the trial is in process or has been held and the case is awaiting final ruling also cannot be reassigned. The remaining cases are arranged in case number order and a random selection is made. In this way the age distribution of the cases on the new judge's initial calendar reflects the average age distribution of all civil cases pending. Such a distribution serves to provide the new judge with a calendar that is reasonably close to the average in terms of workload.

LR40.2. Assignment Procedures

(a) ASSIGNING NEW CASES. The assignment clerk shall file each new case in accordance with procedures approved by the Court.

(b) CASES FILED AFTER HOURS. A judge accepting a case for filing as an emergency matter outside of the normal business hours of the clerk's office shall cause the initiating documents to be delivered to the clerk's office as early as practicable on the next business day. On receipt of the initiating documents, the assignment clerk shall process the case in accordance with section (a).

(c) MAIL-IN CASES. All cases received through the mail for filing shall be filed and assigned in accordance with section (a). The process of filing and assignment shall be completed on the day of receipt, provided that all necessary initiating documents and filing fees are submitted.

LR40.3. Direct Assignment of Cases

(a) TO EXECUTIVE COMMITTEE. The following cases or categories of cases shall be assigned to the calendar of the Executive Committee on filing:

(1) disciplinary cases brought pursuant to LR83.25 through LR83.31; and

(2) Such other cases as the chief judge may direct.

(b) TO SPECIFIC JUDGE. In each of the following instances, the assignment clerk shall assign the case to a judge in the manner specified:

(1) *Cases filed by Persons in Custody*. Any petition for writ of habeas corpus ("habeas corpus petition") or any complaint brought under the Civil Rights Act or 28 U.S.C.§1331 challenging the terms or the conditions of confinement ("civil rights complaint") filed by or on behalf of a person in custody shall be assigned in the same manner as other civil cases except that—

(A) a subsequent habeas corpus petition shall be assigned to the judge to whom the most recently filed petition was assigned;

(B) a subsequent civil rights complaint shall be assigned to the judge to whom the most recently filed complaint was assigned;

(C) a habeas corpus petition to be assigned by lot shall be assigned to a judge other than the judge or judges to whom civil rights complaints filed by or on behalf of the petitioner have been assigned; and

(D) a civil rights complaint to be assigned by lot shall be assigned to a judge other than the judge or judges to whom habeas corpus petitions filed by or on behalf of the plaintiff have been assigned.

(2) *Re-filing of Cases Previously Dismissed.* When a case is dismissed with prejudice or without, and a second case is filed involving the same parties and relating to the same subject matter, the second case shall be assigned to the judge to whom the first case was assigned. The designation sheet presented at the time the second case is filed shall indicate the number of the earlier case and the name of the judge to whom it was assigned.

(3) *Removal of Cases Previously Remanded.* When a case previously remanded is again removed, it shall be assigned to the judge who previously ordered it to be remanded.

(4) *Petitions to Enforce Summonses Issued by the Internal Revenue Service.* Where two or more petitions to enforce summonses issued by the Internal Revenue Service ("I.R.S") are presented for filing and the summonses involve the same taxpayer, the first petition shall be assigned by lot in accordance with the rules of this Court and any other petition shall be assigned directly to the judge to whom the first was assigned. The person presenting such petitions for filing shall notify the assignment clerk that they involve the same taxpayer. This section of shall not be construed as authorizing the direct assignment of petitions to enforce administrative process other than summonses issued by the I.R.S.

(5) *Cases filed to enforce, modify, or vacate judgment.* Proceedings to enforce, modify, or vacate a judgment should be brought within the case in which the judgment was entered. If a separate case is filed for the purpose of enforcing, modifying, or vacating a judgment entered in a case previously filed in this District, the case shall be assigned directly to the judge to whom the earlier case was assigned.

(6) *Tag-along cases in multidistrict proceedings.* Where a civil case is filed as a potential tag-along action to a multidistrict litigation ("MDL") proceeding pending in the district, it shall be assigned directly to the judge handling the MDL proceeding. The

judge handling the MDL proceeding may, at that judge's discretion, transfer to the Executive Committee for reassignment by lot any case assigned pursuant to this Rule that either—

(A) the MDL Panel determines should not be included in the MDL proceeding, or

(B) the judge assigned to the MDL proceeding determines pursuant to Rule 13 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation is not a tag-along case, or

(C) requires trial following the completion of the consolidated discovery

(c) Direct Assignment in Social Security Cases. In a proceeding for judicial review of a final decision by the Commissioner of Social Security pursuant to 42 U.S.C. § 405(g), when a district judge or magistrate judge remands the case for further administrative proceedings, any subsequent proceedings in the district court involving that matter shall be assigned to the district and magistrate judge to which the preceding action for judicial review was originally assigned.

Comment. The inclusion of section (c) will ensure that the judicial officer who originally decided to remand the case be assigned to review any subsequent appeals after remand to the Social Security Administration. (Amended October 4, 2006)

LR40.3.1 Assignments Involving Bankruptcy

(a) Referral to Bankruptcy Judges. Pursuant to 28 U.S.C. §157(a), all cases under Title 11 U.S.C. and all proceedings arising under Title 11 U.S.C. or arising in or related to any cases under Title 11 U.S.C. are referred to the bankruptcy judges of this District.

(b) Assignment by Lot. Except as provided by sections (c) and (d), each of the following items shall be assigned by lot to a district judge:

(1) motions pursuant to 18 U.S.C. §157(d) (including a recommendation by a bankruptcy judge) for the withdrawal of the reference of a bankruptcy ("B") case, or of a contested matter or adversary ("A") proceeding within a bankruptcy case;

(2) objections to proposed findings of fact and conclusions of law of a bankruptcy judge filed pursuant to 28 U.S.C.§157(a)(1);

(3) appeals pursuant to 28 U.S.C. §158(a)(1);

(4) motions for leave to appeal pursuant to 28 U.S.C. §158(a)(3); and

(5) applications for a writ of mandamus or a similar writ in connection with a bankruptcy case, contested matter, or adversary proceeding.

All such assignments shall be made using the Civil II assignment category, except that objections to proposed findings and conclusions shall be assigned using the Civil III assignment category. The clerk is directed to assign a case so designated to the judge on whose calendar the previously filed case was assigned.

(c) Direct assignment for rehearing. Whenever there is activity in bankruptcy court following a district judge's consideration of any of the items described in section (b), any subsequent proceedings in the district court involving that item shall be assigned to the district judge who considered the item initially.

(d) Relatedness. The provisions of LR 40.4 are applicable to the items described in section (b).

(e) Designation Sheet. The person filing any of the items described in paragraph (b) shall complete the designation sheet required by LR3.1 and include on the sheet a designation of any such item, previously heard by the district court, that the filer believes would require direct assignment of the filing pursuant to this rule. Adopted April 25, 2005

LR40.4. Related Cases; Reassignment of Cases as Related

(a) DEFINITIONS. Two or more civil cases may be related if one or more of the following conditions are met:

(1) the cases involve the same property;

(2) the cases involve some of the same issues of fact or law;

(3) the cases grow out of the same transaction or occurrence; or

(4) in class action suits, one or more of the classes involved in the cases is or are the same.

(b) CONDITIONS FOR REASSIGNMENT. A case may be reassigned to the calendar of another judge if it is found to be related to an earlier-numbered case assigned to that judge and each of the following criteria is met:

(1) both cases are pending in this Court;

(2) the handling of both cases by the same judge is likely to result in a substantial saving of judicial time and effort;

(3) the earlier case has not progressed to the point where designating a later filed case as related would be likely to delay the proceedings in the earlier case substantially; and

(4) the cases are susceptible of disposition in a single proceeding.

(c) MOTION TO REASSIGN. A motion for reassignment based on relatedness may be filed by any party to a case. The motion shall—

(1) set forth the points of commonality of the cases in sufficient detail to indicate that the cases are related within the meaning of section (a), and

(2) indicate the extent to which the conditions required by section (b) will be met if the cases are found to be related.

A copy of the complaint or other relevant pleading in each of the higher-numbered cases that are the subject of the motion shall be attached to the motion.

The motion shall be filed with the judge before whom the lowest-numbered case of the claimed related set is pending. Where all of the cases claimed to be related are assigned to magistrate judges on consent, then the motion shall be filed with the magistrate judge before whom the lowest-numbered case is pending. Where one or more of the cases claimed to be related is assigned to a magistrate judge on consent and one or more of the remaining cases is assigned to a district judge, the motion shall be filed with the district judge having the lowest-numbered case.

In order that all parties to a proceeding be permitted to respond on the questions of relatedness and possible reassignment, such motions should not generally be filed until after the answer or motions in lieu of answer have been filed in each of the proceedings involved.

(d) RULING ON MOTION. The judge to whom the motion is presented may consult with the judge or judges before whom the other case or cases are pending. The judge shall enter an order finding whether or not the cases are related within the meaning of the rules of this Court and, if they are, whether the higher-numbered case or cases should be reassigned.

Where the judge finds that the cases are related and that reassignment should take place, a copy of that finding will be forwarded to the Executive Committee together with a request that the Committee reassign the higher-numbered case or cases.

A copy of any finding that cases either are or are not related and, if they are, that reassignment should or should not take place shall also be sent to each of the judges on whose calendar one or more of the higher-numbered cases is or are pending. Any judge to whom one or

more of the cases involved is or are assigned may seek a review of the finding by the Executive Committee. The order entered by the Committee following review shall be final.

LR40.5. Remands; Procedures for Following Appeals

(a) GENERAL. This rule shall not apply to remands resulting from appeals of summary judgments or interlocutory orders unless the mandate or order remanding the case indicates that it is to be reassigned to a judge other than the judge to whom the case was previously assigned ("prior judge"). Whenever a mandate from the Court of Appeals for the Federal Circuit or the Seventh Circuit is filed with the clerk indicating that the case appealed is remanded for a new trial, the case shall be assigned to the Executive Committee, except

(1) if the mandate or accompanying opinion indicates that the case is to be retried by the prior judge, then the case shall remain on that judge's calendar, or

(2) where the prior judge is no longer sitting and the case is an Eastern Division case, it will be reassigned by lot, or

(3) where the prior judge is no longer sitting and the case is a Western Division case, it will be assigned to the Western Division judge.

(b) NOTICE BY CLERK. When a case is reassigned to the Executive Committee pursuant to section (a), the clerk shall forthwith notify all parties of record by mail that the mandate has been filed and that unless a stipulation is filed by all parties within 10 days after the date of the notice indicating that all parties wish the case returned to the prior judge, the case will be reassigned to another judge.

(c) REASSIGNMENT. When a stipulation is filed indicating that the parties wish the case assigned to the prior judge, the Executive Committee shall reassign the case to that judge. When no such stipulation is filed, the Executive Committee shall direct that the case be reassigned to a judge other than the prior judge. A case reassigned pursuant to this rule shall be treated for assignment purposes as a new case. The judge receiving the case is not authorized to transfer a similar case to the Executive Committee for reassignment to the prior judge.

LR41.1. Dismissal for Want of Prosecution or By Default

Cases which have been inactive for more than six months may be dismissed for want of prosecution.

An order of dismissal for want of prosecution or an order of default may be entered if counsel fails to respond to a call of the case set by order of court. Notice of the court call shall be by publication or as otherwise provided by the court. In the Eastern Division publication shall be in the Chicago Daily Law Bulletin unless the court provides otherwise.

LR42 through LR44 (Reserved).

LR45.1. Attaching a Note to the Subpoena Permitted

The validity of the subpoena shall not be affected by attaching or delivering of a note or other memorandum containing instructions to a witness regarding the exact date, time, and place the witness is required to appear.

LR46 is reserved.

LR47.1. Juries

(a) GENERAL. The chief judge shall from time to time enter such orders as may be required to summon petit jurors for the court. Except as provided for in section (b), petit jurors shall be assigned to a single jury pool and reassigned for service upon the request of each judge. The jury pool shall be under the supervision of the clerk. Unless otherwise ordered a copy of the jury list showing the name, town and ZIP code of each juror summoned shall be available for viewing on the first day of the service period.

(b) SEPARATE PANELS. Where the extraordinary nature of a trial indicates that administrative efficiency will be improved and substantial judicial time will be saved through the use of a separate panel of petit jurors, the chief judge may, at the request of the trial judge, direct that such a separate jury panel be summoned.

(c) QUALIFICATION FORMS ARE CONFIDENTIAL. Juror qualification forms completed by the jurors shall be confidential. Such forms shall not be made available for inspection except upon order of the chief judge or upon order of the assigned judge in connection with the preparation or presentation of a motion challenging compliance with selection procedures pursuant to 28 U.S.C. §1867. Orders directing that the juror qualification forms be made available for inspection shall specify the terms of the inspection, including the forms to be inspected, the names of the persons authorized to make the inspection, and any conditions required regarding the release of information contained on the forms.

LR48 through LR52 (Reserved).

LR53.1. Masters

(a) APPOINTMENT. The court may grant a motion for the appointment of a master in a civil action where the parties stipulate in writing to such an appointment. The stipulation shall indicate whether the master is to report upon particular issues or upon all the issues. The procedure covering such a reference shall be the same as that governing any other reference to a master.

A judge may appoint the designated magistrate judge or, with the approval of the Executive Committee, a magistrate judge other than the designated magistrate judge to perform the duties of a special master.

Whenever an order of reference to a master is entered, the attorney procuring the order shall, at the time of filing thereof, deposit with the clerk a copy to be furnished to the master. On docketing the order, the clerk shall promptly send the copy to the master.

(b) MASTER MAY SIT OUTSIDE DISTRICT. A master may sit within or outside of the District. If the master is requested to sit outside the District for the convenience of a party and there is opposition thereto by another party, the master may make an order for the holding of the hearing, or a part thereof, outside the District, upon such terms and conditions as shall be just.

(c) MOTIONS REGARDING REPORT. A motion to confirm or to reject, in whole or in part, a report of a master shall be heard by the judge appointing such master.

LR54.1. Taxation of Costs

(a) TIME TO FILE. Within 30 days of the entry of a judgment allowing costs, the prevailing party shall file a bill of costs with the clerk and serve a copy of the bill on each adverse

party. If the bill of costs is not filed within 30days, costs other than those of the clerk, taxable pursuant to 28 U.S.C. §1920, shall be deemed waived. The court may, on motion filed within the time provided for the filing of the bill of costs, extend the time for filing the bill.

(b) TRANSCRIPT COSTS. Subject to the provisions of Fed.R.Civ.P. 54(d), the expense of any prevailing party in necessarily obtaining all or any part of a transcript for use in a case, for purposes of a new trial, or amended findings, or for appeal shall be taxable as costs against the adverse party. If in taxing costs the clerk finds that a transcript or deposition was necessarily obtained, the costs of the transcript or deposition shall not exceed the regular copy rate as established by the Judicial Conference of the United States and in effect at the time the transcript or deposition was filed unless some other rate was previously provided for by order of court. Except as otherwise ordered by the court, only the cost of the original of such transcript or deposition together with the cost of one copy each where needed by counsel and, for depositions, the copy provided to the court shall be allowed.

(c) BOND PREMIUMS. If costs shall be awarded by the court to either or any party then the reasonable premiums or expenses paid on all bonds or stipulations or other security given by the party in that suit shall be taxed as part of the costs of that party.

(d) FEE OF SPECIAL MASTER. After a master's compensation and disbursements have been allowed by the court, the prevailing party may pay such compensation and disbursements, and on payment the amount thereof shall be a taxable cost against the unsuccessful party or parties. Where, however, the court directs by order the parties against whom, or the proportion in which such compensation and disbursements shall be charged, or the fund or subject matter out of which they shall be paid, the party making the payment to the master shall be entitled to tax such compensation and disbursements only against such parties and in such proportions as the court has directed, and to payment of such taxable cost only out of such fund or subject matter as the court has directed.

LR54.2. Jury Costs for Unused Panels

If for any reason attributable to counsel or parties, including a settlement or change of plea, the court is unable to commence a jury trial as scheduled where a panel of prospective jurors has reported to the courthouse for the voir dire, the court may assess against counsel or parties responsible all or part of the cost of the panel. Any monies collected as a result of said assessment shall be paid to the clerk who shall promptly remit them to the Treasurer of the United States.

LR54.3. Attorney's Fees and Related Non-taxable Expenses

(a) DEFINITIONS; GENERAL. For the purposes of this rule--

(1) "Fee motion" means a motion seeking any award of attorney's fees and related nontaxable expenses,

(2) "Movant" means the party filing the fee motion,

(3) "Respondent" means a party from whom the movant seeks payment, and

(4) "Related nontaxable expenses" means any expense for which a prevailing party may seek reimbursement other than costs that are taxed by the clerk pursuant to Fed.R.Civ.P. 54(d)(1).

This rule does not apply to motions for sanctions under Fed.R.Civ.P. 11 or other sanctions provisions.

Sections (d) through (g) govern a fee motion that would be paid by a party to the litigation rather than out of a fund already created by judgment or by settlement.

(b) TIME TO FILE. Either before or after the entry of judgment the court may enter an order with respect to the filing of a fee motion pursuant to Fed.R.Civ.P. 54. Unless the court's order includes a different schedule for such filing, the motion shall be filed in accordance with the provisions of this rule and shall be filed and served no later than 90 days after the entry of the judgment or settlement agreement on which the motion is founded. If the court has not entered such an order before a motion has been filed pursuant to Fed.R.Civ.P. 54(d)(2)(B), then after such filing the court may order the parties to comply with the procedure set out in this rule as a post-filing rather than as a pre-filing procedure.

(c) EFFECT ON APPEALS. The filing of a fee motion shall not stop the running of the time for appeal of any judgment on which the motion is founded.

Where the parties reach an agreement as to the award and the award is to be based on a judgment, unless the agreement provides otherwise, it shall affect neither a party's right to appeal the fee order resulting from the agreement nor a party's right to seek a subsequent increase, decrease or vacation of the agreed award in the event the underlying judgment is reversed or modified by subsequent judicial proceedings or settlement.

The time requirements of Fed.R.Civ.P. 59 are not changed by this rule.

(d) PRE-MOTION AGREEMENT. The parties involved shall confer and attempt in good faith to agree on the amount of fees or related nontaxable expenses that should be awarded prior to filing a fee motion.

During the attempt to agree, the parties shall, upon request, provide the following information to each other:

(1) The movant shall provide the respondent with the time and work records on which the motion will be based, and shall specify the hours for which compensation will and will not be sought. These records may be redacted to prevent disclosure of material protected by the attorney-client privilege or work product doctrine.

(2) The movant shall inform the respondent of the hourly rates that will be claimed for each lawyer, paralegal, or other person. If the movant's counsel or other billers have performed any legal work on an hourly basis during the period covered by the motion, the movant shall provide representative business records sufficient to show the types of litigation in which such hourly rates were paid and the rates that were paid in each type. If the movant's counsel has been paid on an hourly basis in the case in question or in litigation of the same type as the case in question, records showing the rates paid for those services must be provided. If the movant will rely on other evidence to establish appropriate hourly rates, such as evidence of rates charged by attorneys of comparable experience and qualifications or evidence of rates used in previous awards by courts or administrative agencies, the movant shall provide such other evidence.

(3) The movant shall furnish the evidence that will be used to support the related nontaxable expenses to be sought by the motion.

(4) The movant shall provide the respondent with the above information within 21 days of the judgment or settlement agreement upon which the motion is based, unless the court sets a different schedule.

(5) If no agreement is reached after the above information has been furnished, the respondent shall, within 21 days of receipt of that information, disclose the total amount of attorney's fees paid by respondent (and all fees billed but unpaid at the time of the disclosure and all time as yet unbilled and expected to be billed thereafter) for the litigation and shall furnish the following additional information as to any matters (rates, hours, or related nontaxable expenses) that remain in dispute:

(A) the time and work records (if such records have been kept) of respondent's counsel pertaining to the litigation, which records may be redacted to prevent disclosure of material protected by the attorney-client privilege or work product doctrine;

(B) evidence of the hourly rates for all billers paid by respondent during the litigation;

(C) evidence of the specific expenses incurred or billed in connection with the litigation, and the total amount of such expenses; and

(D) any evidence the respondent will use to oppose the requested hours, rates, or related nontaxable expenses.

By providing the opposing party with information under this rule about the party's hours, billing rates and related nontaxable expenses, no party shall be deemed to make any admission or waive any argument about the relevance or effect of such information in determining an appropriate award.

Within 14 days after the above exchange of information is completed and before the motion is filed, the parties shall specifically identify all hours, billing rates, or related nontaxable expenses (if any) that will and will not be objected to, the basis of any objections, and the specific hours, billing rates, and related nontaxable expenses that in the parties' respective views are reasonable and should be compensated. The parties will thereafter attempt to resolve any remaining disputes.

All information furnished by any party under this section shall be treated as strictly confidential by the party receiving the information. The information shall be used solely for purposes of the fee litigation, and shall be disclosed to other persons, if at all, only in court filings or hearings related to the fee litigation. A party receiving such information who proposes to disclose it in a court filing or hearing shall provide the party furnishing it with prior written notice and a reasonable opportunity to request an appropriate protective order.

(e) JOINT STATEMENT. If any matters remain in dispute after the above steps are taken, the parties, prior to the filing of the fee motion, shall prepare a joint statement listing the following:

(1) the total amount of fees and related nontaxable expenses claimed by the moving party (If the fee request is based on the "lodestar" method, the statement shall include a summary table giving the name, claimed hours, claimed rates, and claimed totals for each biller.);

(2) the total amount of fees and/or related nontaxable expenses that the respondent deems should be awarded (If the fees are contested, the respondent shall include a similar table giving respondent's position as to the name, compensable hours, appropriate rates, and totals for each biller listed by movant.);

(3) a brief description of each specific dispute remaining between the parties as to the fees or expenses; and

(4) a statement disclosing—

(A) whether the motion for fees and expenses will be based on a judgment or on a settlement of the underlying merits dispute, and

(B) if the motion will be based on a judgment, whether respondent has appealed or intends to appeal that judgment.

The parties shall cooperate to complete preparation of the joint statement no later than 70 days after the entry of the judgment or settlement agreement on which the motion for fees will be based, unless the court orders otherwise.

(f) FEE MOTION. The movant shall attach the joint statement to the fee motion. Unless otherwise allowed by the court, the motion and any supporting or opposing memoranda shall limit their argument and supporting evidentiary matter to disputed issues.

(g) MOTION FOR INSTRUCTIONS. A motion may be filed seeking instructions from the court where it appears that the procedures set forth in this rule cannot be followed within the time limits established by the rule or by order of court because of—

(1) the inability of the parties to resolve a dispute over what materials are to be turned over or the meaning of a provision of the rule,

(2) the failure of one or more of the parties to provide information required by the rule, or

(3) other disputes between the parties that cannot be resolved after good faith attempts.

The motion shall state with specificity the nature of the dispute or items not turned over and the attempts made to resolve the dispute or to obtain the items. The motion must be filed not later than 10 days following the expiration of the time within which the matter in dispute or the materials not turned over should have been delivered in accordance with the time table set out in this rule or in the court's order.

The court may on motion filed pursuant to this section, or on its own initiative, modify any time schedule provided for by this rule.

LR54.4. Judgment of Foreclosure

Except as otherwise directed by the court, any form of judgment of foreclosure presented for approval by the court shall contain the following statement with respect to attorneys' fees:

The court has approved the portion of the lien attributable to attorneys' fees only for purposes of the foreclosure sale, and not for purposes of determining the amount required to be paid personally by defendant in the event of redemption by defendant, or a deficiency judgment, or otherwise. In the event of redemption by defendant or for purposes of any personal deficiency judgment, this court reserves the right to review the amount of attorneys' fees to be included for either purpose. Plaintiff's counsel is required to notify defendant of the provisions of this paragraph.

LR54.5. Stipulation Regarding Payment of Fees and Costs Not Prepaid

(a) STIPULATION. Where, pursuant to 28 U.S.C. §1915, 28 U.S.C. §1916 or 45 U.S.C. §-153(b), a plaintiff seeks to commence a civil action without paying fees and costs or giving security for them, the plaintiff and, if represented, counsel for the plaintiff, shall file with the complaint a stipulation that the recovery, if any, in the action shall be paid to the clerk, who shall pay from it the filing fees and other costs not previously paid and remit the balance to the plaintiff or counsel for plaintiff in accordance with section (b).

(b) NOTIFICATION OF PAYMENT. Whenever money shall be paid to the clerk of this Court in compliance with section (a), the clerk shall notify the judge to whom the case is assigned of the amount paid and of any fees prescribed by statute, including those established by the Judicial Conference of the United States, which were not collected because plaintiff was permitted to maintain an action without prepayment of such fees. The judge shall thereupon enter an order directing the clerk to pay from the amount such fees and costs as were not prepaid and to remit the balance to plaintiff or counsel for plaintiff.

LR55 is reserved.

LR56.1. Motions for Summary Judgment

(a) MOVING PARTY. With each motion for summary judgment filed pursuant to Fed.R.Civ.P. 56 the moving party shall serve and file—

(1) any affidavits and other materials referred to in Fed.R.Civ.P. 56(e);

(2) a supporting memorandum of law; and

(3) a statement of material facts as to which the moving party contends there is no genuine issue and that entitle the moving party to a judgment as a matter of law, and that also includes:

(A) a description of the parties, and

(B) all facts supporting venue and jurisdiction in this Court.

The statement referred to in (3) shall consist of short numbered paragraphs, including within each paragraph specific references to the affidavits, parts of the record, and other supporting materials relied upon to support the facts set forth in that paragraph. Failure to submit such a statement constitutes grounds for denial of the motion. Absent prior leave of Court, a movant shall not file more than 80 separately-numbered statements of undisputed material fact.

If additional material facts are submitted by the opposing party pursuant to section (b), the moving party may submit a concise reply in the form prescribed in that section for a response. All material facts set forth in the statement filed pursuant to section (b)(3)(C) will be deemed admitted unless controverted by the statement of the moving party.

(b) Opposing Party. Each party opposing a motion filed pursuant to Fed.R.Civ.P. 56 shall serve and file—

(1) any opposing affidavits and other materials referred to in Fed.R.Civ.P. 56(e);

(2) a supporting memorandum of law; and

(3) a concise response to the movant's statement that shall contain:

(A) numbered paragraphs, each corresponding to and stating a concise summary of the paragraph to which it is directed, and

(B) a response to each numbered paragraph in the moving party's statement, including, in the case of any disagreement, specific references to the affidavits, parts of the record, and other supporting materials relied upon, and

(C) a statement, consisting of short numbered paragraphs, of any additional facts that require the denial of summary judgment, including references to the affidavits, parts of the record, and other supporting materials relied upon. Absent prior leave of Court, a respondent to a summary judgment motion shall not file more than 40 separately-numbered

statements of additional facts. All material facts set forth in the statement required of the moving party will be deemed to be admitted unless controverted by the statement of the opposing party. [NOTE: Rule 56.1 was adopted by General Order of April 20, 2006]

Committee Comment

Local Rule 56.1 is revised to set forth limits on the number of statements of fact that may be offered in connection with a summary judgment motion. The judges of this Court have observed that parties frequently include in their LR56.1 statements facts that are unnecessary to the motion and/or are disputed. The judges' observation is that in the vast majority of cases, a limit of 80 asserted statements of fact and 40 assertions of additional statements of fact will be more than sufficient to determine whether the case is appropriate for summary judgment. The number of statements of fact has been set in light of the requirement of section (a) (3), which requires that only "material facts" be set down. A party may seek leave to file more asserted statements of fact or additional fact, upon a showing that the complexity of the case requires a relaxation of the 80 or 40 statement limit.

LR56.2. Notice to Pro Se Litigants Opposing Summary Judgment

Any party moving for summary judgment against a party proceeding pro se shall serve and file as a separate document, together with the papers in support of the motion, a "Notice to Pro Se Litigant Opposing Motion for Summary Judgment" in the form indicated below. Where the pro se party is not the plaintiff, the movant should amend the form notice as necessary to reflect that fact.

NOTICE TO PRO SE LITIGANT OPPOSING MOTION FOR SUMMARY JUDGMENT

The defendant has moved for summary judgment against you. This means that the defendant is telling the judge that there is no disagreement about the important facts of the case. The defendant is also claiming that there is no need for a trial of your case and is asking the judge to decide that the defendant should win the case based on its written argument about what the law is.

In order to defeat the defendant's request, you need to do one of two things: you need to show that there is a dispute about important facts and a trial is needed to decide what the actual facts are *or* you need to explain why the defendant is wrong about what the law is.

Your response must comply with Rule 56(e) of the Federal Rules of Civil Procedure and Local Rule 56.1 of this court. These rules are available at any law library. Your Rule 56.1 statement needs to have numbered paragraphs responding to each paragraph in the defendant's statement of facts. If you disagree with any fact offered by the defendant, you need to explain how and why you disagree with the defendant. You also need to explain how the documents or declarations that you are submitting support your version of the facts. If you think that some of the facts offered by the

defendant are immaterial or irrelevant, you need to explain why you believe that those facts should not be considered.

In your response, you must also describe and *include* copies of documents which show why you disagree with the defendant about the facts of the case. You may rely upon your own declaration or the declarations of other witnesses. A declaration is a signed statement by a witness. The declaration *must* end with the following phrase: "I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct," and *must* be dated. If you do not provide the Court with evidence that shows that there is a dispute about the facts, the judge will be required to assume that the defendant's factual contentions are true, and, if the defendant is also correct about the law, your case will be dismissed.

If you choose to do so, you may offer the Court a list of facts that you believe are in dispute and require a trial to decide. Your list of disputed facts should be supported by your documents or declarations. It is important that you comply fully with these rules and respond to each fact offered by the defendant, and explain how your documents or declarations support your position. If you do not do so, the judge will be forced to assume that you do not dispute the facts which you have not responded to.

Finally, you should explain why you think the defendant is wrong about what the law is. [NOTE: Rule 56.2 was adopted by General Order of November 3, 2000]

LR57 is reserved.

LR58.1. Satisfaction of Judgment

The clerk shall enter the satisfaction of a judgment in any of the following circumstances:

(1) upon the filing of a statement of satisfaction of the judgment executed and acknowledged by:

(A) the judgment-creditor, or

(B) by a legal representative or assignee of the judgment-creditor who files evidence of their authority, or

(C) if the filing is within two years of the entry of the judgment, by the attorney or proctor of record for the judgment-creditor.

(2) upon payment to the court of the amount of the judgment plus interest and costs;

(3) if the judgment-creditor is the United States, upon the filing of a statement of satisfaction executed by the United States attorney;

(4) in an admiralty proceeding, upon issuance of an order of satisfaction, such order to be made on the consent of the proctors if such consent be given within two years from the entry of the decree; or

(5) upon receipt of a certified copy of a statement of satisfaction entered in another district.

LR59 through LR61 (Reserved).

LR62.1. Supersedeas Bond

The bond shall be conditioned for the satisfaction of the judgment in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest, and damages as the appellate court may adjudge and award.

A supersedeas bond, where the judgment is for a sum of money only, shall be in the amount of the judgment plus one year's interest at the rate provided in 28 U.S.C. §1961, plus $500 to cover costs. If in conformance with LR65.1, the bond may be approved by the clerk. The bond amount fixed hereunder is without prejudice to any party's right to seek timely judicial determination of a higher or lower amount.

LR63 through LR64 (Reserved).

LR65.1. Sureties on Bonds

(a) GENERAL. Bonds and similar undertakings may be executed by the surety or sureties alone, except in bankruptcy and criminal cases or where a different procedure is prescribed by law. No member of the bar nor any officer or employee of this Court shall act as surety in any action or proceeding in this court.

(b) SECURITY. Except as otherwise provided by law, every bond or similar undertaking must be secured by one of the following:

(1) the deposit of cash or obligations of the United States in the amount of the bond, or

(2) the undertaking or guaranty of a corporate surety holding a certificate of authority from the Secretary of the Treasury, or

(3) the undertaking or guaranty of two individual residents of the Northern District of Illinois, provided that each individual surety shall file an affidavit of justification, which shall list the following information:

(A) the surety's full name, occupation, residence and business addresses, and

(B) a statement showing that the surety owns real or personal property within this District which, after excluding property exempt from execution and deducting the surety's debts, liabilities and other obligations (including those which may arise by virtue of acting as surety on other bonds or undertakings), is properly valued at no less than twice the amount of the bond, or

(4) an unconditional letter of credit is an approved form of security.

LR65.2. Approval of Bonds by the Clerk

Except in criminal cases, or where another procedure is prescribed by law, the clerk may approve bonds without an order of court if—

(1) the amount of the bond has been fixed by a judge, by court rule, or by statute, and

(2) the bond is secured in accordance with LR65.1(b).

LR65.3. Security for Costs

Upon good cause shown, the court may order the filing of a bond as security for costs. Except as ordered by the court, the bond will be secured in compliance with LR65.1. The bond shall be conditioned to secure the payment of all fees which the party filing it must pay by law to the clerk, marshal or other officer of the court and all costs of the action which the party filing it may be directed to pay to any other party.

LR65.1.1 Notice of Motion to Enforce Liability of Supersedeas Bond

Whenever a notice of motion to enforce the liability of a surety upon an appeal or a supersedeas bond is served upon the clerk pursuant to Fed.R.Civ.P. 65.1, the party making such motion shall deposit with the clerk one additional copy for each surety to be served.

LR66.1. Receivers; Administration of Estates

(a) GENERAL. The administration of estates by receivers or other officers shall be similar to that in bankruptcy cases except that the court in its discretion shall—

(1) fix the allowance of compensation of receivers or similar officers, their counsel, and any others appointed to aid in the administration of the estate, and

(2) direct the manner in which the estate shall be administered, including the conduct of its business, the discovery and acquirement of its assets, and the formation of reorganization plans.

(b) REPORTS BY RECEIVER. Unless otherwise ordered, a receiver, or other similar officer appointed by this Court, shall as soon as practicable after appointment, but in any event not later than 20 days thereafter, file an inventory of all property, real, personal or mixed, of which the receiver has taken possession or control, together with a list of the then known liabilities of the estate and a report explaining such inventory.

Thereafter and until discharged, the receiver shall file a current report every four months, unless the court fixes some other filing interval. The current report and account shall list the receipts and disbursements and summarize the activities of the receiver.

LR67.1. Investment of Funds Deposited with Clerk

All funds ordered deposited with the clerk pursuant to 28 U.S.C. §2041 for deposit in the registry fund of the Court shall be deposited in the registry account, provided that the Court in exceptional circumstances may for good cause shown direct the clerk to hold the funds deposited in some other form of interest bearing investment. Where the Court so orders, the order shall specify—

(1) the reason or reasons for such alternative form of investment,

(2) the amount to be invested,

(3) the type of account or instrument in which the funds are to be invested, and

(4) the term of the investment.

LR68 is reserved.

LR69.1. Notice of Sale

The notice of a proposed sale of property directed to be made by an order or judgment of the court in a civil action need not, unless otherwise ordered by the court, set out the terms of sale specified in the order or judgment. The notice will be sufficient if in substantially the following form:

United States District Court
Northern District of Illinois
_____Division

NOTICE OF SALE

Pursuant to (o*rder or judgment*) of the United States District Court for the Northern District of Illinois, _____ Division, filed in the office of the clerk of that Court on (d*ate*) in the cause entitled (n*ame and docket number*) the undersigned will sell at public sale at (p*lace of sale*) on (d*ate and hour of sale*) the property in said (o*rder or judgment*) described and therein directed to be sold, to which (o*rder or judgment*) reference is made for the terms of sale and for a description of the property which may be briefly described as follows:

_____

—

_____

—

_____

—

Dated: (d*ate*)

The notice need not describe the property by metes and bounds or otherwise in detail and will be sufficient if in general terms it identifies the property by specifying its nature and location. However, it shall state the approximate acreage of any real estate outside the limits of any town or city, the street, lot and block number of any real estate within any town or city, the termini of any railroad and a general statement of the character of any improvements upon the property.

LR70 through LR71 (Reserved).

LR72.1. Designated Magistrate Judges: Referrals

At the time any case is filed and assigned to a district judge in the Eastern Division, the name of a magistrate judge shall also be assigned in accordance with the procedures adopted pursuant to LR40.2(a) when applicable. The magistrate judge so assigned shall be the designated magistrate judge for that case. Whenever a new case is assigned to a district judge directly and not by lot pursuant to LR40.3(b), the designated

magistrate judge for the case originally assigned by lot will be the designated magistrate judge for the later filed case.

Any judge wishing to refer a matter in a civil case pending on that judge's calendar to a magistrate judge will transfer the matter to the Executive Committee in accordance with the procedures adopted pursuant to LR40.2(a). If the Committee approves the referral, the case will be referred to the designated magistrate judge.

Where two or more cases are related, the designated magistrate judge in the lowest-numbered case of the set of related cases will be the designated magistrate judge for all cases in the set. The designated magistrate judge in the lowest-numbered case will remain the designated magistrate judge for the set as long as any cases in the set are pending.

Except as ordered by the Executive Committee, the reassignment of a case from one district judge to another shall not change the designated magistrate judge for that case.

LR73.1. Magistrate Judges: Reassignment on Consent

(a) Procedure for Parties to Consent to Appear Before a Magistrate Judge. Consent forms filed by parties will be maintained by the plaintiff or plaintiff's counsel until such time as all parties or their counsel have signed the form. At such time as the consent form has been signed by all of the parties, a single joint statement indicating that all parties have consented must be filed electronically with the Court, unless the assigned judge or magistrate judge allows the parties to file a single paper consent form in court.

(b) Reassignment of Case. Any judge wishing to reassign a case pending on that judge's calendar to a magistrate judge following the consent by all parties to have the magistrate judge conduct any and all proceedings in that case will transfer the case to the calendar of the designated magistrate judge.

(c) Consent to Enter Judgment. A magistrate judge is authorized to enter a final judgment for a sum certain to which all the parties have consented in writing or a judgment of dismissal to which all of the parties have stipulated in writing, provided that the parties indicate their consent to the entry of the judgment by the magistrate judge either in writing or in open court at the time of the entry of the judgment.

(d) Limited consents. Parties may consent to the transfer of part of a proceeding to a magistrate judge to act pursuant to 28 U.S.C.§636(c). Such consents shall be filed in the same manner as the consents for a transfer of the entire proceeding. Upon notification of the filing of such consents by the parties, the district judge may transfer that portion of the case covered by the consents for reassignment to the Executive Committee in accordance with the procedures adopted pursuant to LR40.2(a). If the Committee approves the reassignment, the motion may be reassigned to the calendar of the designated magistrate judge. Where such a reassignment is made, the case shall remain on the calendar of the district judge.

Comment

The consent form referred to in section (a) may be found on the District Court website (www.ilnd.uscourts.gov) with instructions for completion.

Adopted October 4, 2006

LR74 through LR76 (Reserved).

LR77.1. Places of Holding Court

The regular places of holding court in this District shall be the Everett McKinley Dirksen Federal Courthouse at Chicago for the Eastern Division and the United States Courthouse at Rockford for the Western Division.

No judge of this Court shall hold a special session or sessions of the court at a location or locations other than the regular places of holding court, without first having obtained permission from the Executive Committee, provided, that if an emergency matter arises at night, on Saturdays or Sundays or holidays, a judge may entertain motions or petitions at a place other than a regular place of holding court.

LR77.2. Emergencies; Emergency Judges

(a) Definitions. For the purpose of these rules—

(1) "Emergency judge" means the judge assigned to perform the duties of emergency judge specified by any local rule or procedure adopted by the Court,

(2) "Emergency magistrate judge" means the magistrate judge assigned to perform the duties of emergency magistrate judge specified by any local rule or procedure adopted by the Court, and

(3) "Emergency matter" means a matter of such a nature that the delay in hearing it that would result from its being treated as any other matter would cause serious and irreparable harm to one or more of the parties to the proceeding provided that requests for continuances or leave to file briefs or interrogatories in excess of the limits prescribed by these rules will normally be entertained as emergency matters only during the summer sessions, and

(4) "Summer session" means the ten week period ending on the Sunday before the second Monday in September.

(b) Duties of Emergency Judge. The emergency judge is responsible for hearing all emergency matters that arise outside of the regular business hours of the Court. During regular office hours, the emergency judge will hear emergency matters arising out of the cases assigned to the calendar of another judge where that judge is not sitting. The emergency judge will not hear emergency matters arising during regular office hours when the assigned judge is sitting, except on approval of the chief judge at the request of the judge to whom the case is assigned. The emergency judge will also hear the following matters or preside at the following ceremonies:

(1) petitions for admission brought by attorneys wishing to be admitted to practice before the Court;

(2) requests for review or de novo determinations of matters directly assigned to the duty magistrate brought pursuant to LCrR50.4;

(3) petitions presented by the United States Immigration and Naturalization Service;
(4) ceremonies for the mass admission of attorneys to the bar of this Court; and
(5) ceremonies for the administration of the oath of allegiance to newly naturalized citizens.

(c) Duties of Emergency Magistrate Judge. The emergency magistrate judge is responsible for hearing any emergency matter arising in a case referred or assigned to a
magistrate judge where that magistrate judge is not sitting.

(d) Western Division. A party in a case filed in or to be filed in the Western Division with an emergency matter should first contact the Western Division judge, or in that judge's absence, the Western Division magistrate judge. If neither can be reached, then the emergency judge is authorized to handle the matter.

Committee Comment. If both the assigned judge and the emergency judge should be unavailable, the matter can be brought to the attention of the chief judge. The chief judge is the chairperson of the Executive Committee, the Court's calendar committee. In that role the chief judge can instruct the parties as to which judge should hear the matter.

While emergency matters arising outside of regular business hours are rare, it is not unusual
that a party can anticipate that happening. An example is ongoing negotiations which, if they do not reach agreement, will lead one of the parties to seek injunctive relief and the negotiations must be concluded by a point in time that lies outside of regular business hours, e.g., midnight on a Saturday. In such instances the party should make every effort to contact the chambers of the emergency judge and inform staff of the potential emergency. In this way arrangements can be made that will give greater assurance that the emergency judge will be available in the event that the emergency matter does in fact occur. If an emergency matter occurs outside of regular business hours and the party has not made prior arrangements with the emergency judge, a telephone number is published in the Chicago Daily Law Bulletin for contacting a member of the staff of the emergency judge. [That number is currently (312) 514-9622.]

LR77.3. Clerk to Sign Certain Orders

The clerk shall sign orders of the following classes without submission to the court:

(1) consent orders extending for not more than 20 days in any instance the time to file the record on appeal and to docket the appeal in the appellate court, except in criminal cases;

(2) orders of discontinuance, or dismissal on consent, except in bankruptcy proceedings and in causes to which Rules 23(c) and 66 of the Federal Rules of Civil Procedure apply; and

(3) consent orders satisfying decrees or canceling bonds.

LR78.1. Motions: Filing in Advance of Hearing

Except where a judge fixes a different time in accordance with this rule, the original of any motion shall be filed by 4:30 p.m. of the *second* business day preceding the date of presentment.

A judge may fix a time for delivery longer than that provided by this rule, or elect to hear motions less frequently than daily, or both. In those instances where a judge elects to fix a longer delivery time, or hear motions less frequently than daily, or both, the judge shall notify the clerk in writing of the practice to be adopted. The clerk shall maintain a list of the current motion practices of each of the judges at the assignment desk. (Amended 10/13/04)

LR78.2. Motions: Denial for Failure to Prosecute

Where the moving party, or if the party is represented by counsel, counsel for the moving party, delivers a motion or objection to a magistrate judge's order or report without the notice required by LR5.3(b) and fails to serve notice of a date of presentment within 10 days of delivering the copy of the motion or objection to the court as provided by LR5.4, the court may on its own initiative deny the motion or objection. (Amended 2/28/2007)

LR78.3. Motions: Briefing Schedules; Oral Arguments; Failure to File Brief

The court may set a briefing schedule. Oral argument may be allowed in the court's discretion.

Failure to file a supporting or answering memorandum shall not be deemed to be a waiver of the motion or a withdrawal of opposition thereto, but the court on its own motion or that of a party may strike the motion or grant the same without further hearing. Failure to file a reply memorandum within the requisite time shall be deemed a waiver of the right to file.

LR78.4. Motions: Copies of Evidentiary Matter to be Served

Where evidentiary matter, in addition to affidavits permitted or required under Rules 5 or 6 of the Federal Rules of Civil Procedure, will be submitted in support of a motion, copies thereof shall be served with the notice of motion.

LR78.5. Motions: Request for Decision; Request for Status Report

Any party may on notice provided for by LR5.3 call a motion to the attention of the court for decision.

Any party may also request the clerk to report on the status of any motion on file for at least seven months without a ruling or on file and fully briefed for at least sixty days. Such requests will be in writing. On receipt of a request the clerk will promptly verify that the motion is pending and meets the criteria fixed by this section. If it is not pending or does not meet the criteria, the clerk will so notify the person making the request. If it is pending and does meet the criteria, the clerk will

thereupon notify the judge before whom the motion is pending that a request has been received for a status report on the motion. The clerk will not disclose the name of the requesting party to the judge. If the judge provides information on the status of the motion, the clerk will notify all parties. If the judge does not provide any information within ten days of the clerk's notice to the judge, the clerk will notify all parties that the motion is pending and that it has been called to the judge’s attention.

LR79.1. Records of the Court

(a) RETENTION OF EXHIBITS. Exhibits shall be retained by the attorney producing them unless the court orders them deposited with the clerk. In proceedings before a master or other like officer, the officer may elect to include exhibits with the report.

(b) AVAILABILITY OF EXHIBITS. Exhibits retained by counsel are subject to orders of the court. Upon request, counsel shall make the exhibits or copies thereof available to any other party to enable that party to designate or prepare the record on appeal.

(c) REMOVAL OF EXHIBITS. Exhibits deposited with the clerk shall be removed by the party responsible for them—

(1) 90 days after a final decision is rendered if no appeal is taken from that decision, or

(2) where an appeal is taken, within 30 days after the mandate of the reviewing court is filed.

A party failing to comply with this rule shall be notified by the clerk to remove the exhibits. If a party fails to remove the exhibits within 30 days following such notice, the material shall be sold by the marshal at public or private sale or disposed of as the court directs. The net proceeds of the sale shall be paid into the registry of the Court.

(d) WITHDRAWAL OF RECORDS. Pleadings and records filed and exhibits deposited with the clerk shall not be withdrawn from the custody of the Court except as provided by these rules or upon order of court. Parties withdrawing their exhibits from the court's custody and persons withdrawing items pursuant to an order of court shall give the clerk a signed receipt identifying the material taken, which receipt shall be filed.

LR79.2. Redemption from Judicial Sales

The clerk shall maintain a listing in which shall be recorded any certificate of purchase issued by the United States marshal, master in chancery or other officer of this court, together with any certificate of redemption from such sale, the costs thereof to be taxed in the cause in which the sale is made.

LR80 is reserved.

LR81.1. Complaints Under the Civil Rights Act, 42 U.S.C. §1983, by Persons in Custody

Pro se complaints brought under the Civil Rights Act, 42 U.S.C. §1983, by persons in custody shall be in writing, signed and certified. Such complaints shall be on forms supplied by the Court.

LR81.2. Removals; Remands of Removals

Committee Comment. The rule is withdrawn. It imposes burdens on the manner in which lawyers practice in state courts without significant benefit and without clear authority to do so.

1. The Background of the Rule

"A local rule of a federal district court is written by and for district judges to deal with the special problems of their court." *Bell, Boyd, & Lloyd v. Tapy*, 896 F.2d 1101, 1103 (7th Cir. 1990).

LR 81.2 was adopted because the interaction of Illinois and federal rules creates uncertainty as to the removability of many cases filed in state courts. 735 ILCS 5/2-604 prohibits lawyers from specifying the amount of damages sought in personal injury cases "except to the minimum extent necessary to comply with the circuit rules of assignment where the claim is filed."

The assignment rules of various Illinois courts require plaintiffs to state (by pleading or affidavit) whether their damages meet thresholds to determine whether certain procedures apply or to what division a case is assigned. A sample of these rules is set out in the Appendices A and B. The amounts in these rules do not correspond to the diversity jurisdiction threshold set out in 28 U.S.C. § 1332 (a)

This restriction on pleading damages sometimes created difficulties for both defendants and plaintiffs in case that might be removable.

A defendant "interested in removal is forced to speculate . . . as to the amount of plaintiff's likely recovery – and if defendant does prefer a federal forum it must err on the side of seeking removal, lest the 30-day time limit for such removal under Section 1446(b) were to expire before defendant could gain any greater certainty in that respect." *Sawisch v. Circuit City Stores*, 960 F.Supp. 154, 155 (N.D. Ill. 1997).

A plaintiff is ordinarily entitled to choose a state forum and preclude a federal forum by limiting damages to amounts below the diversity jurisdiction minimum. *See St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283 (1938); *The Fair v. Kohler Die & Speciality Co.*, 228 U.S. 22, 25 (1913). An Illinois personal injury plaintiff could achieve this only when circuit court rule allowed the plaintiff to specify a damages category entirely below the federal jurisdictional floor. *See, e.g., Tokarz v. Texaco Pipeline, Inc.*, 856 F.Supp. 403, 403-04 (N.D. Ill. 1993) (claims under $30,000 to enable filing in Cook County's Municipal Department).

A plaintiff willing to restrict a claim to $75,000 has no way to plead this in the complaint. Whether removal is appropriate must be determined at the point at

which the notice of removal is submitted. *See In re Shell Oil Co.*, 966 F.2d 1130 (7th Cir. 1992) and 970 F.2d 355 (7th Cir. 1992) (per curiam); *Chase v. Shop 'N Save Warehouse Foods*, 110 F.3d 424 (7th Cir. 1997); *see also Grupo Dataflux v. Atlas Global Group, L.P.*, 124 S.Ct. 1920 (2004).

The rule prohibiting specific money damage claims in personal injury cases has had an effect on other cases. It has become "custom" to avoid specific claims of damages in many other kinds of cases, and the many state court rules manifest the pervasive nature of this custom. *See, e.g.*, Eighteenth Judicial Circuit Rule 13.02(d) (provides different arbitration practice of cases above $30,000 in damages).

2. The Reconsideration of the Rule

The Court of Appeals noted, a short time ago, that the ambit of the Rule is, on its face, too broad. Complaints for equitable relief fall within the literal scope of the Rule but it is the defendant who is in the best position to assess the costs of compliance with the injunction requested by plaintiff. *Rubel v. Pfizer,* 361 F.3d 1016, 1017-20 (7th Cir. 2004).

While considering the remedy to this problem, the Court undertook to review L.R. 81.2 as a whole. The rule has not been uniformly applied. E.g. *Huntsman Chemical Corporation v. Whitehorse Technologies, Inc.* 1997 WL 548043 (N.D. Ill. 1997), *Campbell v. Bayou Steel Corp.*, 2004 WL 1125901 (N.D. Ill. 2004), *McCoy v. General Motors Corp.,* 226 F. Supp. 2d 939 (N.D. Ill 2002).

The situation which precipitated the Rule exists only in a very narrow range of cases. All that is required for removal is "reasonable probability" that more than $75,000 is in controversy. *Shaw v. Dow Brands,* 994 F.2d 364, 366 n.2 (7th Cir. 1993), *McNutt v. General Motors Acceptance Corp.,* 298 U.S. 178 (1936). The very nature of the harm alleged in the case will usually make it simple for a judge to determine whether it is more likely true than not that the amount in controversy exceeds the jurisdictional requirement. (E.g. *McCoy v. General Motors Corp*.), 226 F. Supp. 2d at 941-42 ("it is obvious from a common-sense reading of the complaint"). Cases for which remand is sought are not a large part of our docket. In 2003, 117 motions to remand were filed; only 22 of them were based, in whole or in part, on the failure to meet the jurisdictional amount (See Appendix C).

Only one class of plaintiffs is disadvantaged by cases in which common-sense reading of the complaint shows a reasonable probability that damages exceed $75,000–those whose claims exceed $75,000 but wish to remain in state court by capping damages. We think such plaintiffs will not be numerous. For the few who do exist there may be nothing to stop them from tendering to defense counsel a written admission under Illinois Supreme Court Rule 216 which binds them to seek damages of no more than $75,000. It is true that Rule 216 contemplates a request for

admission prior to an admission but nothing in the structure of the Rule suggests that a pre-request admission would not be binding.

There is no inherent flaw in a rule simply because it governs an extremely small class of cases. But such a rule must be both useful and limited in its effect on other cases. L.R. 81.2 is not so limited. It affects every money damage case in which there is diversity among parties–even when the amount in controversy is obviously in excess of $75,000. It requires lawyers to tender one of two forms of damage discovery in hundreds of cases each year. Rarely will the results of this practice have any bearing on the decision to remand. The cost of compliance with L.R. 81.2 far outweighs its benefit to a tiny subset of plaintiffs.

The legitimate benefit to defendants is small as well and its cost is not justified by any legitimate benefit. A defendant may well worry about meeting the 30-day deadline to seek removal if defendant is uncertain about whether the jurisdictional amount is present in the case. We reiterate that such uncertainty is not common. In any event, the defendant is free to use the interrogatory or request for admission procedure provided by Illinois rules in order to clarify the amount in controversy. We see no reason to require that all defendants do so.

A recent Appellate Court holding creates a dilemma for any defendant who asserts lack of personal jurisdiction in state courts. Under LR81.2, defendant must seek discovery of the damages to be claimed. To do so constitutes "a general appearance and a waiver of any objection to the circuit court's in personam jurisdiction . . . " *Haubner v. Abercrombie & Kent,* 812 N.E.2d 704 (Ill App 2004). It is difficult to defend a rule which requires a defendant to submit to personal jurisdiction in order to try to remove its case to this court.

The Rule confers an unintended benefit on defendants. L.R. 81.2 requires the defendant to proffer an interrogatory or a request for admission. It then provides that the 30-day deadline does not begin to run until there is a response or a failure to timely respond. This allows a defendant a useful gambit, unrelated to the interests of fairness. A defendant seeking delay may not want a prompt removal if it thinks that the case will linger in state court. When the absolute one-year limit for removal (28 U.S.C. § 1446 (b)) comes near, a defendant might only then submit the damage interrogatory and thereafter seeks removal. Defendant is able to do this because the 30-day deadline does not, under the Rule, begin to run as a practical matter until the defendant chooses to start it.

The final problem with the Rule arises from the fact that no Court of Appeals has spoken to the right of a District Court to establish by Local Rule that, as a matter of law, the 30-day time limit is tolled until a damage discovery procedure is completed. *Rubel v. Pfizer,* 361 F.3d at 1020 at least suggests that our power to do so is doubtful. The prudent defense lawyer may well conclude that the only safe

course is to file for removal within 30 days of the receipt of the complaint. If the case is remanded, the defense lawyer will then invoke the procedures under L.R. 81.2 hoping that the judge will abide by the timing provisions of the rule. There is no law against filing multiple petitions for removal. *Benson v. SI Handling Syst., Inc.*, 188 F.3d 780, 782 (7th Cir. 1999). So long as this Court *might* be able to control the onset of the 30-day time limit, the defense will be compelled to try removal without complying with L.R. 81.2 and try again under the Rule if the case is remanded after the first attempt. This practice cannot commend itself to anyone.

For these reasons, we conclude that the rule ought to be withdrawn.

Appendix

A. Application of Special Procedures

Where damages are not in excess of $5,000 then the case is a small claim governed by special rules. Ill.S.Ct.R. 281-89. If damages range from $5,000 to $50,000 there is only limited and simplified discovery. Ill.S.Ct.R. 222. When damages fall within ranges (that vary among the circuit courts), the case may be subject to mandatory arbitration under Illinois Supreme Court Rule 86. *See, e.g.*, Cir.Ct.Cook.Co.R.18.3 (all actions filed in Municipal Districts seeking damages not to exceed $30,000); 18th.Cir.Ct.R. 13.01(b) (all actions seeking damages exceeding $5,000 but not exceeding monetary limit authorized by Supreme Court); 12th.Cir.Ct.R. 22.02(a) (all actions seeking damages exceeding $5,000 but not exceeding $30,000); 19th.Cir.Ct.R. 17.01(c) (Amended) (all actions seeking damages exceeding $5,000 but not exceeding $50,000); 17th.Cir.Ct.R. 2.07(d)-Rule 1(b)(all actions seeking damages exceeding $5,000 but not exceeding $50,000).

B. Assignment to Specific Division of the Court

In the Circuit Court of Cook County, a personal injury action may be filed in either the Law Division or one of six Municipal Districts. Municipal District One hears all personal injury actions seeking compensatory and money damages not in excess of $30,000, *see* Cir.Ct.Cook.Co.G.O. 1-2.3(b)(1); Municipal Districts Two, Three, Four, Five and Six hear cases for money damages not in excess of $100,000, *see* Cir.Ct.Cook.Co.G.O. 1-2.3(b)(2); and the Law Division hears all remaining actions, *see* Cir.Ct.Cook.Co.G.O. 1-2.1(a)(1)(i)-(ii). Plaintiffs must specify which division is the correct one.

Some circuits require personal injury plaintiffs to plead other categories of damages in their complaints. In Cook County's Municipal Department, the complaint must allege whether the amount of damages: (1) does not exceed $2,500; (2) are not less than $2,500 nor more than $30,000 for actions filed in Municipal District One nor more than $50,000 for actions filed in Municipal District Two,

Three, Four, Five or Six; or (3) are not less than $50,000 nor more than $100,000 for actions filed in Municipal Districts Two, Three, Four, Five or Six. *See* Cir.Ct.Cook.Co.G.O. 1-2.3(b)(5)(i)-(iii). For all personal injury pleadings in the 18th Circuit, the complaint must allege whether the amount of damages is: (1) not greater than $5,000; (2) greater than $5,000 and not in excess of $15,000; (3) greater than $15,000 and not in excess of $30,000; (4) greater than $30,000 and not in excess of $50,000; or (5) greater than $50,000. *See* 18th.Cir.Ct.R. 6.03. Finally, for all personal injury pleadings in the 19th Circuit, the complaint must allege whether the amount of damages is: (1) greater than $5,000 but not exceeding $15,000; (2) greater than $15,000 but not exceeding $50,000; or (3) greater than $50,000. *See* 19th.Cir.Ct.R. 17.01(d)

C. Motion to Remand

A total of 117 motions to remand to state court were filed during 2003. Fifty-six of these motions were granted, forty-seven were denied, and fourteen were disposed of in another manner, *e.g.*, withdrawn, administratively terminated.

Twenty-six of the 117 motions reviewed (22.2%) cited a lack of diversity as a reason for seeking remand of the case. Twenty-two motions (18.8%) argued for remand because the amount in controversy was insufficient to justify the case having been removed to federal court. Only five motions (4.3%) sought remand because of incomplete consent by the defendants in the state court proceeding.

Thirty of the motions (25.6%) cited other jurisdictional reasons for remanding the case. Most of the motions in this category argued that, because certain issues in the case at hand had been disposed of, there was no federal jurisdiction for the remaining issues in the case. Finally, thirty-four motions (29.1%) cited a variety of other reasons for remanding the case, including the argument that the petition for removal was not filed in a timely manner, agreement by all of the parties for the return of the case to the state court, and, in one case, the observation that the removal petition was filed by the plaintiff in the state case.

Amended April 25, 2005

LR81.3. Habeas Corpus Proceedings by Persons in Custody

(a) APPROVED FORM. Petitions for writs of habeas corpus filed pursuant to 28 U.S.C. §2241 and §2254 and motions filed pursuant to 28 U.S.C. §2255 shall, when filed by persons in custody, be submitted on forms approved by the Executive Committee. The clerk will supply copies of the approved forms to any person requesting them.

(b) CAPITAL PUNISHMENT CASES. Post conviction petitions filed pursuant to 28 U.S.C. §2254 and §2255 by or on behalf of a petitioner under sentence of capital punishment shall proceed in accordance with the *District Court Rules for*

the Disposition of Post Conviction Petitions Brought Pursuant to 28 U.S.C. § 2254 and § 2255 in Cases Involving Petitioners Under a Sentence of Capital Punishment adopted by the Judicial Council of the Seventh Circuit.

(c) FILING OUTSIDE OF BUSINESS HOURS. Counsel for the petitioner and counsel for any other person or group seeking leave to file *amicus* briefs or motions should communicate with either the chief deputy clerk or the senior staff attorney promptly after counsel's appointment to establish procedures to be used in the event of an emergency. Should an emergency arise before such procedures have been established and at a time that the clerk's office is not open, counsel should use the phone number listed in the *Chicago Daily Law Bulletin* for after hours emergencies. [That number is (312) 514-9622.]

(d) §2255 MOTIONS. The clerk shall cause a civil case number to be assigned to any motion filed pursuant to 28 U.S.C. § 2255. Except where otherwise ordered, a separate file and docket of the pleadings filed in connection with such motions shall be maintained under the civil case number. The clerk shall cause a docket entry to be made on the criminal docket indicating the filing of any §2255 motion and the civil case number assigned to the motion. The docket entry will also indicate that a file and docket with that civil case number is maintained for filing and docketing the motion and pleadings associated with the §2255 motion.

LR81.4 HABEAS CORPUS PROCEEDINGS IN REMOVAL CASES

(a) APPEAL FROM IMMIGRATION JUDGE . Where an appeal from an order of an Immigration Judge is permitted by law, the petition must show that the alien has taken such an appeal to the Board of Immigration Appeals and that the appeal has been denied.

(b) PETITION. In complying with the requirements of 28 U.S.C. §2242, the petitioner shall specify the acts which have deprived the petitioner of a fair hearing or other reasons entitling petitioner to the relief sought. To the extent practicable, the petition shall state the following:

(1) that the facts recited have been obtained from the records of the Immigration and Naturalization Service; or

(2) that access to such records has been refused, in which event the petition shall state when and by whom application was made and refused; or

(3) that the interval between the notice of removal and the date of removal is too short to allow an examination of the records.

The petition shall further set forth the dates of the notice and the affirmance of the orders, the date set for departure, and the basis for inability to make the necessary examination.

(c) SERVICE OF WRIT AND STAY OF ORDER. The writ shall be addressed to, and must be personally served upon, the officer who has actual physical custody of the alien. Service may not be made upon a master after a ship has cast off her moorings. Service may not be made upon a captain of an aircraft after an alien has boarded the aircraft and the aircraft door is closed. Service of the writ does not stay the removal of an alien pending the Court's decision on the writ, unless the Court

orders otherwise. [NOTE: Rule 81.4 was amended by General Order of January 31, 2000]

LR82 is reserved.

LR83.1. Court Facilities: Limitations on Use

(a) COURT ENVIRONS DEFINED. For the purpose of this rule the term "court environs" shall refer to the following areas:

(1) in Chicago in the Courthouse:

(A) the 6th and 7th floors, and the 12th through the 25th floors, inclusive;

(B) the offices of the Pretrial Services Department of this Court on the 15th floor, and the public corridors immediately adjacent to those offices;

(C) the central jury assembly lounge, south elevator banks, and corridors leading from one to the other on the 2nd floor; and

(D) the immediate areas surrounding the elevators on the 1st floor;

(2) in Chicago but not in the Courthouse, the offices of the Probation Department of this Court located at 55 East Monroe Street;

(3) in the Eastern Division but not in Chicago, the immediate area surrounding the courtroom on the 2nd floor of the Federal Building and Courthouse at Joliet; and

(4) in the Western Division, the entire 1st and 2nd floors of the Courthouse at Rockford.

(b) SOLICITING & LOITERING PROHIBITED. Soliciting and loitering within the court environs is prohibited. The unapproved congregating of groups or the causing of a disturbance or nuisance within the courthouses of this Court is prohibited. Picketing or parading outside of the courthouses of this Court is prohibited only when such picketing or parading obstructs or impedes the orderly administration of justice.

(c) NO CAMERAS OR RECORDERS. The taking of photographs, radio and television broadcasting or taping in the court environs during the progress of or in connection with judicial proceedings including proceedings before a United States magistrate judge, whether or not court is actually in session, is prohibited.

(d) MARSHAL TO ENFORCE. The United States marshal and the Custodian of the courthouses shall enforce sections (b) and (c) of this rule, either by ejecting violators from the courthouse or by causing them to appear before one of the judges of this Court for a hearing and the imposition of such punishment as the court may deem proper.

LR83.2. Oath of Master, Commissioner, etc.

Each person appointed master, special master, commissioner, auditor, assessor or appraiser shall before entering upon the duties of that office take and subscribe an oath, which, except as otherwise prescribed by statute or rule, shall be to the effect that the person will faithfully and impartially discharge those duties conformably to the order of appointment to the best of the person's ability and understanding. Such oath may be taken before any federal or state officer authorized by federal law to administer oaths, and shall be filed in the office of the clerk.

LR83.3. Publication of Advertisements

Except in sales of realty or interests therein, publication of any notice or advertisement required by law or rule of court shall be made in a newspaper of general circulation, in the city of Chicago when the case is pending in the Eastern Division, and in a newspaper of general circulation in the cities of Freeport or Rockford when the case is pending in the Western Division. Additional notices or advertisements may be ordered by the court.

LR83.4. Transfers of Cases Under 28 U.S.C. §§1404, 1406, 1412

When an order is entered directing the clerk to transfer a case to another district pursuant to the provisions of 28 U.S.C. §§1404, 1406, or 1412, the clerk shall delay the transfer of the case for 14 days following the date of docketing the order of transfer, provided that where the court directs that the case be transferred forthwith, no such delay shall be made. In effecting the transfer, the clerk shall transmit the original of all documents, including the order of transfer, and a certified copy of the docket. The clerk shall note on the docket the date of the transfer.

The filing of a petition for reconsideration of an order of transfer shall not serve to stop the transfer of the case. The court on its own motion or on motion of the party filing a petition for reconsideration may direct the clerk not to complete the transfer process until a date certain or further order of court.

LR83.5 – Confidentiality of Alternative Dispute Resolution Proceedings

Pursuant to 28 U.S.C. § 652(d), all non-binding alternative dispute resolution ("ADR") proceedings referred or approved by any judicial officer of this court in a case pending before such judicial officer, including any act or statement made by any party, attorney or other participant, shall, in all respects, be privileged and not reported, recorded, placed in evidence, made known to the trial court or jury (without consent of all parties), or construed for any purpose as an admission in the case referred or in any case or proceeding. No participant in the ADR proceedings shall be bound by anything done or said at the ADR conference unless a settlement is reached, in which event the settlement shall be reduced to writing or otherwise memorialized and shall be binding upon all parties to the settlement. [NOTE: Rule 83.5 was adopted by General Order of November 30, 2000]

LR83.6 through LR83.9 (Reserved).

LR83.10. General Bar

(a) QUALIFICATIONS. An applicant for admission to the bar of this Court must be a member in good standing of the bar of the highest court of any state of the United States or of the District of Columbia.

(b) PETITION FORM. The Executive Committee will approve a form of petition to be used by anyone applying for admission to practice. Copies of the approved form will be provided on request by the clerk.

(c) FILING PETITION. Each person applying for admission to practice shall file with the clerk a completed petition for admission on the approved form.

The petitioner must file with the petition the following:

(1) a certificate from the highest court of a state of the United States or of the District of Columbia that the petitioner is a member in good standing of the bar of that court; and

(2) the affidavits of two attorneys who are currently and for at least two years have been members in good standing of the bar of the highest court of any state of the United States or of the District of Columbia and who have known the applicant for at least one year.

(d) SCREENING THE PETITION. The clerk, under the supervision of the Executive Committee, will screen each petition to assure that it is filed on the correct form, has been completed and contains sufficient information to establish that the petitioner meets the qualifications required for the general bar, and is accompanied by the required affidavits of sponsors and a current indication of good standing. Where these requirements are met, an indication to that effect will be placed on the petition and the petitioner will be notified that the petition is approved. Where the requirements are not met, the petition will be returned to the applicant with appropriate instructions.

(e) TAKING THE OATH. Petitioners in the Western Division must appear in person before a judge in the Western Division to be admitted. Petitioners in the Eastern Division may choose whether or not to appear in person to be admitted. If a petitioner in the Eastern Division does not wish to appear in person to be sworn in, the petitioner's signature by the "Oath of Office" must be notarized. If a petitioner in the Eastern Division does not have his/her "Oath of Office" signature notarized and wishes to appear in person to be admitted, then within 30 days of the petition being approved pursuant to section (d), the petitioner will appear before a judge of this Court or a magistrate judge to take the oath or affirmation required for admission. The clerk will inform the petitioner of the dates of the scheduled admission ceremonies. Petitioner may make arrangements to appear before a judge of this Court or a magistrate judge in order to take the oath or affirmation. In such circumstances petitioner must be accompanied by an attorney who is a member in good standing of the bar of this Court. That attorney will move the admission of the petitioner.

(f) ADMISSION FEE. Each petitioner shall pay an admission fee upon the filing of the petition, provided that in the event the petitioner is not admitted, the

petitioner may request that the fee be refunded. The amount of the fee shall be established by the court in conjunction with the fee prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. §1914.

(g) CERTIFICATE OF ADMISSION. On receipt of completed petition form indicating that the petitioner has taken the oath of office, or on receipt of the attorney's own motion accompanied by a copy of the attorney's Certificate of Admission to Practice in another District of Illinois and by the attorney's certification that his or her right to practice law is not suspended by order of court in any jurisdiction, the clerk shall promptly issue a certificate indicating that petitioner has been admitted to the general bar of this Court and add petitioner's name in the list of attorneys admitted to that bar. (Amended 4/9/03, 1/5/04)

LR83.11. Trial Bar

(a) DEFINITIONS. The following definitions shall apply to this rule:

(1) The term "testimonial proceedings" refers to proceedings that meet all of the following criteria:

(A) they are evidentiary proceedings in which all testimony is given under oath and a record is made of the testimony;

(B) the witness or witnesses are subject to cross-examination;

(C) a presiding officer is present;

(D) the parties to such proceedings are generally represented by attorneys; and

(E) where a proceeding was held before an administrative agency, the findings and determinations of the agency are based upon the proceeding and are reviewable for sufficiency of evidence by a court of record.

Procedures limited to taking the deposition of a witness do not constitute testimonial proceedings for the purposes of this rule.

(2) The term "qualifying trial" refers to an evidentiary proceeding that meets the following criteria:

(A) it lasts at least one day;

(B) it must be a trial or hearing involving substantial testimonial proceedings going to the merits; and

(C) it must be held in open court before one of the following: a judge or magistrate judge of a United States district court; a judge of a United States bankruptcy court; a judge of the United States Tax Court; a judge of a trial court of record of a state, the District of Columbia, or a territory of the United States; or any administrative law judge.

(3) The term "participation units" shall mean a qualifying trial in which the petitioner participated as the lead counsel or the assistant to the lead counsel.

(4) The term "observation unit" shall mean a qualifying trial the petitioner observed while being supervised by a supervising attorney who consulted with the observer about the trial. At the time of the observation the supervising attorney must either have been a member of the trial bar of this Court or have had previous trial experience equivalent to at least 4 participation units.

(5) The term "simulation unit" shall mean a trial advocacy program in which the focus is experiential, as contrasted to lecture in which the petitioner satisfactorily participated either as a law school or a continuing legal education course.

(6) The term "training unit of the District Court" shall mean participation in a training seminar officially sanctioned by the Court.

(7) The term "qualifying unit of trial experience" shall include any of the following: participation units, observation units, simulation units, and training units. A petitioner shall be credited the following qualifying units of trial experience for the experience indicated:

(A) for each participation unit, 2 units where the trial lasted 7 days or less, 3 units where the trial lasted from 10 to 12 full days, and 4 units where the trial lasted 13 or more full days;

(B) for each observation unit, 1 unit;

(C) for each simulation unit, 2 units; and

(D) for each training unit of the District Court, 1 unit.

(8) The term "required trial experience" shall mean not less than 4 qualifying units of trial experience.

(9) The term "*pro bono* panel" shall refer to a panel of members of the trial bar selected pursuant to LR83.35(b) for the purpose of representing or assisting in the representation of parties unable to afford to hire a member of the trial bar.

(NOTE: See Regulations promulgated by the District Admissions Committee for additional material relating to admissions. The Regulations are located in the Appendix to the local Rules.)

(b) QUALIFICATIONS. An applicant for admission to the trial bar of this Court must be a member in good standing of the general bar of this Court and provide evidence of having the required trial experience. Anyone wishing to apply for admission to the trial bar who is not a member of the bar of this Court may apply for admission to both bars simultaneously. An attorney representing the United States, a state or local government or an agency of any of those governments who is not a member of the general bar of this Court may be admitted to the trial bar for the sole purpose of representing such government or agency in the attorney's official capacity provided that the attorney is a member in good standing of the bar of the highest court in any state or the District of Columbia and provides evidence to the court of having the required trial experience.

(c) PETITION FORM. The Executive Committee will approve a form of petition to be used by anyone applying for admission to the trial bar. Copies of the approved form will be provided on request by the clerk.

(d) SCREENING THE PETITION. The clerk, under the supervision of the Executive Committee, will screen each petition to assure that it is filed on the correct form, has been completed, and contains sufficient information to establish that the petitioner meets the qualifications required for the trial bar. Where these requirements are met, an indication to that effect will be placed on the petition and the petitioner will be notified that the petition is approved. Where the requirements are not met, the petition will be returned to the applicant with appropriate instructions.

(e) ADMISSION FEE. Each petitioner shall pay an admission fee upon the filing of the petition, provided that in the event the petitioner is not admitted, the petitioner may request that the fee be refunded. The amount of the fee shall be established by the court.

The clerk shall deposit the fee in the District Court Fund.

(f) DUTY TO SUPERVISE. Every member of the trial bar shall be available for appointment by the court to supervise attorneys who are in the process of obtaining observation units needed to qualify for membership in the trial bar. Such appointments shall be made in a manner so as to allocate the responsibility imposed by this rule equally among all members of the trial bar.

(g) DUTY TO ACCEPT APPOINTMENTS. Each member of the trial bar shall be available for appointment by the court to represent or assist in the representation of those who cannot afford to hire a member of the trial bar. Appointments under this rule shall be made in a manner such that no member of the trial bar shall be required to accept more than one appointment during any 12 month period.

(h) WITHDRAWAL FROM TRIAL BAR. A member of the trial bar may, on motion for good cause shown, voluntarily withdraw from said bar. Such motion shall be filed with the clerk for presentation to the Executive Committee. Where the motion to withdraw is made by a member of the current *pro bono* panel the name of the attorney will be removed from the *pro bono* panel if the motion is granted.

(i) REINSTATEMENT. Any attorney permitted to withdraw as a member of the trial bar pursuant to section (h) who wishes to be reinstated must file a petition for reinstatement with the clerk for presentation to the Executive Committee. Where the attorney was a member of a *pro bono* panel at the time the petition to withdraw was filed, the petition for reinstatement shall include a statement indicating the attorney's present willingness and ability to accept an appointment under LR83.35 through LR83.49. If the committee grants the motion in such an instance, it shall direct that the attorney be included in the *pro bono* panel and remain there for one year or until the attorney is appointed, whichever comes first.

LR83.12. Appearance of Attorneys Generally

(a) WHO MAY APPEAR. Except as provided in LR83.14 and LR83.15 and as otherwise provided in this rule, only members in good standing of the general bar of this Court may enter appearance of parties, file pleadings, motions or other documents, sign stipulations or receive payments upon judgments, decrees or orders. Attorneys admitted to the trial bar may appear alone in all matters. Attorneys admitted to the general bar, but not to the trial bar, may appear in association with a member of the trial bar in all matters and may appear alone except as otherwise provided by this rule. The following officers appearing in their official capacity shall be entitled to appear in all matters before the court without admission to the trial bar of this Court: the Attorney General of the United States, the United States Attorney for the Northern District of Illinois, the attorney general or other highest legal officer of any state, and the state's attorney of any county in the State of Illinois. This exception to membership in the trial bar shall apply to such persons as hold the above-described offices during their terms of office, not to their assistants.

(b) TESTIMONIAL PROCEEDINGS. An attorney who is a member of the trial bar may appear alone during testimonial proceedings. An attorney who is a member of the bar, but not of the trial bar, may appear during testimonial proceedings only if accompanied by a member of the trial bar who is serving as advisor. For the purposes of this rule the definition of the term "testimonial proceedings" is the same as in LR83.11(a)(1).

(c) CRIMINAL PROCEEDINGS. An attorney who is a member of the trial bar may appear alone on behalf of a defendant in a criminal proceeding. An attorney who is a member of the general bar, but not a member of the trial bar, may (1) appear as lead counsel for a defendant in a criminal proceeding only if accompanied by a member of the trial bar who is serving as advisor and (2) sign pleadings, motions or other documents filed on behalf of the defendant only if they are co-signed by a member of the trial bar.

(d) WAIVER. A judge may grant permission in a civil or criminal proceeding pending before that judge to an attorney admitted to the general bar, but not to the trial bar, to appear alone in any aspect of the matter only upon written request by the client and a showing that the interests of justice are best served by waiving the experience requirements otherwise required by these rules. Such permission shall apply only to the proceeding in which it was granted. Granting of such permission shall be limited to exceptional circumstances.

LR83.13. Representation by Supervised Senior Law Students

A student in a law school who has been certified by the Administrative Director of Illinois Courts to render services in accordance with Rule 711 of the Rules of the Illinois Supreme Court may perform such services in this Court under like conditions and under the supervision of a member of the trial bar of this Court. In addition to the agencies specified in paragraph (b) of said Rule 711, the law school student may render such services with the United States Attorney for this District, the legal staff of any agency of the United States government or the Federal Defender Program for this District including any of its staff or panel attorneys or, with the prior

approval of the assigned judge on a case-by-case basis, any member of the trial bar of this Court.

LR83.14. Appearance by Attorneys Not Members of the Bar

A member in good standing of the bar of the highest court of any state or of any United States district court may, upon motion, be permitted to argue or try a particular case in whole or in part. A petition for admission under this rule shall be on a form approved by the Executive Committee. The clerk shall provide copies of such forms on request.

The fee for admission under this Rule shall be established by the Court. The fee shall be paid to the clerk who shall deposit it in the District Court Fund.

A petition for admission under this rule may be presented by the petitioner. No admission under this rule shall become effective until such time as the fee has been paid.

LR83.15. Local Counsel: Designation for Service

(a) DESIGNATION. An attorney not having an office within this District ("nonresident attorney") shall appear before this Court only upon having designated as local counsel a member of the bar of this Court having an office within this District upon whom service of papers may be made. Such designation shall be made at the time the initial notice or pleading is filed by the nonresident attorney. Local counsel shall not file a separate appearance unless that attorney is to participate in the case beyond the extent required of an attorney designated pursuant to this rule.

(b) PENALTIES. Where the nonresident attorney tenders documents without the required designation of local counsel, the clerk shall process them as if the designation were filed and shall promptly notify the attorney in writing that the designation must be made within 30 days. If the attorney fails to file the designation within that time, the documents filed by the attorney may be stricken by the court.

(c) DUTIES OF LOCAL COUNSEL. Local counsel shall be responsible for receiving service of notices, pleadings, and other documents and promptly notifying the nonresident attorney of their receipt and contents. In emergencies, local counsel may appear on behalf of the nonresident attorney. This rule does not require local counsel to handle any substantive aspects of the litigation. Such matters may be handled by the nonresident attorney under LR83.12 or LR83.14. Nor does the rule require local counsel to sign any pleading, motion or other paper (*See* Fed.R.Civ.P. 11).

LR83.16. Appearance Forms

(a) GENERAL. The Executive Committee will approve the format of the appearance form to be used. The clerk shall provide copies of the forms on request.

(b) WHO MUST FILE. Except as otherwise provided in these rules, an appearance form shall be filed by every attorney, including senior students admitted pursuant to LR83.13 and attorneys admitted pursuant to LR83.14, who represents a

party in any proceeding brought in this Court, whether before a judge or magistrate judge, except that no appearance form need be filed by the United States attorney or any assistant United States attorney where the appearance is on behalf of the United States, any agency thereof or one of its officials pursuant to 28 U.S.C. § 1442(a)(1).

(c) APPEARANCE BY FIRMS PROHIBITED. Appearance forms are to list only the name of an individual attorney. The clerk is directed to bring to the attention of the assigned judge any appearance form listing a firm of attorneys rather than an individual attorney. For the purposes of this rule, an individual attorney who practices as a professional corporation may file the appearance as the professional corporation.

(d) WHEN TO BE FILED. An attorney required by these rules to file an appearance form shall file it prior to or simultaneously with the filing of any motion, brief or other document in a proceeding before a judge or magistrate judge of this Court, or at the attorney's initial appearance before a judge or magistrate judge of this Court, whichever occurs first.

Where the appearance is filed by an attorney representing a criminal defendant in a proceeding before a judge or magistrate judge, the attorney shall serve a copy of the appearance on the United States attorney.

(e) PENALTIES. If it is brought to the attention of the clerk that an attorney who has filed documents or appeared in court has not filed the appearance form required by this rule, the clerk will notify the judge or magistrate judge before whom the proceedings are pending. An attorney who fails to file an appearance form where required to do so by this rule may be sanctioned.

(f) EMERGENCY APPEARANCES. An attorney may appear before a judge or magistrate judge without filing an appearance form as required by this rule where the purpose of the appearance is to stand in for an attorney who has filed or is required to file such a form and the latter attorney is unable to appear because of an emergency.

(g) ATTORNEY ID NUMBERS. The number issued to members of the Illinois bar by the Illinois Attorney Registration and Disciplinary Commission, or such other number as may be approved by the Executive Committee, shall serve as the identification number. The clerk shall be responsible for issuing identification numbers to attorneys who are not members of the Illinois bar. (Amended April 20, 2007 - technical)

LR83.17. Withdrawal, Addition, and Substitution of Counsel

Once an attorney has filed an appearance form pursuant to LR83.16, that attorney is the attorney of record for the party represented for all purposes incident to the proceeding in which the appearance was filed. The attorney of record may not withdraw, nor may any other attorney file an appearance on behalf of the same party or as a substitute for the attorney of record, without first obtaining leave of court, except that substitutions or additions may be made without motion where both counsel are of the same firm. Where the appearance indicates that pursuant to these rules a member of the trial bar is acting as a supervisor or is accompanying a member of the bar, the member of the trial bar included in the appearance may not withdraw,

nor may another member be added or substituted, without first obtaining leave of court.

LR83.18. Transfer to Inactive Status

(a) AUTOMATIC TRANSFER. When a member of the general bar of this Court is transferred to inactive status by the highest court of any state of the United States or the District of Columbia, the order transferring the attorney to inactive status shall stand as the order transferring the attorney to inactive status in this Court.

Upon being made aware of any order that would automatically transfer a member of the general bar to inactive status, the clerk shall promptly notify the attorney of the provisions of this rule. The notice will also indicate the order upon which automatic transfer to inactive status is being based.

Within 21 days of the mailing of the notice by the clerk, the attorney subject to automatic transfer to inactive status may file a motion with the Executive Committee requesting that the automatic transfer not take place. The motion shall indicate the reasons for the request.

(b) MOTION FOR TRANSFER. An attorney may, in the absence of disciplinary proceedings, file a motion with the Executive Committee requesting transfer to inactive status. The Committee may appoint the United States attorney or any other attorney to conduct an investigation and make recommendations to the Committee as to whether the motion should be granted.

(c) PRACTICE OF LAW PROHIBITED. An attorney who has been transferred to inactive status may not engage in the practice of law before this Court until restored to active status.

(d) AUTOMATIC REINSTATEMENT. When an attorney has been transferred to inactive status by the highest court of any state of the United States or the District of Columbia solely for nonpayment of registration fees and has been reinstated upon payment of registration fees, that attorney will automatically be reinstated to the roll of attorneys of this Court upon receipt of notification by the clerk of that court.

(e) REINSTATEMENT. An attorney who has been transferred to inactive status may file a petition for reinstatement with the Executive Committee. Unless the motion to reinstate is granted by the Committee, the attorney shall be granted a hearing.

(f) DISCIPLINARY PROCEEDINGS. Disciplinary proceedings may be commenced against an attorney in inactive status. If a disciplinary proceeding is pending against an attorney at the time the attorney is transferred to inactive status, the Executive Committee shall determine whether the disciplinary proceeding is to proceed or is to be held in abeyance until further order of the Committee.

LR83.19 through LR83.24 (Reserved).

LR83.25. Disciplinary Proceedings Generally

(a) DEFINITIONS. The following definitions shall apply to the disciplinary rules:

(1) The term "another court" shall mean any other court of the United States or of the District of Columbia, or of any state, territory, commonwealth, or possession of the United States.

(2) The term "complaint of misconduct" shall mean any document in which it is alleged that an attorney practicing before this Court is guilty of misconduct.

(3) The term "discipline" shall include disbarment, suspension from practice before this Court, reprimand or censure, and such other disciplinary action as the circumstances may warrant, including, but not limited to, restitution of funds, satisfactory completion of educational programs, compliance with treatment programs, and community service. The term discipline is not intended to include sanctions or contempt.

(4) The term "misconduct" shall mean any act or omission by an attorney admitted to practice before this Court that violates LR83.50.1 through LR83.58.9. Such act or omission shall constitute misconduct regardless of (A) whether the attorney performed the act or omission individually or in concert with any other person or persons or (B) whether or not the act or omission occurred in the course of an attorney-client relationship.

(5) The term "serious crime" shall mean any crime, whether a felony or a lesser crime, a necessary element of which involves one or more of the following:

(A) false swearing;
(B) misrepresentation;
(C) fraud;
(D) willful failure to file income tax returns or to pay the tax;
(E) deceit;
(F) bribery;
(G) extortion;
(H) misappropriation;
(I) theft; or
(J) an attempt or a conspiracy or solicitation of another to commit a serious crime.

Whether one or more of the crimes listed in (A) through (J) was a necessary element of the crime of which the attorney was convicted shall be determined by the statutory or common law definition of that crime in the jurisdiction in which the judgment was entered.

(b) EXECUTIVE COMMITTEE. The Executive Committee shall serve as the disciplinary committee of the Court.

(c) JURISDICTION. Nothing contained in these rules shall be construed to deny such powers as are necessary for a judge, magistrate judge or

bankruptcy judge of this Court to maintain control over proceedings conducted before that judge, magistrate judge or bankruptcy judge, such as proceedings for contempt under LR37.1, Fed.R.Crim.P. 42 or,18 U.S.C. §§401 and 402.

(d) ATTORNEYS ADMITTED UNDER LR83.14. An attorney who is not a member of the bar of this Court who, pursuant to LR83.14, petitions to appear or is permitted to appear in this Court for purposes of a particular proceeding (pro hac vice), shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

(e) CONFIDENTIALITY. Proceedings before the Executive Committee shall be confidential, except that the Committee may in the interests of justice and on such terms it deems appropriate authorize the clerk to produce, disclose, release, inform, report, or testify to any information, reports, investigations, documents, evidence or transcripts in the clerk's possession. Where a disciplinary proceeding is assigned to a judge of this Court pursuant to these rules, the record and hearings in the proceeding before that judge shall be public, unless for good cause that judge shall in writing order otherwise.

Final orders in disciplinary matters shall be a matter of public record and may be published at the direction of the Executive Committee or the assigned judge.

(f) FILING. An answer to a rule to show cause, a statement of charges, and any other document filed in connection with a disciplinary proceeding before the Executive Committee shall be filed with the attorney admissions coordinator or such other deputy clerk as the clerk may in writing designate.

***Committee Comment*:** A proceeding to discipline a member of the bar of this Court can arise in one of three ways: another court disciplines the attorney; the attorney is convicted of a serious crime; or a complaint is filed alleging misconduct on the part of the attorney. Traditionally, most disciplinary proceedings have been reciprocal proceedings, *i.e.*, proceedings initiated following the discipline of the attorney by another court. The next largest group of disciplinary proceedings consist of those initiated by the conviction of an attorney in this Court for a serious crime.

The Executive Committee is the disciplinary committee of the Court. In those circumstances where an evidentiary hearing may be required as part of the disciplinary proceeding, the Committee may direct that the proceeding be assigned by lot to an individual judge. (LR83.28(e))

As section (c) indicates, the disciplinary rules are not intended to diminish or usurp the authority of a judge in maintaining order in that judge's courtroom or in enforcing compliance with that judge's orders. Disciplinary proceedings are not alternatives to contempt proceedings.

LR83.14 establishes the procedures for admitting an attorney who wishes to appear *pro hac vice*. Section (d) of LR83.25 provides that such attorneys are subject to the same discipline as attorneys who are members of the general bar of the Court.

Section (e) of this rule provides that in general disciplinary proceedings are confidential. Any final orders imposing discipline are public. In those instances

where a proceeding is assigned to an individual judge, it becomes at that point like any other civil proceeding, a matter of public record. As with any other civil case, there may be exceptional circumstances where some or all of the record or hearings should not be made public. Section (e) permits this.

Section (f) makes explicit what has been a practice of long standing: materials relating to disciplinary proceedings before the Executive Committee are to be filed with the Attorney Admissions Coordinator. This procedure enables more effective control over the documents in disciplinary proceedings, a control necessary to assure that the confidentiality of such proceedings is maintained. In addition, the coordinator serves as a source of information on procedure for attorneys involved in disciplinary proceedings.

LR83.26. Discipline of Attorneys Disciplined by Other Courts

(a) DUTY TO NOTIFY. Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by another court, promptly inform the clerk of this court of such action.

(b) DISCIPLINARY ORDER AS EVIDENCE. Except as provided in section (e), the final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this Court.

(c) RULE TO SHOW CAUSE. Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this court has been disciplined by another court, the Executive Committee shall forthwith enter an order directing that the attorney inform the Committee of any claim by that attorney predicated upon the grounds set forth in section (e) that the imposition of the identical discipline by this Court would be unwarranted and the reasons for such a claim. The order will also provide that the response, if any, is to be filed with the clerk within 30 days of service. A certified copy of the order and a copy of the judgment or order from the other court will be served on the attorney, either personally or by mail.

(d) EFFECT OF STAY OF IMPOSITION OF DISCIPLINE IN OTHER COURT. In the event the discipline imposed in the other jurisdiction has been stayed, any reciprocal discipline imposed in this Court shall be deferred until such stay expires.

(e) IMPOSITION OF DISCIPLINE; Exceptions. Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of section (b), the Executive Committee shall impose the identical discipline unless the attorney demonstrates, or the Executive Committee finds—

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

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

(3) that the imposition of the same discipline by this Court would result in injustice; or

(4) that the misconduct established is deemed by this Court to warrant different discipline.

If the Executive Committee determines that any of those elements exist, it shall enter such other order as it deems appropriate.

LR83.27. Discipline of Convicted Attorneys

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

(b) JUDGMENT OF CONVICTION AS EVIDENCE. A certified copy of a judgment of conviction of any attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.

(c) EXECUTIVE COMMITTEE TO INSTITUTE DISCIPLINARY PROCEEDINGS. Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Executive Committee shall, in addition to suspending that attorney in accordance with the provisions of this rule, institute a disciplinary proceeding in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction. Each disciplinary proceeding so instituted will not be concluded until all appeals from the conviction are concluded.

(d) PROCEEDINGS WHERE ATTORNEY CONVICTED OF OTHER THAN SERIOUS CRIME. Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a serious crime, the Executive Committee may, but is not required to, initiate a disciplinary proceeding.

(e) REINSTATEMENT WHERE CONVICTION REVERSED. An attorney suspended pursuant to section (a) will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed, but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney. The disposition of such proceeding shall be determined by the Executive Committee on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

LR83.28. Discipline of Attorneys for Misconduct

(a) COMPLAINT OF MISCONDUCT. Any complaint of misconduct shall be filed with the chief judge. The complaint may be in the form of a letter. The chief judge shall refer it to the Executive Committee for consideration and appropriate action.

(b) ACTION BY EXECUTIVE COMMITTEE. On receipt of a complaint of misconduct the Committee may forward a copy to the attorney and ask for a response within a time set by the Committee. On the basis of the complaint of misconduct and any response, the Committee may—

(1) determine that the complaint merits no further action, or

(2) direct that formal disciplinary proceedings be commenced, or

(3) take such other action as the Committee deems appropriate, including the appointment of an attorney pursuant to LR83.29.

(c) STATEMENT OF CHARGES; SERVICE. To initiate formal disciplinary proceedings based on allegations of misconduct, the Executive Committee shall issue a statement of charges. In addition to setting forth the charges, the statement of charges shall include an order requiring the attorney to show cause, within 30 days after service why the attorney should not be disciplined.

Upon the issuance the statement of charges, the clerk shall forthwith mail two copies to the last known address of the attorney. One copy shall be mailed by certified mail restricted to addressee only, return receipt requested. The other copy shall be mailed by first class mail. If the statement is returned as undeliverable, the clerk shall so notify the Executive Committee. The Executive Committee may direct that further attempts at service be made, either personal service by a private process server or by the United States marshal, or by publication. Personal service shall be accomplished in the manner provided by Fed.R.Civ.P. 5(b) for service other than by mail. Service by publication shall be accomplished by publishing a copy of the rule to show cause portion of the statement in accordance with the provisions of LR83.3. Except as otherwise directed by the Executive Committee, the division of the Court in which the notice is to be published will be as follows:

(1) where the last known address of the attorney is located in the District, the division in which the address is located; or,

(2) where no address is known or the last known address is outside of the District, the Eastern Division.

(d) ANSWER; DECLARATION. The attorney shall file with the answer to the statement of charges a declaration identifying all courts before which the attorney is admitted to practice. The form of the declaration shall be established by the Executive Committee.

(e) ASSIGNMENT TO INDIVIDUAL JUDGE. Following the filing of the answer to the statement of charges, if the Executive Committee determines that an evidentiary hearing is required, the proceeding shall be assigned by lot for a prompt hearing before a judge of this Court. The assigned judge shall not be one who was a member of the Executive Committee that determined that an evidentiary hearing was required. The decision of the assigned judge shall be final.

(f) DISBARMENT ON CONSENT. Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering a declaration stating that the attorney desires to consent to disbarment and that:

(1) the attorney's consent is freely and voluntarily rendered;

(2) the attorney is not being subjected to coercion or duress;

(3) the attorney is fully aware of the implications of so consenting;

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

(5) the attorney acknowledges that the material facts so alleged are true.

Upon receipt of the required declaration, the Executive Committee shall enter an order disbarring the attorney.

The order of disbarring the attorney on consent shall be a matter of public record. However, the declaration shall not be publicly disclosed or made available for use in any other proceeding except where the Executive Committee orders such release after finding it to be required in the interests of justice.

LR83.29. Appointment of Counsel

(a) APPOINTMENT. The Executive Committee or the judge to whom the case is assigned may appoint one or more attorneys to investigate allegations of misconduct, to prosecute disciplinary proceedings, or in conjunction with a reinstatement petition filed by a disciplined attorney. The United States attorney or an assistant United States attorney, the administrator of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois or a designee of the administrator, or a member of the bar of this Court may be appointed. Once appointed, an attorney may not resign unless permission to do so is given by the Executive Committee or the judge to whom the case is assigned.

(b) SUBPOENAS. An attorney appointed under section (a) may, with the approval of the Executive Committee or the judge to whom the case is assigned, cause subpoenas to be issued during the proceedings. Any subpoenas issued pursuant to this rule shall be returnable before the Executive Committee or the assigned judge.

LR83.30. Reinstatement

(a) AUTOMATIC & BY PETITION. An attorney suspended for 3 months or less shall be automatically reinstated at the end of the period of suspension. An attorney suspended for more than 3 months or disbarred may not resume practice until reinstated by order of the Executive Committee.

(b) PETITION FOR REINSTATEMENT. A petition for reinstatement may be filed under the following conditions:

(1) *by a suspended attorney:* An attorney who has been suspended for a period of more than 3 months may petition for reinstatement at any time following the conclusion of the period of suspension.

(2) *by a disbarred attorney:* A petition to reinstate a disbarred attorney may not be filed until at least 5 years has elapsed from the effective date of the disbarment.

Following an adverse decision upon a petition for reinstatement a period of at least 1 year must elapse from the date of the order denying reinstatement before a subsequent petition for reinstatement may be filed.

Petitions for reinstatement shall be filed with the attorney admissions coordinator or such other deputy as the clerk may in writing designate. The Executive Committee may grant the petition without hearing, decide the petition based on a hearing before the Committee, or assign the matter for prompt hearing before, and decision by, a judge of this Court. Where the Committee directs that the petition be assigned to a judge, the assignment will be in the same manner as provided by LR83.28(e) for the assignment of a statement of charges alleging misconduct.

(c) HEARING. A petition for reinstatement will be included on the agenda of the first meeting of the Executive Committee scheduled for not less than 7 days from the time the petition is filed. At that meeting the Committee will consider whether to grant the petition, schedule a hearing, or direct that it be assigned to a judge. Where a hearing is to be held and the Executive Committee has directed that the matter be assigned to a judge, it shall be scheduled for a date not less than 30 days from the date of assignment.

(d) BURDEN OF PROOF. At the hearing the petitioner shall have the burden of demonstrating by clear and convincing evidence that the petitioner has the requisite character and fitness for admission to practice law before this Court and that the petitioner's resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

(e) DUTIES OF COUNSEL. Where an attorney is appointed pursuant to LR83.29, cross-examination of the witnesses of the petitioner and the submission of evidence in opposition to the petition, if any, shall be by that attorney.

(f) CONDITIONS OF REINSTATEMENT. The petition for reinstatement shall be denied if the petitioner fails to demonstrate fitness to resume the practice of law. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate the petitioner, but may make reinstatement conditional upon the making of partial or complete restitution to parties harmed by the conduct of petitioner which led to the suspension or disbarment. If the petitioner has been suspended or disbarred for 5 years or more, reinstatement may be conditioned, in the discretion of the Executive Committee or the judge before whom the matter is heard, upon the furnishing or proof of competency and learning in the law. Such proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

LR83.31. Duties of the Clerk

(a) CERTIFICATION OF CONVICTION IN ANOTHER COURT. Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the clerk shall determine whether the clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been forwarded, the clerk of this Court shall promptly obtain a certificate and file it with this Court.

(b) DISCIPLINE IMPOSED IN ANOTHER COURT. Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another court, the clerk shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court, and if not, the clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this Court.

(c) CONVICTION OR DISCIPLINE IN THIS COURT. Whenever it appears that any person who is admitted to practice law in any other jurisdiction or before any other court has been convicted of a crime, or disbarred, or suspended, or censured, or disbarred on consent by this Court, the clerk shall, within 10 days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other court—

(1) a certificate of the conviction or a certified or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, and

(2) the last known office and residence addresses of the defendant or respondent.

(d) ABA NATIONAL DISCIPLINE DATA BANK. The clerk shall promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this Court.

(e) RECORD OF DISCIPLINARY ACTIONS. The clerk shall note the entry of an order imposing disciplinary sanctions or reinstating a disciplined attorney on the record of that attorney included in the index of attorneys admitted to the bar of this Court.

LR83.32 through LR83.34 (Reserved).

LR83.35. Pro Bono Program

(a) DEFINITIONS. The following definitions shall apply to the *pro bono* rules:

(1) The term "appointment of counsel" shall mean the appointment of a member of the trial bar to represent a party who lacks the resources to retain counsel by any other means. Such appointment shall only be in a civil action or appeal and shall not include any appointment made pursuant to the Criminal Justice Act of 1964, 18 U.S.C. §3006A.

(2) The term "judge" shall mean the judge to whom the action is assigned. It shall include a magistrate judge where the appointment is made in a civil case assigned to a magistrate judge for all purposes pursuant to 28 U.S.C. §636(c) or referred for evidentiary hearings pursuant to 28 U.S.C. §636(b)(1)(B).

(3) The term "panel" shall mean those members of the trial bar who have volunteered for appointment and those whose names were selected pursuant to section (b).

(4) The terms "*pro bono* rules" and "*pro bono* program" shall refer to LR83.35 through 83.49.

(b) CREATING THE PANEL. From time to time, the clerk shall select names at random from the trial bar to create a panel. There shall be a panel for each division of the District. Except as otherwise provided by the *pro bono* rules, the clerk shall select members from the trial bar who have not been included on an earlier panel.

(c) NOTIFICATION TO PANEL. Following the selection of a panel the clerk shall notify each member and obtain from each the following information:

(1) counsel's prior civil trial experience, including a general indication of the number of trials and areas of trial experience;

(2) counsel's ability to consult and advise in languages other than English;

(3) counsel's preferences for appointment among the following types of matters:

(A) Social Security appeals;

(B) employment discrimination actions;

(C) civil rights actions filed by persons in custody; and

(D) other civil rights actions.

(4) whether counsel would be willing to accept an appointment to serve in one or both of the Court's divisions; and

(5) whether counsel would be willing to accept an appointment to serve in one or more of the other districts of the Seventh Circuit.

Such information as is supplied by counsel may be amended at any time by letter.

(d) EXEMPTIONS. A member of the trial bar

(1) whose principal place of business is outside of this District, or

(2) who is employed full-time as an attorney for an agency of the United States, a state, a county, or any sub-division thereof, or

(3) who is employed full-time as an attorney by a not-for-profit legal aid organization

shall, when selected for a panel, be removed from it and returned to the pool. However, such action shall not preclude counsel from being selected for a subsequent panel.

(e) VOLUNTEERS. A member of the trial bar may volunteer to be included in a panel. Whenever a volunteer is appointed, the clerk as part of the notification process will ask the volunteer to elect one of the following options:

(1) the volunteer's name will be moved to the end of the list of names on the panel, or

(2) the volunteer's name will be removed from the panel and either replaced after a specified time period or at the request of the volunteer.

The clerk will make a similar request of any volunteer whose name has been on a panel for 12 months and who has not been appointed during that time.

***Committee Comment*:** Pursuant to LR83.11(g) each member of the trial bar has the responsibility to serve as an appointed attorney in *pro se* matters. The *pro se* rules provide for the reimbursement of expenses of counsel appointed under those rules. The admission fees collected when counsel join the trial bar form a major source of the funds used to pay the expenses.

The procedures for appointment involve selecting from a current panel. The panels are formed annually, one for each of the two divisions of the District. The names are selected in such a manner that no member of the trial bar is selected for a subsequent panel until all other members have been selected.

The only exemption from being included on a panel is the limited one granted to members of the groups specified in section (d).

LR83.36. Appointment Procedures

(a) APPLICATION. Any application for the appointment of counsel by a party appearing *pro se* shall be on a form approved by the Executive Committee. The application shall include a form of affidavit stating the party's efforts, if any, to obtain counsel by means other than appointment and indicating any prior *pro bono* appointments of counsel to represent the party in cases brought in this Court including both pending and previously terminated actions. A completed copy of the affidavit of financial status in the form required by LR3.3(a)(2) shall be attached to the application. The clerk shall provide the application forms and financial status affidavits on request together with a cover sheet informing the party of the following:

(1) the steps needed to complete and file the application;

(2) the party's responsibility under LR83.40 to pay expenses to the extent reasonably feasible based on the party's financial condition;

(3) the party's responsibility under LR83.41 to pay part or all of counsel's fees to the extent reasonably feasible based on the party's financial condition;

(4) the provisions of 42 U.S.C. §2000e-5(k) for the award of attorney's fees to prevailing parties in Title VII employment discrimination actions; and

(5) the provisions for awarding statutory attorney's fees from any award of retroactive disability benefits in Social Security appeals.

Failure of a party to make a written application for appointed counsel shall not preclude appointment.

(b) RE-APPLICATION. A *pro se* party who was ineligible for appointed counsel at the outset of the litigation who later becomes eligible by reason of changed circumstances may apply for appointment of counsel within a reasonable time after the change in circumstances has occurred. The procedures set out in section (a) shall be followed in making such re-application.

(c) FACTORS USED IN DETERMINING WHETHER TO APPOINT. Upon receipt of an application for the appointment of counsel, the judge shall determine whether counsel is to be appointed to represent the *pro se* party pursuant to 28 U.S.C. §1915(d). That determination shall be made within a reasonable time after the application is filed. The following factors will be taken into account in making the determination:

(1) the potential merit of the claims as set forth in the pleadings;

(2) the nature and complexity of the action, both factual and legal, including the need for factual investigation;

(3) the presence of conflicting testimony calling for a lawyer's presentation of evidence and cross-examination;

(4) the capability of the *pro se* party to present the case;

(5) the inability of the *pro se* party to retain counsel by other means;

(6) the degree to which the interests of justice will be served by appointment of counsel, including the benefit the court may derive from the assistance of appointed counsel; and

(7) any other factors deemed appropriate by the judge.

(d) ORDER OF APPOINTMENT. Whenever the judge concludes that the appointment of counsel is warranted, the judge shall enter an order pursuant to 28 U.S.C. §1915(d) directing the appointment of counsel to represent the *pro se* party. The judge may specify in the order of appointment an area of expertise or preference so that the clerk may select a prospective appointee who indicated such area, if one is available. The order shall be transmitted forthwith to the clerk. If service of the summons and complaint has not yet been made, an order directing service by the United States marshal or by other appropriate method of service shall accompany the appointment order.

The selection of a member of the panel for appointment pursuant to the appointment order will normally be made in accordance with section (e). However, the judge may determine that an appointment be made in any of the following manners:

(1) Where the *pro se* party has one or more other cases pending before this Court in which counsel has been appointed, the judge may determine it to be appropriate that counsel appointed in such other case or cases be appointed to represent the *pro se* party in the case before the judge.

(2) Where the judge finds that the nature of the case requires specific expertise and among the panel members available for appointment

there are some with the required expertise, the judge may direct the clerk to select counsel from among those included in the group or may designate a specific member of the group.

(3) Where the judge finds that the nature of the case requires specific expertise and none of the panel members available for appointment has indicated that expertise, the judge may appoint counsel with the required expertise who is not on the panel.

In order to assist the judge in determining whether or not to make a direct appointment under (1) of this section, the clerk shall provide on request the case number, case title, judge to whom assigned, and name of counsel appointed of each case currently pending before the Court in which the *pro se* party has had counsel appointed.

(e) SELECTION OF ATTORNEY TO BE APPOINTED. Except where another method of appointment is ordered pursuant to section (d), the clerk, on receipt of the order of appointment, shall select a name from the panel in the following manner:

(1) Where the order specifies a particular area of expertise or a preference, the clerk shall select the first available panel member indicating such expertise or preference. If no such person is found, the next available person listed on the panel shall be selected.

(2) Where the order does not specify any area of expertise or preference, the clerk shall select the first available person listed on the panel.

(f) NOTICE OF APPOINTMENT. After counsel has been selected, the clerk shall forthwith send to counsel written notice of the appointment. A copy of the order of appointment and copies of the pleadings filed to date, relevant correspondence, and any other relevant documents shall accompany the notice. In addition to notifying counsel, the clerk shall also notify all of the parties to the action of the appointment and include with such notification the name, address, and telephone number of the appointee.

(g) MAKING PRIVATE COUNSEL COURT-APPOINTED. Where a party is represented by counsel and because of the party's financial condition both the party and counsel wish to change the nature of the representation to court-appointed representation in order that counsel may be eligible for reimbursement of expenses from the District Court Fund pursuant to LR83.40, counsel may petition the court to be court-appointed counsel. Any such petition shall indicate that if the court grants the petition, any existing fee agreements between the party and counsel shall no longer be enforceable and any subsequent fee agreements between the party and counsel may only be made in accordance with the provisions of LR83.41. In ruling on the petition, the judge shall grant it only if the judge would have granted an application filed under this rule had the party not been represented by counsel. Where the party is represented by more than one counsel, any order of appointment under this section shall preclude prospective operation of fee agreements with all such counsel but shall appoint only those counsel wishing to be appointed.

LR83.37. Duties & Responsibilities of Appointed Counsel

Upon receiving notice of the appointment, counsel shall forthwith file an appearance in accordance with LR83.13 in the action to which counsel is appointed. Promptly following the filing of an appearance, counsel shall communicate with the newly-represented party concerning the action or appeal. In addition to a full discussion of the merits of the dispute, counsel shall explore with the party any possibilities of resolving the dispute in other forums, including but not limited to administrative forums. If after consultation with counsel the party decides to prosecute or defend the action or appeal, counsel shall proceed to represent the party in the action or appeal unless or until the attorney- client relationship is terminated as provided by these rules.

Except where the appointment is terminated pursuant to LR83.38 or LR83.39, each appointed counsel shall represent the party in the action from the date counsel enters an appearance until a final judgment is entered in the action. If the matter is remanded to an administrative forum, the appointed counsel shall, unless given leave to withdraw by the judge, continue to represent the party in any proceeding, judicial or administrative, that may ensue upon an order of remand. The appointed counsel is not required by these rules to continue to represent a party on appeal should the party represented wish to appeal from a final judgment.

LR83.38. Relief from Appointment

(a) GROUNDS; APPLICATION. After appointment counsel may apply to be relieved of an order of appointment only on the following grounds or on such other grounds as the appointing judge finds adequate for good cause shown:

(1) Some conflict of interest precludes counsel from accepting the responsibilities of representing the party in the action.

(2) In counsel's opinion, counsel is not competent to represent the party in the particular type of action assigned.

(3) Some personal incompatibility or a substantial disagreement on litigation strategy exists between counsel and the party.

(4) Because of the temporary burden of other professional commitments involved in the practice of law, counsel lacks the time necessary to represent the party.

(5) In counsel's opinion the party is proceeding for purpose of harassment or malicious injury, or the party's claims or defenses are not warranted under existing law and cannot be supported by good faith argument for extension, modification, or reversal of existing law.

Any application by appointed counsel for relief from an order of appointment on any of the grounds set forth in this section shall be made to the judge promptly after the attorney becomes aware of the existence of such grounds, or within such additional period as may be permitted by the judge for good cause shown.

(b) ORDER GRANTING RELIEF. If an application for relief from an order of appointment is granted, the judge may issue an order directing the appointment of another counsel to represent the party. Such appointment shall be made in accordance

with the procedures set forth in LR83.36. Alternatively, the judge shall have the discretion not to issue a further order of appointment, in which case the party shall be permitted to prosecute or defend the action *pro se*.

Where the judge enters an order granting relief from an order of appointment on the grounds that counsel lacks the time to represent the party due to a temporary burden of other professional commitments, the name of counsel so relieved shall, except as otherwise provided in the order, automatically be included among the names selected for the next panel.

LR83.39. Discharge of Appointed Counsel on Request of Party

Any party for whom counsel has been appointed shall be permitted to request the judge to discharge that counsel from the representation and to appoint another. Such request shall be made promptly after the party becomes aware of the reasons giving rise to the request, or within such additional period as may be permitted by the judge for good cause shown.

When such a request is supported by good cause, such as personal incompatibility or a substantial disagreement on litigation strategy between the party and appointed counsel, the judge shall forthwith issue an order discharging and relieving appointed counsel from further representation of the party in the action or appeal. Following the entry of such an order of discharge, the judge may in the judge's discretion either enter or not enter a further order directing the appointment of another counsel to represent the party. In any action where the judge discharges appointed counsel but does not issue a further order of appointment, the party shall be permitted to proceed *pro se*.

In any action where a second counsel is appointed and subsequently discharged upon request of a party, no additional appointment shall be made except on a strong showing of good cause. Any appointments made following the entry of an order of discharge shall be made in accordance with the procedures set forth in LR83.36.

LR83.40. Expenses

The party shall bear the cost of any expenses of the litigation or appeal to the extent reasonably feasible in light of the party's financial condition. Such expenses shall include, but not be limited to discovery expenses, subpoena and witness fees, and transcript expenses. It shall be permissible for appointed counsel or the firm with which counsel is affiliated to advance part or all of the payment of any such expenses without requiring that the party remain ultimately liable for such expenses, except out of the proceeds of any recovery. However, the attorney or firm shall not be required to advance the payment of such expenses.

Expenses incurred by counsel appointed pursuant to LR83.36 or the firm with which counsel is affiliated may be reimbursed from the District Court Fund in accordance with the provisions of the *Regulations Governing the Reimbursement of Expenses in Pro Bono Cases*. The clerk will provide copies of the *Regulations* and the *Plan for the Administration of the District Court Fund* on request.

LR83.41. Attorney's Fees

(a) PARTY'S ABILITY TO PAY. Where as part of the process of appointing counsel the judge finds that the party is able to pay for legal services in whole or in part but that appointment is justified, the judge shall include in the order of appointment provisions for any fee arrangement between the party and the appointed counsel.

If appointed counsel discovers after appointment that the party is able to pay for legal services in whole or in part, counsel shall bring that information to the attention of the judge. Thereupon the judge may either (1) authorize the party and counsel to enter into a fee agreement subject to the judge's approval, or (2) relieve counsel from the responsibilities of the order of appointment and either permit the party to retain an attorney or to proceed *pro se*.

(b) FEE AGREEMENTS PROHIBITED; EXCEPTIONS. Because the representation of the party was not voluntary at its inception and because the party is unrepresented in dealing with appointed counsel, appointed counsel shall, except as otherwise provided in this rule, neither (1) enter into a binding fee arrangement of any type with the party nor (2) make such an arrangement a condition to undertaking or continuing the representation.

Where it appears that a reasonable settlement is possible, appointed counsel may enter into a provisional fee agreement with the party counsel was appointed to represent. Such provisional fee agreement shall be presented to the court for approval.

(c) ALLOWANCE OF FEES. Upon appropriate application by appointed counsel, the judge may award attorney's fees to appointed counsel for services rendered in the action as authorized by applicable statute, regulation, rule, or other provision of law, including case law.

LR83.42 through LR83.49 (Reserved).

LR83.50.1. Rules of Professional Conduct

LR83.50.1 through LR83.58.5 are the rules of professional conduct for the Northern District of Illinois. The rules have been numbered to permit a ready identification of the comparable rule in the ABA Model Rules. The ABA Model Rules run from 1.1 through 8.5. The local rules are of the form LR83.5x.x where the x.x part of the rule number is the same as the comparable ABA Model Rule.

Committee Comment. *Preamble to Rules of Professional Conduct.*

The practice of law is a public trust. Lawyers are the trustees of the system by which citizens resolve disputes among themselves, punish and deter crime, and determine their relative rights and responsibilities toward each other and their government. Lawyers therefore are responsible for the character, competence and integrity of the persons whom they assist in joining their profession; for assuring access to that system through the availability of competent legal counsel, for maintaining public confidence in the system of justice by acting competently and

with loyalty to the best interests of their clients; by working to improve that system to meet the challenges of a rapidly changing society; and by defending the integrity of the judicial system against those who would corrupt, abuse or defraud it.

To achieve these ends the practice of law is regulated by the following rules. Violation of these rules is grounds for discipline. No set of prohibitions, however, can adequately articulate the positive values or goals sought to be advanced by those prohibitions. This preamble therefore seeks to articulate those values in much the same way as did the former canons set forth in the Code of Professional Responsibility. Lawyers seeking to conform their conduct to the requirements of these rules should look to the values described in this preamble for guidance in interpreting the difficult issues which may arise under the rules.

The policies which underlie the various rules may, under certain circumstances, be in some tension with each other. Wherever feasible, the rules themselves seek to resolve such conflicts with clear statements of duty. For example, a lawyer must disclose, even in breach of a client confidence, a client's intent to commit a crime involving a serious risk of bodily harm. In other cases, lawyers must carefully weigh conflicting values, and make decisions, at the peril of violating one or more of the following rules. Lawyers are trained to make just such decisions, however, and should not shrink from the task. To reach correct ethical decisions, lawyers must be sensitive to the duties imposed by these rules and, whenever practical, should discuss particularly difficult issues with their peers.

Timely, affordable counsel is essential if disputes are to be avoided and, when necessary, resolved. Basic rights have little meaning without access to the judicial system which vindicates them. Effective access to that system often requires the assistance of counsel.

It is the responsibility of those licensed as officers of the court to use their training, experience and skills to provide services in the public interest for which compensation may not be available. It is the responsibility of those who manage law firms to create an environment that is hospitable to the rendering of a reasonable amount of uncompensated service by lawyers practicing in that firm.

Service in the public interest many take many forms. These include but are not limited to *pro bono* representation of persons unable to pay for legal services and assistance in the organized bar's efforts at law reform. An individual lawyer's efforts in these areas is evidence of the lawyer's good character and fitness to practice law, and the efforts of the bar as a whole are essential to the bar's maintenance of professionalism.

The absence from these rules of ABA Model Rule 6.1 regarding *pro bono* and public service therefore should not be interpreted as limiting the responsibility of attorneys to render uncompensated service in the public interest. Rather, the rationale for the absence of ABA Model Rule 6.1 is that this concept is not appropriate for a disciplinary code, because an appropriate disciplinary standard regarding *pro bono* and public service is difficult, if not impossible, to articulate. That ABA Model Rule 6.1 itself uses the word "should" instead of "shall" in describing this duty reflects the uncertainty of the ABA on this issue.

The quality of the legal profession can be no better than that of its members. Lawyers must exercise good judgment and candor in supporting applicants for membership in the bar.

Lawyers also must assist in the policing of lawyer misconduct. The vigilance of the bar in preventing and, where required, reporting misconduct can be a formidable deterrent to such misconduct, and a key to maintaining public confidence in the integrity of the profession as a whole in the face of the egregious misconduct of a few.

Legal services are not a commodity, rather, they are the result of the efforts, training, judgment and experience of the members of a learned profession. These rules reflect the sensitive task of striking a balance between making available useful information regarding the availability and merits of lawyers and the need to protect the public against deceptive or overreaching practices. All communications with clients and potential clients should be consistent with these values.

The lawyer-client relationship is one of trust and confidence. Such confidence can be maintained only if the lawyer acts competently and zealously pursues the client's interests within the bounds of the law. "Zealously" does not mean mindlessly or unfairly or oppressively. Rather, it is the duty of all lawyers to seek resolution of disputes at the least cost in time, expense and trauma to all parties and to the courts.

Scope of the Rules of Professional Conduct. The rules of professional conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, cast in the term "may," are permissive and define areas under the rules in which the lawyer has professional discretion. Nonetheless, a lawyer is subject to discipline when the lawyer's action or failure to act is outside the bounds of permissible discretion. Other rules define the nature of relationships between lawyers and others. The rules are thus partly obligatory and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add an obligation to the rules but provide guidance for practicing in compliance with the rules.

The rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. Compliance with the rules, as with all law in an open society, depends upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinions and finally, when necessary, upon enforcement through disciplinary proceedings. The rules do not, however, exhaust the moral and ethical considerations that should inform the lawyer, for no worthwhile human activity can be completely defined by legal rules. The rules simply provide a framework for the ethical practice of law.

Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer

relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under LR83.51.6, that may attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. Whether the client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have the authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. They also may have authority to represent the "public interest" in circumstances where a private lawyer would not be authorized to do so. These rules do not abrogate any such authority.

Failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. The rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuation factors and whether there have been previous violations.

The Comment accompanying each rule explains and illustrates the meaning and purpose of the rule. The Preamble at the beginning of this Comment and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each rule is authoritative.

LR83.50.2. Terminology

The following definitions shall apply to the rules of professional conduct:

(1) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(2) "Confidence" denotes information protected by the lawyer-client privilege under applicable law.

(3) "Contingent fee agreement" denotes an agreement for the provision of legal services by a lawyer under which the amount of the lawyer's compensation is contingent in whole or in part upon the successful

completion of the subject matter of the agreement, regardless of whether the fee is established by formula or is a fixed amount.

(4) "Disclose" or "disclosure" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

(5) "Firm" or "law firm" denotes a lawyer or lawyers engaged in the private practice of law in a partnership, professional corporation, or other entity or in the legal department of a corporation, legal services organization or other entity. *See* Comment, LR83.51.10.

(6) "Fraud" or "fraudulent" denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprize another of relevant information.

(7) "Knowingly," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(8) "Partner" denotes a lawyer who is a member of a partnership, or a shareholder or officer in a law firm organized as a professional corporation.

(9) "Person" denotes natural persons, partnerships, business corporations, not-for-profit corporations, public and quasi-public corporations, municipal corporations, State and Federal governmental bodies and agencies, or any other type of lawfully existing entity.

(10) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(11) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(12) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(13) "Secret" denotes information gained in the professional relationship, that the client has requested be held inviolate or the revelation of which would be embarrassing to or would likely be detrimental to the client.

(14) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

LR83.51.1. Competence

(a) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation necessary for the representation.

(b) A lawyer shall not represent a client in a legal matter in which the lawyer knows or reasonably should know that the lawyer is not competent to provide

representation, without the association of another lawyer who is competent to provide such representation.

(c) After accepting employment on behalf of a client, a lawyer shall not thereafter delegate to another lawyer not in the lawyer's firm the responsibility for performing or completing that employment, without the client's consent.

Committee Comment. *Legal Knowledge and Skill*. In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kinds of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented persons. *See also* LR83.56.2.

Thoroughness and Preparation. Competent handling of a particular matter includes inquiry into an analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake: major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

Maintaining Competence. To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education. If a system of peer review

has been established, the lawyer should consider making use of it in appropriate circumstances.

LR83.51.2. Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to sections (c), (d), and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after disclosure by the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the objectives of the representation if the client consents after disclosure.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good-faith effort to determine the validity, scope, meaning or application of the law.

(e) A lawyer shall not present, participate in presenting, or threaten to present criminal charges or professional disciplinary actions to obtain an advantage in a civil matter.

(f) In representation of a client, a lawyer shall not:

(1) file a suit, assert a position, conduct a defense, delay a trial or take other action on behalf of the client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another;

(2) advance a claim or defense the lawyer knows is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by a good-faith argument for an extension, modification, or reversal of existing law; or

(3) fail to disclose that which the lawyer is required by law to reveal.

(g) A lawyer who knows a client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon the client to rectify the same, and if the client refuses or is unable to do so, the lawyer shall reveal the fraud to the affected person or tribunal, except when the information is protected as a privileged communication.

(h) A lawyer who knows that a person other than the client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

(i) When a lawyer knows that a client expects assistance not permitted by these rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

Committee Comment. *Scope of Representation.* Both lawyers and clients have authority and responsibility in the objectives and means of representation. The client has the ultimate authority to determine the purpose to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected.

In a case in which the client appears to be suffering mental disability, the lawyer's duty to abide by the client's decisions is to be guided by reference to LR83.51.14.

Independence from Client's Views or Activities. Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Services Limited in Objectives or Means. The objectives or scope of services provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitation on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. The terms upon which representation in undertaken may exclude specific objectives or means. Such limitations may exclude objectives or means that the lawyer regards as repugnant or imprudent.

An agreement concerning the scope of representation must accord with the rules of professional conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate LR83.51.1, or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer may wish to continue.

Criminal, Fraudulent and Prohibited Transactions. A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. However, a lawyer may not knowingly assist a client in criminal or fraudulent conduct. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is not permitted to reveal the client's wrongdoing, except where permitted by LR83.51.2(g) or LR83.51.6. However, the lawyer is required to avoid furthering the purpose, for example, by suggesting how it might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposes is legally proper but then discovers is criminal and fraudulent. Withdrawal from the representation, therefore, may be required.

Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

Section (d) applies whether or not the defrauded party is a party to the transaction. Hence a lawyer should not participate in a sham transaction; for example, a transaction to effectuate criminal or fraudulent escape of tax liability. Section (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of section (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

LR83.51.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Committee Comment. A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client. A lawyer has professional discretion in determining the means by which a matter should be pursued. *See* LR83.51.2. A lawyer's work load should be controlled so that each matter can be handled adequately.

Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness.

Unless the relationship is terminated as provided in LR83.51.16. a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether

a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client but has not been specifically instructed concerning pursuit of an appeal, the lawyer should advise the client of the possibility of appeal before relinquishing responsibility for the matter.

LR83.51.4. Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Committee Comment. *General.* The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. For example, a lawyer negotiating on behalf of a client should provide the client with facts relevant to the matter, inform the client of communications from another party and take reasonable steps that permit the client to make a decision regarding a serious offer from another party. A lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case should promptly inform the client of its substance unless prior discussions with the client have left it clear that the proposal will be unacceptable. *See* LR83.51.2(a). Even when a client delegates authority to the lawyer, the client should be kept advised of the status of the matter.

Adequacy of communication depends in part on the kind of advice or assistance involved. For example, in negotiations where there is time to explain a proposal, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that might injure or coerce others. On the other hand, a lawyer ordinarily cannot be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of the representation.

Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, when the client is a child or suffers from mental disability. SeeLR83.51.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. *See* LR83.51.13. Where many routine matters are involved, a system of limited or occasional reporting

may be arranged with the client. Practical exigency may also require a lawyer to act for a client without prior consultation.

Withholding Information. In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client.

LR83.51.5. Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability, of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client before or within a reasonable time after commencing the representation.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by section (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a dissolution of marriage or upon

the amount of maintenance or support, or property settlement in lieu thereof, except that this prohibition shall not extend to representation in matters subsequent to final judgments in such cases;

(2) a contingent fee for representing a defendant in a criminal case.

(e) Notwithstanding section (c), a contingent fee agreement regarding the collection of commercial accounts or of insurance company subrogation claims may be made in accordance with the customs and practice in the locality for such legal services.

(f) Except as provided in section (j), a lawyer shall not divide a fee for legal services with another lawyer who is not in the same firm, unless the client consents to employment of the other lawyer by signing a writing which discloses:

(1) that a division of fees will be made;

(2) the basis upon which the division will be made, including the economic benefit to be received by the other lawyer as a result of the division; and

(3) the responsibility to be assumed by the other lawyer for performance of the legal services in question.

(g) A division of fees between lawyers who are not in the same firm shall be made in proportion to the services performed and responsibility assumed by each lawyer, except where the primary service performed by one lawyer is the referral of the client to another lawyer and

(1) the receiving lawyer discloses that the referring lawyer has received or will receive economic benefit from the referral and the extent and basis of such economic benefit, and

(2) the referring lawyer agrees to assume the same legal responsibility for the performance of the services in question as would a partner of the receiving lawyer.

The total fee of the lawyers shall be reasonable.

(h) For purposes of section (g) "economic benefit" shall include:

(1) the amount of participation in the fee received with regard to the particular matter;

(2) any other form of remuneration passing to the referring lawyer from the receiving lawyer, whether or not with regard to the particular matter; and

(3) an established practice of referrals to and from or from and to the receiving lawyer and the referring lawyer.

(i) Notwithstanding section (f), a payment may be made to a lawyer formerly in the firm, pursuant to a separation or retirement agreement.

Committee Comment. *Basis or Rate of Fee.* When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. In a new client-lawyer relationship, however, an understanding as to the fee should be promptly established. It is not necessary to

recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. When developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is sufficient if the basis or rate of the fee is set forth.

Terms of Payment. A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. *See* LR83.51.16(e). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to LR83.51.8(i). However, a fee paid in property instead of money may be subject to special scrutiny because it involves questions concerning both the value of the services and the lawyer's special knowledge of the value of the property.

An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures. When there is doubt whether a contingent fee is consistent with the client's best interest, the lawyer should offer the client alternative bases for the fee and explain their implications. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage.

Division of Fee. A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Section (g) permits the lawyers to divide a fee on either the basis of the proportion of services they render or by agreement between the participating lawyers if all assume responsibility for the representation as a whole and the client is advised and does not object. It does not require disclosure to the client of the share that each lawyer is to receive. Joint responsibility for the representation entails the obligations stated in LR83.55.1 for purposes of the matter involved.

Disputes Over Fees. If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer should conscientiously consider submitting to it. Law may prescribe a

procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

LR83.51.6. Confidentiality of Information

(a) Except when required under section (b) or permitted under section (c), a lawyer shall not, during or after termination of the professional relationship with the client, use or reveal a confidence or secret of the client known to the lawyer unless the client consents after consultation.

(b) A lawyer shall reveal information about a client to the extent it appears necessary to prevent the client from committing an act that would result in death or serious bodily harm.

(c) A lawyer may use or reveal:

(1) confidences or secrets when permitted under these rules or required by law or court order;

(2) the intention of a client to commit a crime in circumstances other than those enumerated in LR83.51.6(b); or

(3) confidences or secrets necessary to establish or collect the lawyer's fee or to defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct.

(d) The relationship of trained intervener and a lawyer or a judge who seeks or receives assistance through the Lawyers' Assistance Program, Inc., shall be the same as that of lawyer and client for purposes of the application of this rule and LR83.58.3.

(e) Any information received by a lawyer in a formal proceeding before a trained intervener, or panel of intervener, of the Lawyers' Assistance Program, Inc., shall be deemed to have been received from a client for purposes of the application of this rule and LR83.58.3.

Committee Comment. *General.* The lawyer is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

The observances of the ethical obligation of a lawyer to hold inviolate confidential information of the client not only facilitates the full development of facts essential to proper representation of the client but also encourages people to seek early legal assistance.

Almost without exception, clients come to lawyers in order to determine what their rights are and what is, in the maze of laws and regulations, deemed to be legal and correct. The common law recognizes that the client's confidences must be protected from disclosure. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

A fundamental principle in the client-lawyer relationship is that the lawyer maintain confidentiality of information relating to the representation. The client is thereby encouraged to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter.

The principle of confidentiality is given effect in two related bodies of law, the attorney-client privilege (which includes the work product doctrine) in the law of evidence and the rule of confidentiality established in professional ethics. The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by these rules of professional conduct or other law. *See also* the discussion under the heading "Scope of the Rules of Professional Conduct" in the Comment section of LR83.50.1.

The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

Authorized Disclosure. A lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority. In litigation, for example, a lawyer may disclose information by admitting a fact that cannot properly be disputed, or in negotiation by making a disclosure that facilitates a satisfactory conclusion.

Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure Adverse to Client. The confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends serious harm to another person. However, to the extent a lawyer is required or permitted to disclose a client's purposes, the client will be inhibited from revealing facts which would enable the lawyer to counsel against a wrongful course of action. The public is better protected if full and open communication by the client is encouraged than if it is inhibited.

Several situations must be distinguished.

First, the lawyer must never counsel or assist a client in conduct that is criminal or fraudulent. *See* LR83.51.2(d). Similarly, a lawyer has a duty under LR83.53.3(a)(4) not to use false evidence. This duty is essentially a special instance of the duty prescribed in LR83.51.2(d) to avoid assisting a client in criminal or fraudulent conduct.

Second, the lawyer may have been innocently involved in past conduct by the client that was criminal or fraudulent. In such a situation the lawyer has not violated

LR83.51.2(d), because to "counsel or assist" criminal or fraudulent conduct requires knowing that the conduct is of that character.

Third, the lawyer may learn that a client intends prospective conduct that is criminal and likely to result in imminent death or substantial bodily harm. As stated in section (b), the lawyer has the professional obligation to reveal information in order to prevent such consequences. The lawyer must make such disclosure in order to prevent homicide or serious bodily injury which the lawyer reasonably believes is intended by a client, even though it is very difficult for the lawyer to "know" when such a heinous purpose will actually be carried out, for the client may have a change of mind.

Fourth, the lawyer may learn that a client intends to commit some other crime. As stated in section (c)(2), the lawyer has professional discretion to reveal that information. The lawyer's exercise of discretion requires consideration of such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question.

In any instance in which the lawyer learns of a client's intention to commit a crime, where practical the lawyer should seek to persuade the client to take suitable action. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to the purpose. A lawyer's decision not to take preventive action permitted by section (c)(2) does not violate this rule.

Withdrawal. If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in LR83.51.16(a)(2).

After withdrawal the lawyer is required to refrain from making disclosure of the client's confidence, except as otherwise provided in LR83.51.6. Neither this rule nor LR83.51.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like.

Where the client is an organization, the lawyer may be in doubt whether the contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with this rule, the lawyer may make inquiry within the organization as indicated in LR83.51.13(b).

Dispute Concerning a Lawyer's Conduct. Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. The lawyer's right to respond arises when an assertion of such complicity has been made. Section (c)(3) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend, of course, applies where a proceeding has been commenced. Where practicable and not prejudicial to the lawyer's ability to establish

the defense, the lawyer should advise the client of the third party's assertion and request that the client respond appropriately. In any event, disclosure should be no greater than the lawyer reasonably believes is necessary to vindicate the innocence, the disclosure should be made in a manner which limits access to the information to the tribunal or other persons having a need to know it, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

If the lawyer is charged with wrongdoing in which the client's conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge. Such a charge can arise in a civil, criminal or professional disciplinary proceeding, and can be based on a wrong allegedly committed by the lawyer against the client, or a wrong alleged by a third person; for example, a person claiming to have been defrauded by the lawyer and client acting together. A lawyer entitled to a fee is permitted by section (c)(3) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary. As stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure.

Disclosures Otherwise Required or Authorized. The attorney-client privilege is differently defined in various jurisdictions. If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, section (a) requires the lawyer to invoke the privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client.

The rules of professional conduct in various circumstances permit or require a lawyer to disclose information relating to the representation. *See* LR83.51.2(g), LR83.52.3, LR83.53.3, and LR83.54.1. In addition to these provisions, a lawyer may be obligated or permitted by other provisions of law to give information about a client. Whether another provisions of law supersedes LR83.51.6 is a matter of interpretation beyond the scope of these rules, but a presumption should exist against such a supersession.

Former Client. The duty of confidentiality continues after the client-lawyer relationship has terminated.

LR83.51.7. Conflict of Interest: General Rule

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after disclosure.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after disclosure.

(c) When representation of multiple clients in a single matter is undertaken, the disclosure shall include explanation of the implications of the common representation and the advantages and risks involved.

Committee Comment. *Loyalty to a Client.* Loyalty is an essential element in the lawyer's relationship to a client. An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. The lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the parties and issues involved and to determine whether there are actual or potential conflicts of interest.

If such a conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. *See* LR83.51.16. Where more than one client is involved and the lawyer withdraws because a conflict arises over representation, whether the lawyer may continue to represent any of the clients is determined by LR83.51.9. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to LR83.51.3 and the discussion under the heading "Scope of the Rules of Professional Conduct" in the Comment section of LR83.50.1.

As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without the client's consent. Section (a) expresses that general rule. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not require consent of the respective clients. Section (a) applies only when the representation of one client would be directly adverse to the other.

Loyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Section (b) addresses such situations. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interests involved.

Disclosure and Consent. A client may consent to representation notwithstanding a conflict. However, as indicated in subsection (a)(1) with respect to representation directly adverse to a client, and subsection (b)(1) with respect to material limitations on representation of a client, when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When more than one client is involved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent.

Lawyer's Interests. The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, a lawyer's need for income should not lead the lawyer to undertake matters that cannot be handled competently and at a reasonable fee. *See* LR83.51.1 and LR83.51.5. If the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. A lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest.

Conflicts in Litigation. Section (a) prohibits representation of opposing parties in litigation. Simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by sections (b)and (c). An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflict can arise in criminal cases as will as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal and the requirements of sections (b) and (c) are met.

Ordinarily, a lawyer may not act as advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated. However, there are circumstances in which a lawyer may act as advocate against a client. For example, a lawyer representing an enterprise with diverse operations may accept employment as an advocate against the enterprise in an unrelated matter if doing so will not adversely affect the lawyer's relationship with the enterprise or conduct of the suit and if both clients consent after disclosure. By the same token, government lawyers in some circumstances may represent government employees in proceedings in which a government agency is the opposing party. The propriety of concurrent representation can depend on the nature of the litigation. For example, a

suit charging fraud entails conflict to a degree not involved in a suit for a declaratory judgment concerning statutory interpretation.

A lawyer may represent parties having antagonistic positions on a legal question that has arisen in different cases, unless representation of either client would be adversely affected. Thus, it is ordinarily not improper to assert such positions in cases pending in different trial courts, but it may be improper to do so in cases pending at the same time in an appellate court.

Interest of Person Paying for a Lawyer's Service. A lawyer may be paid from a source other than the client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty to the client. *See* LR83.51.8(f). For example, when an insurer and its insured have conflicting interests in a matter arising from a liability insurance agreement, and the insurer is required to provide special counsel for the insured, the arrangement should assure the special counsel's professional independence. So also, when a corporation and its directors or employees are involved in a controversy in which they have conflicting interests, the corporation may provide funds for separate legal representation of the directors or employees, if the clients consent after disclosure and the arrangement ensures the lawyer's professional independence.

Other Conflict Situations. Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree.

For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference of interest among them.

Conflict questions may also arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may arise. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. The lawyer should make clear the relationship to the parties involved.

A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called upon to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk

that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as director.

Conflict Charged by an Opposing Party. Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question where there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique for harassment. *See* Scope the discussion under the heading "Scope of the Rules of Professional Conduct" in the Comment section of LR83.50.1.

LR83.51.8. Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless client consents after disclosure, except as permitted or required by LR83.51.6 or LR83.53.3.

(c) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client consents after disclosure;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by LR83.51.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendre pleas, unless each client consents after disclosure, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not enter into an agreement with a client or former client limiting or purporting to limit the right of the client or former client to file or pursue any complaint before the Illinois Attorney Registration and Disciplinary Commission or this Court's Executive Committee or any other disciplinary body.

(i) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

(j) A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after disclosure regarding the relationship.

(k) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for the client, except that the lawyer may:

(1) acquire a lien granted by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

Committee Comment. *Transactions Between Client and Lawyer.* As a general principle, all transactions between client and lawyer should be fair and reasonable to the client. In such transactions a review by independent counsel on behalf of the client is often advisable. Furthermore, a lawyer may not exploit information relating to the representation to the client's disadvantage. For example, a lawyer who has learned that the client is investing in specific real estate may not, without the client's consent, seek to acquire nearby property where doing so would adversely affect the client's plan for investment. Section (a) does not, however, apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in section (a) are unnecessary and impracticable.

A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, however, the client should have the detached advice that another lawyer can provide. Section (c) recognizes an exception where the client is a relative of the donee or the gift is not substantial.

Literary Rights. An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Section (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to LR83.51.5 and section (k).

Persons Paying for a Lawyer's Services. Section (f) requires disclosure of the fact that the lawyer's services are being paid for by a third party. Such an arrangement must also conform to the requirements of LR83.51.6 concerning confidentiality and LR83.51.7 concerning conflict of interest. Where the client is a class, consent may be obtained on behalf of the class by court-supervised procedure.

Limiting Liability. Section (i) is not intended to apply to customary qualifications and limitations in legal opinions and memoranda. Section (h), however, is an unqualified prohibition.

Family Relationships Between Lawyers. Section (j) applies to related lawyers who are in different firms. Related lawyers in the same firm are governed by LR83.51.7, LR83.51.9, and LR83.51.10. The disqualification stated in section (j) is personal and is not imputed to members of firms with whom the lawyers are associated.

Acquisition of Interest in Litigation. Section (k) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. This general rule, which has its basis in common law champerty and maintenance, is subject to specific exceptions developed in decisional law and continued in these rules, such as the exception for reasonable contingent fees set forth in LR83.51.5 and the exception for certain advances of the costs of litigation set forth in section (e).

LR83.51.9. Conflict of Interest: Former Client

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which the person's interests are materially adverse to the interests of the former client unless the former client consents after disclosure.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which the firm with which the lawyer formerly was associated had previously represented a client,

(1) whose interests are materially adverse to that person, and

(2) about whom the lawyer had acquired information protected by LR83.51.6 and LR83.51.9(c) that is material to the matter,

unless the former client consents after disclosure.

(c) A lawyer who has formerly represented a client in a matter or whose present or former law firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as LR83.51.6 or LR83.53.3 would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as LR83.51.6 or LR83.53.3 would permit or require with respect to a client.

Committee Comment. *General.* After termination of a client-lawyer relationship, a lawyer may not represent another client except in conformity with this rule. The principles in LR83.51.7 determine whether the interests of the present and former client are adverse. Thus, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction.

The scope of a "matter" for purposes of this rule may depend on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a wholly distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdiction. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

Lawyers Moving Between Firms. When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another

several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

Reconciliation of these competing principles in the past has been attempted under two rubrics. One approach has been to seek per se rules of disqualification. For example, it has been held that a partner in a law firm is conclusively presumed to have access to all confidences concerning all clients of the firm. Under this analysis, if a lawyer has been a partner in one law firm and then becomes a partner in another law firm, there may be a presumption that all confidences known by the partner in the first firm are known to all partners in the second firm. This presumption might properly be applied in some circumstances, especially where the client has been extensively represented, but may be unrealistic where the client was represented only for limited purposes. Furthermore, such a rigid rule exaggerates the difference between a partner and an associate in modern law firms.

The other rubric formerly used for dealing with disqualification is the appearance of impropriety proscribed in Canon 9 of the ABA Model Code of Professional Responsibility. This rubric has a twofold problem. First, the appearance of impropriety can be taken to include any new client-lawyer relationship that might make a former client feel anxious. If that meaning were adopted, disqualification would become little more than a question of subjective judgment by the former client. Second, since "impropriety" is undefined, the term "appearance of impropriety" is question-begging. It therefore has to be recognized that the problem of disqualification cannot be properly resolved either by simple analogy to a lawyer practicing alone or by the very general concept of appearance of impropriety.

Confidentiality. Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in particular circumstances, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients.

Application of section (b) depends on a situation's particular facts. In such an inquiry, the burden of proof should rest upon the lawyer whose disqualification is sought.

Section (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by LR83.51.6 and LR83.51.9(c). Thus, if a lawyer while with one law firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing

another client in the same or a related manner even though the interests of the two clients conflict. *See* LR83.51.10(c) for the restrictions on a firm once a lawyer has terminated association with the firm.

Independent of the question of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. *See* LR83.51.6 and LR83.51.9.

Adverse Positions. The second aspect of loyalty to a client is the lawyer's obligation to decline subsequent representations involving positions adverse to a former client arising in substantially related matters. This obligation requires abstention from adverse representation by the individual lawyer involved.

Information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude that lawyer from using generally known information about that client when later representing another client.

Disqualification from subsequent representation is for the protection of former clients and can be waived by them. A waiver is effective only if there is disclosure of the circumstances, including the lawyer's intended role in behalf of the new client.

With regard to an opposing party's raising a question of conflict of interest, see Comment to LR83.51.7. With regard to disqualification of a firm with which a lawyer is or was formerly associated, see LR83.51.10.

LR83.51.10 Imputed Disqualification: General Rule

(a) No lawyer associated with a firm shall represent a client when the lawyer knows or reasonably should know that another lawyer associated with that firm would be prohibited from doing so by LR83.51.7, LR83.51.8(c), or LR83.51.9, except as permitted by sections (b), (c), or (d) of this rule or by LR83.51.11 or LR83.51.12.

(b) When a lawyer becomes associated with a firm, the firm may not represent a person in a matter that the firm knows or reasonably should know is the same or substantially related to a matter in which the newly associated lawyer, or a firm with which that lawyer was associated, had previously represented a client whose interests are materially adverse to that person unless:

(1) the newly associated lawyer has no information protected by LR83.51.6 or LR83.51.9 that is material to the matter; or

(2) the newly associated lawyer is screened from any participation in the matter and is apportioned no specific share therefrom.

(c) When a lawyer has terminated an association with a firm, the firm may thereafter represent a person with interests materially adverse to those of a client represented by the formerly associated lawyer if:

(1) the matter is not the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) no lawyer remaining in the firm has information protected by this rule, or LR83.51.6.

(d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in LR83.51.7.

(e) For purposes of this rule LR83.51.11, and LR83.51.12, a lawyer in a firm will be deemed to have been screened from any participation in a matter if:

(1) the lawyer has been isolated from confidences, secrets, and material knowledge concerning the matter;

(2) the lawyer has been isolated from all contact with the client or any agent, officer or employee of the client and any witness for or against the client;

(3) the lawyer and the firm have been precluded from discussing the matter with each other; and

(4) the firm has taken affirmative steps to accomplish the foregoing.

Committee Comment. *Definition of "Firm".* For purposes of the rules of professional conduct, the term "firm" includes lawyers in a private firm and lawyers in the legal department of a corporation or other organization or in a legal services organization. Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for the purposes of the rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another.

With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a firm within the meaning of the rules of professional conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can

depend on the particular rule that is involved, and on the specific facts of the situation.

Where a lawyer has joined a private firm after having represented the government, the situation is governed by LR83.51.11(a) and (b); where a lawyer represents the government after having served private clients, the situation is governed by LR83.51.11(c)(1). The individual lawyer involved is bound by the rules generally, including LR83.51.6, LR83.51.7, and LR83.51.9.

Different provisions are thus made for movement of a lawyer from one private firm to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences and, therefore. to the protections provided in LR83.51.6, LR83.51.9, and LR83.51.11. However, if the more extensive disqualification in this rule were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations and, thus, has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government's recruitment of lawyers would be seriously impaired if this rule were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in LR83.51.11.

Definition of "Associated". As used in this rule the term "associated," e.g., "newly associated lawyer," "a lawyer becomes associated with a firm," shall be read to cover all forms of association between the lawyer and the firm, including, but not restricted to partner, associate, and of counsel.

Principles of Imputed Disqualification. The rule of imputed disqualification stated in section (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Section (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by LR83.51.9(b) and section (b) of this rule.

Section (b) of this rule operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate LR83.51.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by LR83.51.6 and LR83.51.9(c).

LR83.51.11 Successive Government and Private Employment

(a) Except as otherwise expressly permitted by law, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as public officer or employee, unless the appropriate government agency consents after disclosure. No lawyer in a firm with which that lawyer is associated and who knows or reasonably should know of the lawyer's prior participation may undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no specific share of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(b) Except as otherwise permitted by law, a lawyer having information that the lawyer knows is confidential government information about a person, acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is screened from any participation in the matter and is apportioned no specific share of the fee therefrom.

(c) Except as otherwise expressly permitted by law, a lawyer serving as a public officer or employee shall not:

(1) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or

(2) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially.

(d) As used in this rule, the term "matter" denotes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

(e) As used in this rule, the term "confidential government information" denotes information which has been obtained under governmental authority and which, at the time this rule is applied, the government is prohibited by law from revealing to the public or has a legal privilege not to reveal, and which is not otherwise available to the public.

Committee Comment. This rule prevents a lawyer from exploiting public office for the advantage of a private client. It is a counterpart of LR83.51.10, which applies to lawyers moving from one firm to another.

A lawyer representing a government agency, whether employed or specially retained by the government, is subject to the rules of professional conduct, including the prohibition against representing adverse interests stated in LR83.51.7 and the protections afforded former clients in LR83.51.9. In addition, such a lawyer is subject to this rule and to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this rule.

Where the successive clients are a public agency and a private client, the risk exists that power or discretion vested in public authority might be used for the special benefit of a private client. A lawyer should not be in a position where benefit to a private client might affect performance of the lawyer's professional functions on behalf of public authority. Also, unfair advantage could accrue to the private client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. However, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. The provisions for screening and waiver are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service.

When the client is an agency of one government, that agency should be treated as a private client for purposes of this rule if the lawyer thereafter represents an agency of another government, as when a lawyer represents a city and subsequently is employed by a federal agency.

Sections (a)(1) and (b) do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement. They prohibit directly relating the attorney's compensation to the fee in the matter in which the lawyer is disqualified.

Subsection (a)(2) does not require that a lawyer give notice to the government agency at a time when premature disclosure would injure the client; a requirement for premature disclosure might preclude engagement of the lawyer. Such notice is, however, required to be given as soon as practicable in order that the government agency will have a reasonable opportunity to ascertain that the lawyer is complying with this rule and to take appropriate action if it believes the lawyer is not complying.

Section (b) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

Sections (a) and (c) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by LR83.51.7 and is not otherwise prohibited by law.

Section (c) does not disqualify other lawyers in the agency with which the lawyer in question has become associated.

LR83.51.12. Former Judge or Arbitrator

(a) Except as provided in section (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated as a judge or other adjudicative officer, arbitrator, law clerk or any other assistant or aide to such a person unless all parties to the proceeding consent after disclosure.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as a lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge, other adjudicative officer, or arbitrator. A lawyer serving as a law clerk to a judge, other adjudicative officer, or arbitrator may negotiate for employment with a party or a lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge, other adjudicative officer, or arbitrator.

(c) If a lawyer is disqualified by section (a), a lawyer in the firm with which that lawyer is associated who knows or reasonably should know of that disqualification shall not undertake or continue representation in the matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no specific share of the fee therefrom; and

(2) written notice is promptly given to the appropriate tribunal to enable it to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

Committee Comment. This rule generally parallels LR83.51.11. The term "personally and substantially" signifies that a judge who was a member of a multimember court and thereafter left judicial office to practice law is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. *Compare* the Comment to LR83.51.11. The term "adjudicative officer" includes such officials as judges *pro tempore*, referees, special masters, hearing officers and other parajudicial officers, and also lawyers who serve as part-time judges. Compliance Canons A(2), B(2) and C of the Model Code of Judicial Conduct (also part of the Code of Conduct for United States Judges) provide that a part-time judge, judge *pro tempore* or retired judge recalled to active service may not "act as a lawyer in any proceeding in which the judge has served as a judge or in any other proceeding related thereto." Although phrased differently from this Rule, those rules correspond in meaning.

LR83.51.13. Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee, or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal

obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:

(1) asking reconsideration of the matter;

(2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and

(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) If, despite the lawyer's efforts in accordance with section (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of the law and is likely to result in substantial injury to the organization, the lawyer may resign in accordance with LR83.51.16.

(d) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(e) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of LR83.51.7. If the organization's consent to the dual representation is required by LR83.51.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Committee Comment. *The Entity as the Client.* An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents.

Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations. "Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by LR83.51.6. Thus, by way of example, if an organizational client

requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by LR83.51.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by LR83.51.6.

When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. However, different considerations arise when the lawyer knows that the organization may be substantially injured by action of a constituent that is in violation of law. In such a circumstance, it may be reasonably necessary for the lawyer to ask the constituent to reconsider the matter. If that fails, or if the matter is of sufficient seriousness and importance to the organization, it may be reasonably necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. Clear justification should exist for seeking review over the head of the constituent normally responsible for it. The stated policy of the organization may define circumstances and prescribe channels for such review, and a lawyer should encourage the formulation of such a policy. Even in the absence of organization policy, however, the lawyer may have an obligation to refer a matter to higher authority, depending on the seriousness of the matter and whether the constituent in question has apparent motives to act at variance with the organization's interest. Review by the chief executive officer or by the board of directors may be required when the matter is of importance commensurate with their authority. At some point it may be useful or essential to obtain an independent legal opinion.

In an extreme case, it may be reasonably necessary for the lawyer to refer the matter to the organization's highest authority. Ordinarily that is the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions highest authority reposes elsewhere; for example, in the independent directors of a corporation.

Relation to Other Rules. The authority and responsibility provided in section (b) are concurrent with the authority and responsibility provided in other rules. In particular, this rule does not limit or expand the lawyer's responsibility under LR83.51.6, LR83.51.8, LR83.51.16, LR83.53.3, or LR83.54.1. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, LR83.51.2(d), LR83.51.6(b), and LR83.51.6(c)(2) can be applicable.

Government Agency. The duty defined in this rule applies to governmental organizations. However, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful official act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. Therefore, defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may

be more difficult in the government context. Although in some circumstances the client may be a specific agency, it is generally the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the government as a whole may be the client for purpose of this rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. This rule does not limit that authority. *See* the discussion under the heading "Scope of the Rules of Professional Conduct" in the Comment section of LR83.50.1.

Clarifying the Lawyer's Role. There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

Dual Representation. Section (e) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

Derivative Actions. Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is in fact a legal controversy over management of the organization.

The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, LR83.51.7 governs who should represent the directors and the organization.

LR83.51.14. Client Under a Disability

(a) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship.

(b) A lawyer may seek the appointment of a guardian or take other protective action with respect to a client only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest.

Committee Comment. *General.* The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a mental disorder or disability, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, an incapacitated person may have no power to make legally binding decisions. Nevertheless, a client lacking legal competence often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. Furthermore, to an increasing extent the law recognizes intermediate degrees of competence. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. If the person has no guardian or legal representative, the lawyer often must act as de facto guardian. Even if the person does have a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. If a legal representative has not been appointed, the lawyer should see to such an appointment where it would serve the client's best interests. Thus, if a disabled client has substantial property that should be sold for the client's benefit, effective completion of the transaction ordinarily requires appointment of a legal representative. In many circumstances, however, appointment of a legal representative may be expensive or traumatic for the client. Evaluation of these considerations is a matter of professional judgment on the lawyer's part.

If the lawyer represents the guardian as distinct from the ward and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. *See* LR83.51.2(d).

Disclosure of the Client's Condition. Rules of procedure in litigation generally provide that minors or persons suffering mental disability shall be represented by a guardian or next friend if they do not have a general guardian. However, disclosure of the client's disability can adversely affect the client's interests. For example, raising the question of disability could, in some circumstances, lead to proceedings for involuntary commitment. The lawyer's position in such cases is an unavoidably difficult one. The lawyer may seek guidance from an appropriate diagnostician.

LR83.51.15. Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the State where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(d) All nominal or short-term funds of clients paid to a lawyer or law firm, including advances for costs and expenses, shall be deposited in one or more pooled interest-bearing trust accounts established with a bank or savings and loan association, with the Lawyers Trust Fund of Illinois designated as income beneficiary. Each pooled interest-bearing trust account shall comply with the following provisions:

(1) Each lawyer or law firm shall establish one or more interest-bearing trust accounts with any bank or savings and loan association authorized by Federal or State law to do business in Illinois. Funds deposited in each interest-bearing trust account shall be federally insured and shall be subject to withdrawal promptly upon request.

(2) The rate of interest payable on any interest bearing trust account shall not be less than the rate paid by the depository institution to depositors other than lawyers or law firms.

(3) Each lawyer or law firm shall direct the depository institution to remit net interest or dividends, after deduction of reasonable charges and fees, as the case may be, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice, at least quarterly, directly to the Lawyers Trust Fund of Illinois. A statement shall be transmitted with each remittance showing the name of the lawyer or law firm directing that the remittance be sent, the account number, the gross interest, the service fee/handling charge if any, the

net interest remitted, the amount of such remittance, the remittance period, and the rate of interest applied.

(4) Each lawyer or law firm shall deposit into such interest-bearing trust accounts all clients' funds which are nominal in amount or are expected to be held for a short period of time.

(5) The decision as to whether funds are nominal in amount or are expected to be held for a short period of time rests exclusively in the sound judgment of the lawyer or law firm, and no charge of ethical impropriety or other breach of professional conduct shall attend a lawyer's or law firm's judgment on what is nominal or short term.

(e) Ordinarily, in determining the type of account into which to deposit particular funds for a client, a lawyer or a law firm shall take into consideration the following factors:

(1) the amount of interest which the funds would earn during the period they are expected to be deposited;

(2) the cost of establishing and administering the account, including the cost of the lawyer's services;

(3) the capability of the financial institution, through subaccounting, to calculate and pay interest earned by each client's funds, net of any transaction costs, to the individual client.

(f) Any lawyer or law firm that can establish that compliance with section (d) of this rule has resulted in any banking expense whatsoever shall be entitled to reimbursement of such expense from the Lawyers Trust Fund of Illinois by filing an appropriate claim with supporting documentation.

Committee Comment. A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer

should not unilaterally assume to arbitrate a dispute between the client and the third party.

The obligations of a lawyer under this rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction.

The Lawyers Trust Fund of Illinois provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. This rule requires all income on clients' funds held by a lawyer to be remitted to that Trust Fund.

LR83.51.16. Declining or Termination Representation

(a) A lawyer representing a client before a tribunal shall withdraw from employment (with permission of the tribunal if such permission is required), and a lawyer representing a client in other matters shall withdraw from employment, if:

(1) the lawyer knows or reasonably should know that the client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken, merely for the purpose of harassing or maliciously harming any person;

(2) the lawyer knows or reasonably should know that such continued employment will result in violation of these rules;

(3) the lawyer's mental or physical condition renders it unreasonably difficult for the lawyer to carry out the employment effectively; or

(4) the lawyer is discharged by the client.

(b) Except as required in section (a), a lawyer shall not request permission to withdraw in matters pending before a tribunal, and shall not withdraw in other matters, unless such request or such withdrawal is because:

(1) the client:

(A) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by a reasonable argument for an extension, modification, or reversal of existing law;

(B) seeks to pursue an illegal course of conduct;

(C) insists that the lawyer pursue a course of conduct that is illegal or that is prohibited by these rules;

(D) by other conduct renders it unreasonably difficult for the lawyer to carry out the employment effectively;

(E) insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer although not prohibited by these rules; or

(F) substantially fails to fulfill an agreement or obligation to the lawyer as to expenses or fees;

(2) the lawyer's inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;

(3) the client consents to termination of the lawyer's employment after disclosure; or

(4) the lawyer reasonably believes that a tribunal will, in a proceeding pending before the tribunal, find the existence of other good cause for withdrawal.

(c) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(d) In any event, a lawyer shall not withdraw from employment until the lawyer has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(e) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

Committee Comment. *General.* A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion.

Mandatory Withdrawal. A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the rules of professional conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. *See* also LR83.56.2. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may wish an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient.

Discharge. A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring the client to represent himself.

If the client is mentally incompetent, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider

the consequences and, in an extreme case, may initiate proceedings for a conservatorship or similar protection of the client. *See* LR83.51.14.

Optional Withdrawal. A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer also may withdraw where the client insists on a repugnant or imprudent objective or where some personal incompatibility exists between the lawyer and the client or where a substantial disagreement exists between the lawyer and the client on litigation strategy.

A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal. Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law.

Whether or not a lawyer for an organization may under certain unusual circumstances have a legal obligation to the organization after withdrawing or being discharged by the organization's highest authority is beyond the scope of these rules.

LR83.52.1. Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations, such as moral, economic, social and political factors that may be relevant to the client's situation.

Committee Comment. *Scope of Advice.* A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

Advice couched in narrowly legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice. In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, duty to the client under LR83.51.4 may require that the lawyer act if the client's course of action is related to the representation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

LR83.52.2. Evaluation for Use by Third Persons

(a) A lawyer may undertake an evaluation of a matter affecting a client for the use of someone other than the client if:

(1) the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client; and

(2) the client consents after disclosure.

(b) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by LR83.51.6.

Committee Comment. *Definition.* An evaluation may be performed at the client's direction but for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or at the behest of a borrower for the information of a prospective lender. In some situations the evaluation may be required by a government agency: for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances the evaluation may be required by a third person, such as a purchaser of a business.

Lawyers for the government may be called upon to give a formal opinion on the legality of contemplated government agency action. In making such an

evaluation, the government lawyer acts at the behest of the government as the client but for the purpose of establishing the limits of the agency's authorized activity. Such an opinion is to be distinguished from confidential legal advice given agency officials. The critical question is whether the opinion is to be made public.

A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer relationship. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client-lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer or by special counsel employed by the government is not an evaluation as that term is used in this rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

Duty to Third Person. When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this rule. However, since such an evaluation involves a departure from the normal client-lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting as advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings.

Access to and Disclosure of Information. The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations which are material to the evaluation should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances.

Financial Auditors' Requests for Information. When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's response may be made in accordance with procedures recognized in the legal profession. Such a procedure

is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted in 1975.

LR83.53.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good-faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Committee Comment. The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person, or if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

LR83.53.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Committee Comment. Dilatory practices bring the administration of justice into disrepute. Delay should not be indulged merely for the convenience of the advocates, or for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

LR83.53.3. Conduct Before a Tribunal

(a) In appearing in a professional capacity before a tribunal, a lawyer shall not:

(1) make a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false;

(2) fail to disclose to a tribunal a material fact known to the lawyer when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;

(4) offer evidence that the lawyer knows to be false, or if the lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures;

(5) participate in the creation or preservation of evidence when the lawyer knows or reasonably should know the evidence is false;

(6) counsel or assist the client in conduct the lawyer knows to be illegal or fraudulent;

(7) engage in other illegal conduct or conduct in violation of these rules;

(8) fail to disclose the identities of the clients represented and of the persons who employed the lawyer unless such information is privileged or irrelevant;

(9) intentionally degrade a witness or other person by stating or alluding to personal facts concerning that person which are not relevant to the case;

(10) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused, but a lawyer may argue, on analysis of evidence, for any position or conclusion with respect to the matter stated herein;

(11) refuse to accede to reasonable requests of opposing counsel that do not prejudice the rights of the client;

(12) fail to use reasonable efforts to restrain and to prevent clients from doing those things that the lawyer ought not to do;

(13) suppress any evidence that the lawyer or client has a legal obligation to reveal or produce;

(14) advise or cause a person to become unavailable as a witness by leaving the jurisdiction or making secret their whereabouts within the jurisdiction; or

(15) pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness' testimony or the outcome of the case, but a lawyer may advance, guarantee, or acquiesce in the

payment of expenses reasonably incurred in attending or testifying, and a reasonable fee for the professional services of an expert witness.

(b) The duties stated in section (a) are continuing duties and apply even if compliance requires disclosure of information otherwise protected by LR83.51.6.

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Committee Comment. *General.* The advocate's task is to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client is qualified by the advocate's duty of candor to the tribunal. However, an advocate does not vouch for the evidence submitted in a cause; the tribunal is responsible for assessing its probative value.

Representations by a Lawyer. An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. *Compare* LR83.53.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in LR83.51.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with LR83.51.2(d), see the Comment to that rule. *See also* the Comment to LR83.58.4(b).

Misleading Legal Argument. Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in section (a)(3), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction which has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

False Evidence. When evidence that a lawyer knows to be false is provided by a person who is not the client, the lawyer must refuse to offer it regardless of the client's wishes.

When false evidence is offered by the client, however, a conflict may arise between the lawyer's duty to keep the client's revelations confidential and the duty of candor to the court. Upon ascertaining that material evidence is false, the lawyer should seek to persuade the client that the evidence should not be offered or, if it has been offered, that its false character should immediately be disclosed. If the

persuasion is ineffective, the lawyer must take reasonable remedial measures (in this respect, see LR83.51.2 and LR83.51.6 and the discussion under the heading "Criminal, Fraudulent and Prohibited Transactions" in the Comment to LR83.51.2).

Except in the defense of a criminal accused, the rule generally recognized is that if necessary to rectify the situation, an advocate must disclose the existence of the client's deception to the court or to the other party. Such a disclosure can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. *See* LR83.51.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Perjury by a Criminal Defendant. Whether an advocate for a criminally accused has the same duty of disclosure has been intensely debated. While it is agreed that the lawyer should seek to persuade the client to refrain from perjurious testimony, there has been dispute concerning the lawyer's duty when that persuasion fails. If the confrontation with the client occurs before trial, the lawyer ordinarily can withdraw. Withdrawal before trial may not be possible, however, either because trial is imminent or because the confrontation with the client does not take place until the trial itself, or because no other counsel is available.

The most difficult situation, therefore, arises in a criminal case where the accused insists on testifying when the lawyer knows that the testimony is perjurious. The lawyer's effort to rectify the situation can increase the likelihood of the client's being convicted as well as opening the possibility of a prosecution for perjury. On the other hand, if the lawyer does not exercise control over the proof, the lawyer participates, although in a merely passive way, in deception of the court.

Three resolutions of this dilemma have been proposed. One is to permit the accused to testify by a narrative without guidance through the lawyer's questioning. This compromises both contending principles; it exempts the lawyer from the duty to disclose false evidence but subjects the client to an implicit disclosure of information imparted to counsel. Another suggested resolution, of relatively recent origin, is that the advocate be entirely excused from the duty to reveal perjury if the perjury is that of the client. This is a coherent solution but makes the advocate a knowing instrument of perjury.

The other resolution of the dilemma is that the lawyer must reveal the client's perjury if necessary to rectify the situation. A criminal accused has a right to the assistance of an advocate, a right to testify and a right of confidential communication with counsel. However, an accused should not have a right to assistance of counsel in committing perjury. Furthermore, an advocate has an obligation, not only in professional ethics but under the law as well, to avoid implication in the commission of perjury or other falsification of evidence. *See* LR83.51.2(d).

Remedial Measures. If perjured testimony or false evidence has been offered, the advocate's proper course ordinarily is to remonstrate with the client confidentially. If that fails, the advocate should seek to withdraw if that will remedy the situation. If withdrawal will not remedy the situation or is impossible, the advocate should make disclosure to the court. It is for the court then to determine what should be done—making a statement about the matter to the trier of fact, ordering a mistrial, or perhaps nothing. If the false testimony was that of the client, the client may controvert the lawyer's version of their communication when the lawyer discloses the situation to the court. If there is an issue whether the client has committed perjury, the lawyer cannot represent the client in resolution of the issue, and a mistrial may be unavoidable. An unscrupulous client might in this way attempt to produce a series of mistrials and thus escape prosecution. However, a second such encounter could be construed as a deliberate abuse of the right to counsel and as such a waiver of the right to further representation.

Constitutional Requirements. It must always be kept in mind that the principles expressed in LR83.53.3 and this Comment are subject to any constitutional constraints that are imposed on defense counsel in criminal cases by the provisions as to due process and the defendant's right to counsel.

Duration of Obligation. A practical time limit on the obligation to rectify the presentation of false evidence has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation.

Refusing to Offer Proof Believed to Be False. Generally speaking, a lawyer has authority to refuse to offer testimony or other proof that the lawyer believes is untrustworthy. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. This consideration too is subject to constitutional requirements governing the right to counsel in criminal cases.

Ex Parte Proceedings. Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in an *ex parte* proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an *ex parte* proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

LR83.53.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

(1) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value, nor shall a lawyer counsel or assist another person to do any such act;

(2) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law; or

(3) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(A) the person is a relative or an employee or other agent of a client, and

(B) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Committee Comment. The procedure of the adversary system contemplates that the evidence in a case is to be marshaled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purposes of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Subsection (1) applies to evidentiary material generally, including computerized information. With regard to subsection (2), it is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

Subsection (3) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. *See also* LR83.54.2.

LR83.53.5. Impartiality and Decorum of the Tribunal

(a) Before the trial of a case, a lawyer connected therewith shall not communicate with or cause another to communicate with anyone the lawyer knows to be a member of the venire from which the jury will be selected for the trial of the case.

(b) During the trial of a case:

(1) a lawyer connected therewith shall not communicate with or cause another to communicate with a juror; and

(2) a lawyer who is not connected therewith shall not communicate with or cause another to communicate with a juror concerning the case.

(c) Notwithstanding sections (a) and (b), a lawyer may communicate with members of the panel or jury in the course of official proceedings.

(d) After discharge of the jury from further consideration of a case in the United States District or Bankruptcy Courts of this District with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a juror without first obtaining leave of court, nor shall the lawyer thereafter ask questions of or make comments to a member of the venire that are calculated to harass or embarrass the juror or to influence such juror's actions in future jury service.

(e) A lawyer shall not conduct or cause another to conduct, by financial support or otherwise, a vexatious or harassing investigation of members of the venire or jury.

(f) All restrictions imposed by this rule also apply to communications with or investigations of the families of members of the venire or jury.

(g) A lawyer shall reveal promptly to the court the lawyer's knowledge of improper conduct by a member of the venire or jury or by another toward such a person or a member of such person's family.

(h) A lawyer shall not give or lend anything of value to a judge, official, or employee of a tribunal, except those gifts or loans which a judge or a member of the judge's family may receive under the code of judicial conduct to which the judge is subject. No campaign contribution to a state court judge or candidate for judicial office may be made other than by means of a check, draft, or other instrument payable to or to the order of an entity which the lawyer reasonably believes to be a political committee supporting such judge or candidate. The provision of volunteer services by a lawyer to a political committee shall not be deemed to violate this rule.

(i) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:

(1) in the course of official proceedings in the cause:

(A) in writing if the lawyer promptly delivers a copy of the writing to opposing counsel or to the adverse party if such party is not represented by a lawyer; or

(B) orally upon adequate notice to opposing counsel or to the adverse party if such party is not represented by a lawyer; or

(2) as otherwise authorized by law.

Committee Comment. Many forms of improper influence upon a tribunal are proscribed by criminal law. Various others relate to conduct relating to jurors or prospective jurors. Still others are specified in the Illinois Code of Judicial Conduct or the Code of Judicial Conduct for United States Judges, with each of which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

LR83.53.6. Trial Publicity

(a) A lawyer shall not make an extrajudicial statement the lawyer knows or reasonably should know is likely to be disseminated by public media and, if so disseminated, would pose a serious and imminent threat to the fairness of an adjudicative proceeding.

(b) A statement referred to in section (a) ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, and the statement relates to:

(1) the prior criminal record (including arrests, indictments or other charges of crime), the character or reputation of the accused, or any opinion as to the accused's guilt or innocence, as to the merits of the case, or as to the evidence in the case;

(2) the existence or contents of a statement given by the accused, or the refusal or failure of the accused to make a statement;

(3) the performance of an examination or test of the accused or the accused's refusal or failure to submit to an examination or test;

(4) the identity, testimony, or credibility of prospective witnesses;

(5) the possibility of a plea of guilty to or other disposition of the offense charged; or

(6) information that the lawyer knows or reasonably should know would be inadmissible as evidence in a trial.

(c) Notwithstanding sections (a) and (b), a lawyer involved in the investigation or litigation of a matter may state without elaboration:

(1) the general nature of the claim or defense;

(2) the information contained in a public record;

(3) that an investigation of the matter is in progress, including the general scope of the investigation, the offense, claim or defense involved, and, except when prohibited by law, the identity of the persons involved;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information;

(6) a warning of danger concerning the behavior of a person involved, when the lawyer reasonably believes that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case:

(A) the identity, residence, occupation, and family status of the accused,

(B) if the accused has not been apprehended, information necessary to aid in apprehension of that person,

(C) the fact, time, and place of arrest, and

(D) the identity of investigating and arresting officers or agencies and the length of the investigation.

Committee Comment. It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the

information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the tree dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

No body of rules can simultaneously satisfy all interests of fair trial and all those of free expression. The formula in this Rule is based upon the Code of Professional Responsibility, the ABA Standards Relating to Fair Trial and Free Press (as amended in 1978), and the decision in *Chicago Council of Lawyers v. Bauer*, 522 F.2d 242 (7th Cir. 1975).

Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation.

LR83.53.7. Lawyer as Witness

(a) A lawyer shall not act as an advocate in a trial or evidentiary proceeding if the lawyer knows or reasonably should know that the lawyer may be called as a witness therein on behalf of the client, except that the lawyer may do so and may testify:

(1) if the testimony will relate to an uncontested matter;

(2) if the testimony will relate to a matter of formality and the lawyer reasonably believes that no substantial evidence will be offered in opposition to the testimony;

(3) if the testimony will relate to the nature and value of legal services rendered in the case by the lawyer or the firm to the client; or

(4) as to any other matter, if refusal to act as an advocate would work a substantial hardship on the client.

(b) If a lawyer knows or reasonably should know that the lawyer may be called as a witness other than on behalf of the client, the lawyer may act as an advocate in a trial or evidentiary proceeding unless the lawyer knows or reasonably should know that the lawyer's testimony is or may be prejudicial to the client.

(c) Except as prohibited by LR83.51.7 or LR83.51.9, a lawyer may act as advocate in a trial or evidentiary proceeding in which another lawyer in the lawyer's firm may be called as a witness, and nothing in this rule shall be deemed to prohibit a lawyer barred from acting as advocate in a trial or evidentiary proceedings from handling other phases of the litigation.

Committee Comment. Combining the roles of advocate and witness can prejudice the opposing party and can involve a conflict of interest between the lawyer and client.

The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

Subsections (a)(1) and (a)(2) recognize that if the testimony will be uncontested or relates to a matter of mere formality, the ambiguities in the dual role are purely theoretical. Subsection (a)(3) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

Apart from these two exceptions, subsection (a)(4) recognizes that a balancing is required between the interests of the client and those of the opposing party. Whether the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The principle of imputed disqualification stated in LR83.51.10 has no application to this aspect of the problem.

Whether the combination of roles involves an improper conflict of interest with respect to the client is determined by LR83.51.7 or LR83.51.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer or a member of the lawyer's firm, the representation is improper. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. *See* Comment to LR83.51.7. If a lawyer who is a member of a firm may not act as both advocate and witness by reason of conflict of interest, LR83.51.10 disqualifies the firm also.

LR83.53.8. Special Responsibilities of a Prosecutor

(a) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when such prosecutor or lawyer knows or reasonably should know that the charges are not supported by probable cause.

(b) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if the defendant is not represented by a lawyer, of the existence of evidence known to the

prosecutor or other government lawyer that tends to negate the guilt of the accused or mitigate the degree of the offense.

(c) A public prosecutor or other government lawyer in criminal litigation shall exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under LR83.53.6.

Committee Comment. A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. *See also* LR83.53.3(d), governing *ex parte* proceedings, among which grand jury proceedings are included. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of LR83.58.4.

LR83.54.1. Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

(1) make a false statement of material fact or law to a third person; or

(2) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by LR83.51.6.

Committee Comment. *Misrepresentation.* A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by failure to act.

Statements of Fact. This rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud.

Fraud by Client. Subsection (2) recognizes that substantive law may require a lawyer to disclose certain information to avoid being deemed to have assisted the client's crime or fraud. The requirement of disclosure created by this paragraph is, however, subject to the obligations created by LR83.51.6.

LR83.54.2. Communications with Persons Represented by Counsel

During the course of representing a client a lawyer shall not communicate or cause another to communicate on the subject of the representation with a party the lawyer knows to be represented by another lawyer in that matter unless the first lawyer has obtained the prior consent of the lawyer representing such other party or as may otherwise be authorized by law.

Committee Comment. This rule does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Also, parties to a matter may communicate directly with each other and a lawyer having independent justification for communicating with the other party is permitted to do so. Communications authorized by law include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.

In the case of an organization, this rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization. If an agent or employee of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this rule. *Compare* LR83.53.4(c).

This rule also covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question.

LR83.54.3. Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

Committee Comment. An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents

a client. During the course of a lawyer's representation of a client, the lawyer should not give advice to an unrepresented person other than the advice to obtain counsel.

LR83.54.4. Respect for Rights of Third Persons

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Committee Comment. Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons.

LR83.55.1. Responsibilities of a Partner or Supervisory Lawyer

(a) Each partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the conduct of all lawyers in the firm conforms to these rules.

(b) Each lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer's conduct conforms to these rules.

(c) A lawyer shall be responsible for another lawyer's violation of these rules if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Committee Comment. Sections (a) and (b) refer to lawyers who have supervisory authority over the professional work of a firm or legal department of a government agency. This includes members of a partnership and the shareholders in a law firm organized as a professional corporation; lawyers having supervisory authority in the law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm.

The measures required to fulfill the responsibility prescribed in sections (a) and (b) can depend on the firm's structure and the nature of its practice. In a small firm, informal supervision and occasional admonition ordinarily might be sufficient. In a large firm, or in practice situations in which intensely difficult ethical problems frequently arise, more elaborate procedures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. *See* LR83.55.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can

influence the conduct of all its members and a lawyer having authority over the work of another may not assume that the subordinate lawyer will inevitably conform to the rules.

Subsection (c)(1) expresses a general principle of responsibility for acts of another. *See also* LR83.58.4(a).

Subsection (c)(2) defines the duty of a lawyer having direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has such supervisory authority in particular circumstances is a question of fact. Partners of a private firm have at least indirect responsibility for all work being done by the firm, while a partner in charge of a particular matter ordinarily has direct authority over other firm lawyers engaged in the matter. Appropriate remedial action by a partner would depend on the immediacy of the partner's involvement and the seriousness of the misconduct. The supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

Professional misconduct by a lawyer under supervision could reveal a violation of section (b) on the part of the supervisory lawyer even though it does not entail a violation of section (c) because there was no direction, ratification or knowledge of the violation.

Apart from this rule and LR83.58.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these rules.

LR83.55.2. Responsibilities of a Subordinate Lawyer

(a) A lawyer is bound by these rules notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate these rules if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Committee Comment. Although a lawyer is not relieved of responsibility for a violation of the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way,

the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under LR83.51.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

LR83.55.3. Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(1) each partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the law firm and its lawyers;

(2) each lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer; and

(3) a lawyer shall be responsible for a nonlawyer's conduct that would be a violation of these rules if engaged in by a lawyer if:

(A) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(B) the lawyer is a partner in the law firm, or has direct supervisory authority over the nonlawyer, and knows of the nonlawyer's conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Committee Comment. Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

LR83.55.4. Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of

time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer; and

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof, except that a nonlawyer may serve as secretary thereof if such secretary performs only ministerial duties; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Committee Comment. The provisions of this rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in section (c), such arrangements should not interfere with the lawyer's professional judgment.

LR83.55.5. Unauthorized Practice of Law

A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

Committee Comment. The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. Subsection (2) does not prohibit a lawyer from employing the services of paraprofessionals and delegating

functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. *See* LR83.55.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed *pro se.*

LR83.55.6. Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

(1) a partnership or employment agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(2) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

Committee Comment. An agreement restricting the right of partners or associates to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Subsection (1) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

Subsection (2) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

LR83.56.1. Accepting Appointments

A lawyer shall not seek to avoid or to resign from appointment by a tribunal to represent a person except for good cause.

Committee Comment. *General.* A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. As LR83.11(g) reflects (though it is applicable only to members of the trial bar), all lawyers have a responsibility to assist in providing *pro bono publico* service. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients.

Appointed Counsel. LR83.38 provides guidance to the lawyer seeking relief from appointment.

An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the rules.

LR83.56.2. Membership in Legal Services Organization

A lawyer may serve as a director, officer or member of a not-for-profit legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer or law firm. The lawyer shall not participate in a decision or action of the organization if the lawyer knows that:

(1) participation in the decision would be incompatible with the lawyer's obligations to a client under LR83.51.7; or

(2) the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

Committee Comment. Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

LR83.56.3. Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the actions of the organization may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall reveal that fact to the organization but need not identify the client.

Committee Comment. Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. *See also* LR83.51.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other rules particularly LR83.51.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefitted.

LR83.57.1. Communications Concerning Lawyer's Services

A lawyer shall not knowingly make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate these rules or other law; or

(3) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

Committee Comment. This rule governs all communications about a lawyer's services. Whatever means are used to make known a lawyer's services, statements about them should be truthful. The prohibition in subsection (2) of statements that may create "unjustified expectations" would ordinarily preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, and advertisements containing client endorsements. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances.

LR83.58.1. Bar Admission and Disciplinary Matters

(a) An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a lawyer disciplinary matter, shall not:

(1) make a statement of material fact known by the applicant or the lawyer to be false; or

(2) fail to disclose a fact necessary to correct a material misapprehension known by that person to have arisen in the matter, or fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by these rules or by law.

(b) A lawyer shall not further the application for admission to the bar of another person known by the lawyer to be unqualified in respect to character, education, or any other relevant attribute.

Committee Comment. The duty imposed by this rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it

is a separate professional offense for a lawyer knowingly to make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. This rule also requires affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

This rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this rule.

A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship.

LR83.58.2. Judicial and Legal Officers

(a) A lawyer shall not make a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall refrain from conduct which, if the lawyer were a judge, would be a breach of the Code of Judicial Conduct.

Committee Comment. Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as United States attorney, attorney general, state's attorney, corporation counsel, and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

LR83.58.3. Reporting Professional Misconduct

(a) A lawyer possessing knowledge not otherwise protected as a confidence by these rules or by law that another lawyer has committed a violation of LR83.58.4(a)(3) or (a)(4) shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

(b) A lawyer possessing knowledge not otherwise protected as a confidence by these rules or by law that a judge has committed a violation of the

Code of Judicial Conduct which raises a question as to the judge's fitness for office shall inform the appropriate authority.

(c) Upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges, a lawyer possessing information not otherwise protected as a confidence by these rules or by law concerning another lawyer or a judge shall reveal fully such information.

(d) A lawyer who has been disciplined as a result of a lawyer disciplinary action brought before any body other than the Executive Committee or a judge of this Court appointed pursuant to LR83.28(e) shall report that fact to the Executive Committee.

Committee Comment. Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the rules of professional conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

A report about misconduct is not required where it would involve violation of LR83.51.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

If a lawyer were obliged to report every violation of the rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this rule.

The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship.

LR83.58.4. Misconduct

(a) A lawyer shall not:

(1) violate or attempt to violate these rules;

(2) induce another to engage in conduct, or give assistance to another's conduct, when the lawyer knows that conduct will violate these rules;

(3) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(4) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(5) engage in conduct that is prejudicial to the administration of justice;

(6) state or imply an ability to influence improperly any tribunal, legislative body, government agency or official;

(7) assist a judge or judicial officer in conduct that the lawyer knows is a violation of the Code of Judicial Conduct; or

(8) avoid in bad faith the repayment of an education loan guaranteed by the Illinois Student Assistance Commission or other governmental entity (the lawful discharge of an education loan in a bankruptcy proceeding shall not constitute bad faith under this rule, but the discharge shall not preclude a review of the attorney's conduct to determine if it constitutes bad faith).

(b) A lawyer who holds public office shall not:

(1) use that office to obtain, or attempt to obtain, a special advantage in a legislative matter for a client under circumstances where the lawyer knows or reasonably should know that such action is not in the public interest;

(2) use that office to influence, or attempt to influence, a tribunal to act in favor of a client; or

(3) represent any client, including a municipal corporation or other public body, in the promotion or defeat of legislative or other proposals pending before the public body of which such lawyer is a member or by which such lawyer in employed.

(c) A lawyer who holds public office may accept political campaign contributions as permitted by law.

Committee Comment. Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance, when considered separately, can indicate indifference to legal obligation.

A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of LR83.51.2(d)

concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

LR83.58.5. Jurisdiction

Any lawyer practicing before this Court is subject to the disciplinary authority of this Court although also engaged in practice elsewhere.

Committee Comment. In addition to the fact that Illinois lawyers practice in Illinois state courts as well as in this Court, in modern practice lawyers frequently act outside the territorial limits of the jurisdiction in which they are licensed to practice, either in another state or outside the United States. In doing so, they remain subject to the governing authority of this Court as well as the state jurisdiction in which they are licensed to practice.

Where the lawyer is licensed to practice law before two courts which impose conflicting obligations, applicable rules of choice of law may govern the situation. This Court's adoption of rules differing to some extent from the Illinois Rules has been intended, to the maximum extent possible, to minimize, or avoid entirely, such conflicting obligations.

ADMIRALTY RULES

LRSupA.1. Local Admiralty Rules; Application of Local Civil Rules

Local rules numbered as LRSupA.1, LRSupB.1, etc., are associated with the Supplemental Rules For Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure. They may be referred to as the "local admiralty rules." The terms "Supplemental Rule" and "Supplemental Rules" as used within the local admiralty rules shall refer to one or all of the Supplemental Rules for Certain Admiralty Claims of the Federal Rules of Civil Procedure.

The local civil rules of this Court shall apply to admiralty and maritime claims to the extent they are not inconsistent with the local admiralty rules.

LRSupB.1. Attachments & Garnishments: Special Provisions

(a) SUITS FILED *IN FORMA PAUPERIS*. In suits *in forma pauperis* no process *in rem* shall issue except upon proof of 24 hours' notice to the owner of the property or his agent, of the filing of the complaint unless allowed by the court.

(b) SERVICE. In actions *in personam* where the debts, credits or effects named in any process of maritime attachment and garnishment are not delivered up to the marshal by the garnishee or are denied by him to be the property of the defendant it shall be a sufficient service of such process to leave a copy thereof with such garnishee, or at his usual residence or place of business, with notice of the property attached. On return by the marshal, the plaintiff may proceed to a hearing and final judgment in the cause on providing proof to the satisfaction of the court that the property belongs to defendant.

In actions *in rem*, process against freight or proceeds of property in possession of any person may be served in the same manner.

(c) JUDGMENT OF DEFAULT. On the expiration of the time to answer, if no pleading under Fed.R.Civ.P. 12 has been filed, the plaintiff may have an *ex parte* hearing of the cause and a judgment without notice, except that:

(1) if an appearance has been filed, 5 days' notice of the hearing shall be given by the plaintiff to all persons who have appeared; and

(2) final judgment shall not enter against arrested or attached property until it is shown by affidavit that notice of the motion has been given to the owner of the property, if known to the plaintiff, or otherwise to the owner's agent, if known and to any holder of any security interest in the vessel arrested or attached, recorded in the records of the United States Coast Guard.

The notice shall be by first class mail to the mailing address of record or to the last known address. Failure to give notice as provided by this rule may be grounds for setting aside the default under applicable rules, but shall not affect title to property sold under a judgment.

LRSupC.1. Actions in Rem: Special Provisions

(a) PUBLICATION; NOTICE OF SALE. The notice required by section (4) of Supplemental Rule C shall be published at least once and shall contain the fact and date of the arrest, the name of the Court, the title of the cause, the nature of the action, the amount demanded, the name of the marshal, the name and address of the attorney for the plaintiff, and a statement that claimants must file their claims pursuant to Supplemental Rule C(6) with the clerk within 10 days after the date of first publication or within such additional time as may be allowed by the court and must file and serve their answers within 20 days after the filing of their claims. The notice shall also state that all interested persons should file claims and answers within the times so fixed; otherwise default will be noted and condemnation ordered.

When property remains in custody of the marshal the cause will not be heard until after publication of notice of arrest shall have been made in that cause or in some other pending cause in which the property is held in custody. No final judgment shall be entered ordering the condemnation and sale of non-perishable property,

arrested under process *in rem*, unless publication of notice of arrest in that cause shall have been duly made.

Unless otherwise ordered as provided by law, notice of sale of the property in suits *in rem* shall be published daily for at least 6 days before sale.

All publication shall be made in a newspaper of general circulation in the City of Chicago.

(b) TIME WITHIN WHICH TO SHOW CAUSE. A summons issued pursuant to Supplemental Rule C(3) dealing with freight or the proceeds of property sold or other intangible property, shall set the date by which the person having control of the funds is to show cause. The date shall be at least 10 days after service of the summons. The court, for good cause shown, may shorten the period.

(c) PROPERTY IN POSSESSION OF COLLECTOR OF CUSTOMS. In suits *in rem* when property is in the possession or custody of the collector of customs the person or organization to whom the clerk delivered the warrant of arrest shall deliver a copy of the process to the collector together with notice of the arrest of the property therein described and require the collector to detain such property in custody until the further order of the court. This requirement shall be in addition to any publication of process made pursuant to section (a).

(d) LIMITATIONS ON CLAIMS MADE AFTER SALE. In proceedings *in rem*, claims upon the proceeds of sale of property under a final judgment order or decree, except for seamen's wages, will not be admitted in behalf of lienors who file complaints or petitions after the sale, to the prejudice of lienors who filed complaints or petitions before the sale, but shall be limited to the remnants and surplus, unless for cause shown it shall be otherwise ordered.

LRSupD is reserved.

LRSupE.1. Actions in Rem and Quasi in Rem: General Provisions

(a) SECURITY FOR COSTS. Each plaintiff other than the United States shall file a security for cost bond or stipulation in the amount of $250 conditioned that the principal shall pay all costs awarded by this or any appellate court, except as ordered by court.

Municipal corporations within this District shall not be required to file such bond unless ordered by court pursuant to Supplemental Rule E(2)(b).

(b) STIPULATIONS. Whenever the owner or owners of any vessel shall execute and deliver to the clerk a general bond or stipulation as provided by Supplemental Rule E(5)(b) conditioned to answer the judgment of the court in all or any actions that may be brought thereafter in such court in which the vessel is attached or arrested, notice of the process shall be given to the principal and surety or sureties in said bond by service of a copy thereof by the marshal upon each of the persons named in said bond. Failure to receive such notice shall in no wise affect the liability under such bond; all other notices shall be given and the cause proceed as if such vessel had been taken into actual custody.

All stipulations shall contain the consent of the stipulators, that if the party, for whose benefit the stipulation is filed recover, the judgment may be entered against them for an amount not exceeding the amount named in such stipulation.

(c) NOTICE & APPROVAL. Stipulators may justify on short notice before a magistrate judge, the clerk, or a notary public, who, if required by an adverse party, shall examine the sureties under oath as to their sufficiency, and annex their depositions to the bond or stipulation.

In all cases where the surety on bonds or stipulations is not a corporate surety holding a certificate of authority of the Secretary of the Treasury and the bond or stipulation is not approved by the parties, reasonable notice of the application for approval by the court or clerk shall be given.

LRSupE.2. Appraisal

In case of seizure of property in behalf of the United States, an appraisal for the purpose of bonding may be had by any party in interest, on giving one day's notice of motion for the appointment of appraisers. If the parties or their attorneys and the United States attorney are present in court, such motion may be made *instanter*, after seizure and without notice.

Orders for the appraisal of property under arrest or attachment at the suite of a private party may be entered as of course, at the instance of any party interested, or upon the consent of the attorneys for the respective parties.

Unless otherwise ordered, only one appraiser shall be appointed. Where the respective parties do not agree in writing, the judge shall name the appraiser.

The appraiser shall give one day's notice of the time and place of making the appraisal to the attorneys in the action. The appraisal shall be filed with the clerk.

LRSupE.3. Safekeeping of Vessels; Movement Within Port

Upon seizure of any vessel, the marshal shall make appropriate arrangements for the safekeeping of the vessel. The marshal may require the party at whose instance the vessel is to be seized to pay any costs as incurred.

Upon the request of the claimant of the vessel or of the owner, charterer, master or other person in control of the vessel at the time it was seized, and with the consent of the party at whose instance the vessel was seized, the marshal may appoint the master of the vessel as custodian and may permit the vessel to be worked and shifted within the District without further order of court.

LRSupE.4. Judicial Sale

(a) MARSHAL'S ACCOUNT OF SALE. When any money shall come to the hands of the marshal under or by virtue of any order or process of the court, he shall forthwith present to the clerk a bill of his charges showing the time he received the money. After the filing of the bill of charges and upon the taxation thereof he shall forthwith pay to the clerk the amount of said money less his charges as taxed. An account of all property sold under the order or judgment of this Court shall be returned by the marshal and filed in the clerk's office, with the execution or other process under which the sale was made.

(b) CONDITIONS OF SALE. When a vessel is sold under an order or judgment of this Court pursuant to Supplemental Rules E(9)(b) or E(9)(c), the marshal shall make his account of the property sold as provided in section (a) and shall prepare a certificate of sale showing the name and address of the highest bidder. Such sale shall be subject to approval and confirmation by the court or rejection by the court, upon motion and showing of good cause therefor, which motion may be made by the plaintiff, or by any party of record, or by the highest bidder. It shall be the responsibility of the plaintiff, or such other party of record who desires that the sale be approved and confirmed, to prepare and present to the court from the pleadings in the case, or from other sources, a description of the vessel for purpose of identification as an aid to the United States Coast Guard properly to record and index the vessel on its records, or to enable the vessel to be registered or numbered under the Illinois Boat Registration and Safety Act or such other state or federal statute as may be applicable. The description may include the name of the vessel, its official number, if any, its state identification number, if any, its dimensions, the name of the former owner, the ownership interest to be transferred, and the name and address of the purchaser who shall have been the successful bidder at the sale.

(c) MARSHAL'S BILL OF SALE. If and when the court approves and confirms the sale, the order approving and confirming such sale shall direct the marshal to issue a marshal's bill of sale containing appropriate identification and description of the vessel so that the same may be recorded pursuant to any applicable regulations of the United States Coast Guard or other government agency.

CRIMINAL RULES

LCrR1.1. Adoption of Rules

These rules apply to the conduct of criminal proceedings in this Court. They may be referred to as "local criminal rules" or, where reference is to a specific rule, "LCrR.[*number*]."

Unless otherwise indicated, reference in these rules to the United States attorney shall also include an assistant United States attorney and an assistant United States attorney general.

Reference in these rules to defendant's attorney is in no way intended to preclude a defendant from proceeding *pro se*, in which case a reference to defendant's attorney applies to defendant.

LCrR1.2. Applicability of Local Civil Rules

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

LCrR2 through LCrR4 (Reserved).

LCrR5.1. Duty Magistrate Judge: Eastern Division

The magistrate judge designated as emergency magistrate judge pursuant to LR77.2 shall serve as duty magistrate judge.

Magistrate judges in this district shall have the power to perform all duties set forth in the United States Code and the Federal Rules of Criminal Procedure.

LCrR6.1. Chief Judge to Supervise Grand Jury

The chief judge shall supervise the operations of the grand jury, including empaneling and charging each grand jury at the commencement of its term, providing whatever services it may require, including a convenient place for its deliberations, entering all appropriate orders it requests, and discharging it upon completion of its deliberations or at the end of its term. All matters pertaining to grand juries shall be heard by the chief judge or his or her designee.

LCrR6.2. Records of the Grand Juries in the Possession of the Clerk

The following documents relating to grand juries shall be public records:

(1) orders empaneling grand juries;
(2) orders returning indictments;
(3) orders extending the period of service of grand juries; and
(4) orders discharging grand juries.

The clerk is authorized to provide to an attorney who has filed an appearance in a criminal case pending in this Court a copy of any motions, orders, or documents relating to any grand jury subpoena issued in the grand jury proceeding from which the case arose against the person on whose behalf the attorney is appearing.

All other records maintained by the clerk relating to grand juries are restricted documents and shall be available only on order of the chief judge. This includes grand jury subpoenas, transcripts of testimony, the clerk's docket of grand jury proceedings, motions and orders relating to grand jury subpoenas, true bills, and no bills. (Amended 2/28/2007)

LCrR7 through LCrR9 (Reserved).

LCrR10.1. Arraignments

Following the filing of an indictment or information the clerk shall promptly enter a minute order setting the date of arraignment. Where the defendant is not in custody, the arraignment shall be conducted on or before 7 days after the date of filing, unless the judge to whom the case is assigned orders that the arraignment shall be held within a shorter period of time. Where the defendant is in custody, the arraignment shall be set for no later than the second business day following such filing. Copies of the minute order setting the arraignment shall be mailed to each defendant and attorney for the defendant if their addresses are known. If their addresses are not known, the copies shall be attached to the copy of the indictment or information to be served on the defendant.

LCrR11.1. Pleas by Corporate Defendants

When the defendant in a criminal proceeding is other than a natural person, any plea other than a plea of not guilty shall be entered by an authorized officer, director or managing agent of the defendant, or by counsel, provided counsel is authorized to do so by virtue of a specific corporate resolution to that effect from the defendant's board of directors.

LCrR12.1. Pretrial Motions

(a) TIME. All pretrial motions and supporting briefs shall be filed within the time set by the court. If the court does not set a time, pretrial motions shall be filed within 21 days from the date of arraignment.

(b) ADDITIONAL DISCOVERY. In the event that a party moves for additional discovery or inspection following the discovery conference required by LCrR 16.1(a), the motion shall be filed within 7 days of the conference or, if the court has set a later date for the filing of pretrial motions, the later date. The motion shall contain:

(1) a statement that the required conference was held;

(2) the date the conference was held;

(3) the name of opposing counsel with whom the conference was held; and

(4) the statement that agreement could not be reached concerning the discovery or inspection that is the subject of the motion.

The court will not hear a motion for additional discovery or inspection if it does not conform to the procedural requisites of this section.

LCrR13 through LCrR15 (Reserved).

LCrR16.1. Pretrial Discovery and Inspection

(a) DISCOVERY CONFERENCE. Within 7 days after the arraignment the United States attorney and the defendant's attorney shall confer and attempt to agree on a timetable and procedures for the following:

(1) inspecting, copying, or photographing any of the information subject to disclosure pursuant to Fed.R.Crim.P. 16;

(2) preserving the written notes of government agents;

(3) identification and notification of evidence the United States attorney intends to introduce pursuant to Federal Rule of Evidence 404(b);

(4) the filing of a proffer made within the scope of *U.S. v. Santiago*, 582 F.2d 1128 (7th Circ., 1978);

(5) the filing of materials subject to 18 U.S.C. §3500; and

(6) any other preliminary matters where such agreement would serve to expedite the orderly trial of the case.

(b) DECLINATION OF DISCLOSURE. If in the judgment of the United States attorney or of the defendant's attorney, it would not be in the interests of justice to make any one or more of the disclosures set forth in Fed.R.Crim.P. 16 and requested by counsel, disclosure may be declined. A declination shall be in writing, directed to opposing counsel. The declination shall specify the types of disclosures that are declined. It shall be signed personally by the United States attorney or the first assistant United States attorney or the defendant's counsel, as appropriate. It shall be served on opposing counsel and a copy filed with the court within 5 days of the discovery conference held pursuant to section (a).

LCrR17 through LCrR30 (Reserved).

LCrR31.1. Contact With Jurors

After the conclusion of a trial, no party, agent or attorney shall communicate with any members of the petit jury before which the case was tried without first receiving permission of the court.

LCrR32.1. Presentence Investigations

(a) Application of Rule**.** This rule shall apply in those instances where the offense for which the defendant is to be sentenced was committed on and after 1 November 1987. For offenses committed prior to that date, the court may adhere to these provisions or amend them as permitted by law.

(b) Definitions. The following definitions shall apply to this rule:

(1) "business day" shall include any day other than a Saturday, a Sunday, or a legal holiday as defined by Fed.R.Crim.P. 45(a);

(2) "day" (except where used in the term "business day") shall refer to all days, including Saturdays, Sundays, and legal holidays as defined by Fed.R.Crim.P. 45(a);

(3) "determination of guilt" shall mean the entry of a judgment of conviction whether by plea or after trial;

(4) "Guidelines" shall mean the *United States Sentencing Guidelines and Policy Statements* promulgated pursuant to 28 U.S.C. §944;

(5) "probation officer" shall mean the probation officer assigned to prepare the presentence investigation report; and

(6) "report" shall mean the presentence investigation report.

(c) Scheduling of Hearing. Upon the determination of guilt, the court shall set a date for the sentencing hearing. The hearing shall be set 63 days after the determination of guilt. Any motion to modify the time limits in this Rule must be made at the time the sentencing hearing date is set.

(d) Notifying Probation Department. Following determination of guilt, the attorney for the defendant and the defendant, unless in custody, shall report immediately to the probation department to begin the presentence investigation.

If the defendant is incarcerated, the attorney for the defendant shall report to the probation department and provide the information needed to begin the presentence investigation.

Within 2 business days following determination of guilt, the court's courtroom deputy shall forward a presentence referral form to the probation department.

(e) Submission of Versions**.** Not more than 10 business days after the determination of guilt, the attorney for the government shall submit to the probation officer its version of the offense conduct. Not more than 5 business days after submission of the government's version of the offense conduct, the attorney for each defendant shall submit a version of the offense conduct to the probation officer. The attorneys shall serve copies of their versions upon opposing counsel and upon the attorney for any co-defendant as to whom a determination of guilt has been made. Within 5 business days after the receipt of the co-defendants' versions, each co-defendant's attorney shall submit to the probation officer and serve upon all counsel that defendant's version of the offense conduct as it relates to the defendants' respective roles in the offense. Failure to submit a version of the offense conduct within 5 business days after the government's submission of its version of the offense conduct may constitute waiver of the right to have such material considered within the PSR, and the probation officer will have the right to make determinations without regard to a defendant's version of the offense conduct submitted after that date.

(f) Presentence Investigation Report. Not later than 10 business days prior to sentencing, the probation officer shall complete and issue the presentence investigation report to the Court, the defendant and defense counsel, and counsel for the government. The recommendation of the presentence report shall be submitted

only to the Court. The recommendation section shall not include any factual information not already contained in the other sections of the report.

(g) Position Paper. Not later than 5 business days prior to sentencing, counsel for the defendant and counsel for the government shall each file with the Court and the probation officer a pleading entitled "[Defendant's or Government's] Position Paper as to Sentencing Factors." The paper shall specify—

(1) any factor important to the sentencing determination that is reasonably in dispute,

(2) any additional material information affecting the sentencing ranges established by the Guidelines, and

(3) any other objections or corrections to the report.

Any objection or correction not filed at that time shall be deemed waived, unless for good cause shown the court permits it to be raised at the sentencing hearing. The attorneys shall serve copies of the position papers upon opposing counsel and upon the attorney for any co-defendant as to whom a determination of guilt has been made.

(h) Responsibility of Attorneys to Review Presentence Investigation Report. Counsel for the defendant shall meet with the defendant to read and discuss the report at a reasonable time prior to the date set for sentencing. Counsel for the government shall examine the final report not less than 2 business days prior to the date set for sentencing.

(i) Report and Letters. Letters to the court regarding the case or defendant shall be disclosed promptly to the probation department and all counsel.

(j) Availability of Report. Neither the report nor its contents shall be disclosed to any person or agency without the written permission of the sentencing judge. Upon notice of appeal, the probation department shall, with notification to the sentencing judge, forward under seal and apart from the appellate public file, a copy of the report to the clerk of the appellate court where it shall be held in that clerk's vault and available upon request for review by attorneys for the defendant and the government. Upon completion of all appellate matters, the report and the recommendation shall be returned to the probation department. Unauthorized copying, dissemination, or disclosure of the contents of the report in violation of these rules may be treated as contempt of court and punished accordingly.

Committee Comment: Prior to its most recent amendment, the rule had required the probation officer to "mail a preliminary report, without the recommendation to the defendant, the defendant's attorney and the attorney for the government." The above-quoted language did not expressly require that the recommendation be kept confidential. It merely prevented its early disclosure. We believe that the phrase "without the recommendation" was included in the prior rule because it reflected the long-standing *practice* of confidentiality. This commonly accepted practice had existed for decades. All district courts in this Circuit treat the recommendations as

confidential. Nevertheless, elimination of the phrase has led to uncertainty over the continuing confidentiality of the recommendations.

The Proposed Rule removes whatever doubt about confidentiality that may have arisen from our 2002 amendment.

[NOTE: Criminal Rule 32.1 was amended by General Orders of October 1, 2002, December 23, 2002, 9/30/03, and 10/26/05]

LCrR32.1.1. Petitions & Reports Relating to Modification of Terms of Probation or Supervised Release

The probation department will file with the court any petitions or reports dealing with alleged violations or modification of conditions of probation or supervised release. The probation department will also file with such petition or report a proof of service indicating that a copy of such petition or report has been served upon the United States attorney, to the defendant, and, if the defendant is represented, to the defendant's attorney.

LCrR32.3. Confidentiality of Records Relating to Presentence Investigation Reports and Probation Supervision

Records maintained by the probation department of this Court relating to the preparation of presentence investigation reports and the supervision of persons on probation are confidential. Information contained in the records may be released only by order of court. Requests for such information shall be by written petition establishing with particularity the need for specific information contained in such records.

When a demand by way of a subpoena or other judicial process is made of a probation officer either for testimony concerning information contained in such records or for the records or copies of the records, the probation officer may petition the court for instructions. The probation officer shall neither disclose the information nor provide the records or copies of the records except on order of this Court or as provided in LCrR32.1.

LCrR33 through LCrR45 (Reserved).

LCrR46.1. Bail Bonds

(a) WHO MAY APPROVE BONDS. When the amount of bail has been set by the judge or magistrate judge, a bond, whether secured by the defendant's own recognizance or by a surety may be approved by a magistrate judge, the clerk, or one of the officers specified in 18 U.S.C. §3041, *provided* that only a judge may admit to bail or otherwise release a person charged with an offense punishable by death.

(b) REFUND OF CASH DEPOSIT. Where a defendant's bond is secured by depositing cash with the clerk, the cash shall be refunded when the conditions of the bond have been performed and the defendant has been discharged from all obligations thereon. However, if the sentence includes a fine or costs, the sentence shall constitute a lien in favor of the United States on the amount deposited to secure

the bond. In such instances the amount deposited can be refunded only by order of court. No such lien shall attach when someone other than the defendant has deposited the cash and refund is directed to someone other than the defendant.

At the time the cash deposit is made, the person furnishing the cash ("the depositor") shall be given a receipt by the clerk. The depositor shall at the time of the deposit indicate in writing the name and address of the person to whom the cash is to be refunded. This shall be done on Form LCrR46.1. The depositor may change the designation of the person to receive the refund by completing a new form and filing it with a fiscal deputy in the clerk's office at any time before the refund is made.

A refund to a person other than the depositor shall be made only pursuant to an order of court.

LCrR46.2. Pretrial Services Agency

The Pretrial Services Agency of this Court ("Agency") shall perform the following functions:

(1) collect, verify and report promptly to the district or magistrate judge information pertaining to the pretrial release of each person charged with an offense, including any drug testing information, and recommend appropriate release conditions;

(2) review and modify the reports and recommendations made in (1) above for persons seeking release pursuant to 18 U.S.C. §3145;

(3) supervise persons released into its custody;

(4) with the cooperation of the Administrative Office of the United States Courts, and with the approval of the Attorney General, operate or contract for the operation of appropriate facilities for the custody or care of persons released under Chapter 207 of Title 18 of the United States Code, including, but not limited to, residential halfway houses, drug addiction and alcoholism treatment centers and counseling services;

(5) inform the court of all apparent violations of pretrial release conditions or arrests of persons released to its custody or under its supervision and recommend appropriate modifications of release conditions;

(6) serve as coordinator for other local agencies which serve or are eligible to serve as custodians under Chapter 207 of Title 18 of the United States Code and advise the court as to the eligibility, availability and capacity of such agencies;

(7) assist persons released on bond in securing any necessary employment, medical, legal, or social services;

(8) prepare, in cooperation with the United States marshal and the United States attorney, such pretrial detention reports as are required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial; and

(9) perform such other functions as the court may assign from time to time.

LCrR46.3. Notifying Pretrial Services Agency of Arrest and Filing of Case

(a) ARREST OR CONFINEMENT. The Pretrial Services Agency ("Agency") shall be notified (1) by the arresting officer, or (2) by the officer receiving the defendant if the defendant was arrested by local officers and subsequently turned over to federal officers, as soon as practicable following the arrest or transfer, of the facts of such arrest or transfer, the name of the defendant, the charge upon which the defendant has been arrested or transferred, and the place wherein the defendant is being detained.

(b) FILING OF CASE. Immediately following the filing of a complaint the magistrate judge shall cause a copy of it to be forwarded to the Agency. The clerk shall cause a copy of each indictment or information filed to be forwarded to the Agency immediately following the filing, provided that if the indictment is suppressed, the clerk shall cause the copy to be forwarded immediately following the release of the suppression.

LCrR46.4. Confidentiality of Pretrial Services Information and Reports

(a) GENERAL. The information obtained in the course of performing pretrial services functions in relation to a particular accused shall be used only for the purposes of release determination and shall otherwise be confidential. Each pretrial services report shall be made available to the attorney for the accused and the attorney for the Government in connection with a pretrial release or detention hearing, a pretrial release revocation proceeding, or any judicial proceeding to modify the conditions of release. The pretrial services report should not be disclosed to other parties by the attorney for the defendant or the attorney for the Government. Any copies of the pretrial services report so disclosed shall be returned to the pretrial services officer at the conclusion of the hearing.

(b) PROHIBITION OF DISCLOSURE. Unless authorized by the regulations as established by the Director of the Administrative Office, or ordered by the judicial officer for good cause shown, a pretrial services officer shall not disclose pretrial services information. This prohibition on unauthorized disclosure applies whether such disclosure is sought through the direct testimony of the pretrial services officer or by means of a subpoena, subpoena duces tecum, or other form of judicial process.

The term "pretrial services information" shall include any information whether recorded or not, that is obtained or developed by a pretrial services officer in the course of performing a pretrial services investigation, preparing the pretrial services report, performing any post-release of post-detention investigation, or supervising a defendant released pursuant to chapter 207 of Title 18, United States Code. The term does not include any information appearing in the public records of the court.

Any disclosure of pretrial services information permitted under the provisions of these regulations or ordered by the judicial officer shall be limited to the minimum information necessary to carry out the purpose of the disclosure.

LCrR47.1. Motions

(a) NOTICE AND PRESENTATION. Except as provided in section (c) of this rule, LR5.3 and LR78.1 shall apply to motions filed in criminal cases and proceedings.

(b) BRIEFING MOTIONS. A contested motion shall be accompanied by a short, concise brief in support of the motion, together with citations of authority. An original and a copy of the motion and brief shall be filed. The clerk shall forward the copy to the judge unless otherwise ordered by the court. The opposing party shall file an answering brief within 10 days of receiving the supporting brief. The moving party may file a reply brief within 5 days of receipt of the answering brief.

Failure to file a supporting or answering brief shall not be deemed a waiver of the motion or a withdrawal of opposition thereto, but the court on its own motion or that of a party may strike or grant the motion without further hearing. Failure to file reply brief within the requisite time shall be deemed a waiver of the right to file.

The court may by order excuse the filing of supporting, answering, or reply briefs, and may shorten or extend the time fixed by this rule filing briefs.

Any party may on notice call the motion or matter to the attention of the court for a decision. When requested, oral argument may be allowed in the Court's discretion.

(c) EXCEPTIONS. The following motions are not subject to the provisions of section (a) of this rule:

(1) *Pretrial motions.* Motions filed pursuant to LCrR12.1 are not subject to the requirements of this rule.

(2) *Ex Parte Motions.* The original, signed motion shall be presented to the court at the hearing. Copies of the stipulated motions shall be served on all parties as soon thereafter as practicable. (Amended 10/13/04)

LCrR48 through LCrR49 (Reserved).

LCrR50.1 Related Cases: Reassignment of Cases as Related

Two or more criminal cases may be related if all of the defendants named in each of the cases are the same and none of the cases includes defendants not named in any of the other cases. A case may be reassigned to the calendar of another judge as related if it is found to be related to another case and it meets the criteria established by LR40.4(b) for reassigning civil cases. The procedures set out in LR40.4(c) and (d) shall be followed where the reassignment of a criminal case based on relatedness is sought.

LCrR50.2. Direct Assignments: Criminal

In each of the following instances, the assignment clerk shall assign the case to a judge in the manner specified:

(1) *Criminal Contempt Cases arising out of Grand Jury proceedings*. Any criminal contempt case arising out of grand jury proceedings shall be assigned to the chief judge at the time of filing. If the chief judge determines that such case should be heard by some other judge, it will be transferred to the Executive Committee with a ecommendation that it be assigned by lot to some other judge.

(2) *Interception of Wire and Oral Communications*. All requests for authorization for interceptions of wire and oral communications or other investigatory matters arising under Chapter 119 of Title 18 of the U.S. Code shall be brought before the chief judge. Any civil suppressed cases arising out of such requests shall be assigned directly to the calendar of the chief judge.

(3) *Cases Arising Out of Failure to Appear.* Where an information or indictment is filed in which the principal charge is that the defendant failed to appear in a criminal proceeding in this Court, the information or indictment shall be assigned directly to the same calendar as that to which the earlier criminal proceeding is assigned.

(4) *Superseding Indictments or Informations*. The United States attorney will indicate on the designation sheet filed with each indictment or information whether or not it supersedes a pending indictment or information. A superseding indictment or information will be filed in the same case as the superseded indictment or information. Where it supersedes more than one indictment or information, it will be filed in the case which was first assigned to a district judge.

For the purpose of this subsection, an indictment or information supersedes an earlier filed indictment or information if at least one of the defendants in the later filed indictment or information is charged with at least one of the charges brought against the same defendant in an earlier filed indictment or information.

(5) *Criminal cases where pre-indictment assignment made*. Where a proceeding arising out of a criminal complaint is required to be heard by a district judge and is assigned by lot to a district judge prior to the filing of the indictment or information associated with the complaint, the indictment or information shall be assigned directly to the calendar of the judge to whom the proceeding was assigned. Where the indictment would have been assigned using a category different from the one used to assign the criminal complaint, appropriate equalization will be made.

LCrR50.3 Magistrate Judges: Assignments and Referrals

(a) MISDEMEANORS. Informations filed or indictments returned in the Eastern Division alleging the commission of a misdemeanor shall be assigned by lot among the magistrate judges sitting in that division. Similar informations filed or indictments returned in the Western Division shall be assigned to the magistrate judge sitting in division.

(b) FEDERAL ENCLAVE MAGISTRATE JUDGE. From time to time the presiding magistrate judge shall approve a schedule designating the periods during which each of the magistrate judges sitting in the Eastern Division will serve as the federal enclave magistrate judge. The federal enclave magistrate judge will conduct trials of all misdemeanors which arise in federal enclaves.

(c) DESIGNATION AT FILING. Whenever a criminal case is filed in the Eastern Division and assigned to the calendar of a district judge, the clerk shall designate a magistrate judge in the manner provided in LR72.1. Where an indictment or information arises out of one or more criminal complaints, the designated magistrate judge shall be the magistrate to whom the earliest of those complaints was assigned. Where multiple defendants in a single complaint assigned to a magistrate judge are subsequently charged in more than one indictment or information arising out of that complaint, the designated magistrate judge for each such case shall be the magistrate judge to whom the complaint was assigned.

(d) REFERRALS. The procedures used to refer a matter in a criminal case to a magistrate judge shall be the same as those used to refer a civil case pursuant to LR72.1, provided that where a judge notifies the clerk in writing that the judge wishes to have criminal cases routinely referred to a magistrate judge for conducting arraignments and other pretrial matters, such notification shall act as a referral in lieu of the procedures specified in LR72.1. The clerk shall promptly notify the designated magistrate judge of the filing of any indictment or information assigned to the calendar of a judge who has filed a notice of routine reference.

(e) FORFEITURE OF COLLATERAL HEARINGS. Hearings and other matters relating to violation notices and forfeiture of collateral proceedings pursuant to LCrR58.1 shall be handled in the Eastern Division by the magistrate judge designated as federal enclave magistrate judge on the day the hearings are scheduled and in the Western Division by the magistrate judge sitting in that division.

(f) RIGHT TO PROCEED BEFORE DISTRICT JUDGE. If a proceeding assigned directly to a magistrate judge is such that a party to the proceeding has the right to proceed before a district judge and that party fails to waive that right, then the proceeding shall be reassigned to a district judge pursuant to LCrR50.4(b) as if it were an appeal from a judgment of a magistrate judge. The magistrate judge shall notify the clerk in writing of the failure to waive. The clerk will reassign the proceeding promptly following the receipt of that notice. (Amended 6/23/06)

LCrR50.4. Magistrate Judges: Reviews and Appeals

(a) DUTY MAGISTRATE JUDGE. Where a review is requested of an order entered by the duty magistrate judge in proceedings directly assigned pursuant to LCrR5.1, the review shall be heard by the emergency judge. The request for review shall be brought to the attention of the emergency judge by the party seeking review as soon as practicable following the entry of the order by the magistrate judge. The party seeking review shall be responsible for notifying the other parties involved in the proceeding that a review will be requested and for notifying them of the time the review is noticed before the emergency judge.

(b) CVB AND MISDEMEANOR. Appeals from final judgments entered by a magistrate judge in violation notice and forfeiture of collateral proceedings and misdemeanor cases shall be assigned by lot to a judge of this Court. For assignment purposes, such appeals shall be considered as cases in the magistrate judge class established by the procedures adopted pursuant to LR40.2. The assignments of a judge shall be made when the appeal is filed with the clerk pursuant to Fed.R.Crim.P. 58(g)(2).

LCrR51 through LCrR56 (Reserved).

LCrR57.1. Attorneys: Filing Appearances

Each attorney representing a defendant in a criminal proceeding shall file an appearance. The appearance must be filed prior to or simultaneously with the filing of any motion, brief or other document or at the initial court appearance, whichever occurs first. A copy of the appearance shall be served on the United States attorney.

The filing of an appearance in a pre-indictment proceeding does not relieve an attorney from filing an appearance in a subsequent proceeding should an indictment be returned or an information filed against the defendant. A copy of the appearance in the subsequent proceedings shall also be served on the United States attorney.

The appearance shall be on the form prescribed by LR83.16.

LCrR57.2. Release of Information by Courthouse Personnel

All courtroom and courthouse personnel, including, but not limited to, deputy marshals, court security officers, minute clerks, court reporters, pretrial services officers, probation officers, and clerical personnel of the offices of the United States marshal, the clerk of court, the probation department, and pretrial services, shall not disclose to any person, without authorization by the court, information relating to a pending criminal case that is not part of the public record. In particular, all such personnel shall not divulge any information concerning arguments and hearings held in chambers or otherwise outside the presence of the public.

LCrR58.1. Petty Offenses; Central Violations Bureau

(a) EXECUTIVE COMMITTEE. Orders establishing the amount of collateral to be posted by defendants alleged to have committed petty offenses and those cases in which the collateral may be accepted in lieu of appearances may be entered by the Executive Committee acting for the Court.

(b) COLLATERAL IN LIEU OF APPEARANCE. Collateral may be posted by a defendant in lieu of appearance where the charge is one of the petty offenses listed in an order entered pursuant to (a) of this rule. The collateral shall be in the amount specified in that order. Collateral may not be posted by a defendant in lieu of appearance either–

(1) where the petty offense involved or contributed to an accident which resulted in personal injury or damage to property in excess of $100, or

(2) for a subsequent offense not arising out of the same facts or sequence of events which resulted in the original offense.

(c) FORFEITURE OF COLLATERAL. Posting collateral pursuant to section (b) of this rule signifies that the defendant neither contests the charge nor requests a hearing before the designated magistrate judge. The failure of the defendant to appear shall result in the forfeiture of the amount posted. Such forfeiture shall be tantamount to a finding of guilty. The clerk shall certify the record of any conviction of a traffic violation to the proper state authority as required by the applicable state statute.

(d) CENTRAL VIOLATIONS BUREAU (CVB). The clerk shall maintain a central violations bureau (CVB). All agencies issuing violation notices shall prepare the notices in the form prescribed by the Director of the Administrative Office of the United States Courts. Agencies shall promptly submit to the CVB the original and one copy of any violation notice issued or any which the agency wishes to be voided or dismissed.

(e) DISMISSALS AND VOIDS. No violation notice may be dismissed or voided except by order of court. Requests to dismiss or void made by agencies shall be submitted to the CVB. The CVB shall notify the United States attorney of the request. The United States attorney shall present the request to the designated magistrate judge at a regular call of violation notices.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

APPENDIX A

STANDING PRETRIAL PROCEDURE ORDER AND FORMS

STANDING ORDER ESTABLISHING PRETRIAL PROCEDURE
(Adopted Pursuant to General Order of 26 June 1985; Amended Pursuant to General Orders of 27 November 1991 and 9 March 1995)

TABLE OF CONTENTS

1. Introduction
This pretrial procedure is intended to secure a just, speedy, and inexpensive determination of the issues. If the type of procedure described below does not appear calculated to achieve these ends in this case, counsel should seek an immediate conference with the judge and opposing counsel so that alternative possibilities may be discussed. Failure of either party to comply with the substance or the spirit of this *Standing Order* may result in dismissal of the action, default or other sanctions appropriate under Fed. R. Civ. P. 16 or 37, 28 U.S.C. §1927 or any other applicable provisions.
Parties should also be aware that there may be variances in the forms and procedures used by each of the judges in implementing these procedures. Accordingly, parties should contact the minute clerk for the assigned judge for a copy of any standing order of that judge modifying these procedures.

2. Scheduling Conference
Within 60 days after the appearance of a defendant and within 90 days after the complaint has been served on a defendant in each civil case (other than categories of cases excepted by local General Rule 5.00), the court will usually set a scheduling conference (ordinarily in the form of a status hearing) as required by Fed.R.Civ.P. 16. At the conference, counsel should be *fully prepared* and have authority to discuss any questions regarding the case, including questions raised by the pleadings, jurisdiction, venue, pending motions, motions contemplated to be filed, the contemplated joinder of additional parties, the probable length of time needed for discovery and the possibility of settlement of the case. Counsel will have the opportunity to discuss any problems confronting them, including the need for time in which to prepare for trial.

3. Procedures for Complex or Protracted Discovery

If at any time during the scheduling conference or later status, hearings it appears that complex or protracted discovery will be sought, the court may

(a) determine that the *Manual on Complex Litigation 2d* be used as a guide for procedures to be followed in the case, or

(b) determine that discovery should proceed by phases, or

(c) require that the parties develop a joint written discovery plan under Fed.R.Civ.P. 26 (f).

If the court elects to proceed with phased discovery, the first phase will address information necessary to evaluate the case, lay the foundation for a motion to dismiss or transfer, and explore settlement. At the end of the first phase, the court may require the parties to develop a joint written discovery plan under Fed.R.Civ.P. 26 (f) and this *Standing Order*.

If the court requires parties to develop a discovery plan, such plan shall be as specific as possible concerning dates, time, and places discovery will be sought and as to the names of persons whose depositions will be taken. It shall also specify the parties' proposed discovery closing date. Once approved by the court, the plan may be amended only for good cause. Where the parties are unable to agree on a joint discovery plan, each shall submit a plan to the court. After reviewing the separate plans, the court may take such action as it deems appropriate to develop the plan.

Where appropriate, the court may also set deadlines for filing and a time framework for the disposition of motions.

4. Discovery Closing Date.

In cases subject to this *Standing Order,* the court will, at an appropriate point, set a discovery closing date. Except to the extent specified by the court on motion of either party, discovery must be *completed* before the discovery closing date. Discovery requested before the discovery closing date, but not scheduled for completion before the discovery closing date, does not comply with this order.

5. Settlement

Counsel and the parties are directed to undertake a good faith effort to settle that includes a thorough exploration of the prospects of settlement before undertaking the extensive labor of preparing the Order provided for in the next paragraph. The court may require that representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference.

If the parties wish the court to participate in a settlement conference, counsel should ask the court or the minute clerk to schedule such conference. In a case where the trial will be conducted without a jury, particularly as the case nears the date set for trial, the preferred method of having the court preside over settlement talks is for the assigned judge to arrange for another judge to preside or to refer the task to a magistrate judge. If the case has not been settled and is placed on the court's trial calendar, settlement possibilities should continue to be explored throughout the

period before trial. If the case is settled, counsel shall notify the minute clerk promptly and notice up the case for final order.

6. Final Pretrial Order

The court will schedule dates for submission of a proposed final pretrial order (Order) and final pretrial conference (Conference) in accordance with Fed.R.Civ.P. 16. In the period between notice and the date for submission of the pretrial order:

(a) Counsel for all parties are directed to meet in order to (1) reach agreement on any possible stipulations narrowing the issues of law and fact, (2) deal with nonstipulated issues in the manner stated in this paragraph and (3) exchange copies of documents that will be offered in evidence at the trial. The court may direct that counsel meet in person (face-to-face). It shall be the duty of counsel for plaintiff to initiate that meeting and the duty of other counsel to respond to plaintiff's counsel and to offer their full cooperation and assistance to fulfill both the substance and spirit of this standing order. If, after reasonable effort, any party cannot obtain the cooperation of other counsel, it shall be his or her duty to advise the court of this fact by appropriate means.

(b) Counsel s meeting shall be held sufficiently in advance of the date of the scheduled Conference with the court so that counsel for each party can furnish all other counsel with a statement (Statement) of the issues the party will offer evidence to support. The Statement will (1) eliminate any issues that appear in the pleadings about which there is no controversy, and (2) include all issues of law as well as ultimate issues of fact from the standpoint of each party.

(c) It is the obligation of counsel for plaintiff to prepare from the Statement a draft Order for submission to opposing counsel. Included in plaintiff's obligation for preparation of the Order is submission of it to opposing counsel in ample time for revision and timely filing. Full cooperation and assistance of all other counsel are required for proper preparation of the Order to fulfill both the substance and spirit of this Standing Order. All counsel will jointly submit the original and one copy of the final draft of the Order to the judge's chambers (or in open court, if so directed) on the date fixed for submission.

(d) All instructions and footnotes contained within the Final Pretrial Order form promulgated with this *Standing Order* must be followed. They will be binding on the parties at trial in the same manner as though repeated in the Order. If any counsel believes that any of the instructions and/or footnotes allow for any part of the Order to be deferred until after the Order itself is filed, that counsel shall file a motion seeking leave of court for such deferral.

(e) Any pending motions requiring determination in advance of trial (including, without limitation, motions *in limine*, disputes over specific jury

instructions or the admissibility of any evidence at trial upon which the parties desire to present authorities and argument to the court) shall be specifically called to the court's attention not later than the date of submission of the Order.

(f) Counsel must consider the following matters during their conference:

(1) Jurisdiction (if any question exists in this respect, it must be identified in the Order);

(2) Propriety of parties; correctness of identity of legal entities; necessity for appointment of guardian, administrator, executor or other fiduciary, and validity of appointment if already made; correctness of designation of party as partnership, corporation or individual d/b/a trade name; and

(3) Questions of misjoinder or nonjoinder of parties.

7. Final Pretrial Conference

At the Conference each party shall be represented by the attorneys who will try the case (unless before the conference the court grants permission for other counsel to attend in their place). All attending attorneys will familiarize themselves with the pretrial rules and will come to the Conference with full authority to accomplish the purposes of F.R.Civ.P. 16 (including simplifying the issues, expediting the trial and saving expense to litigants). Counsel shall be prepared to discuss settlement possibilities at the Conference without the necessity of obtaining confirmatory authorization from their clients. If a party represented by counsel desires to be present at the Conference, that party's counsel must notify the adverse parties at least one week in advance of the conference. If a party is not going to be present at the Conference, that party's counsel shall use their best efforts to provide that the client can be contacted if necessary. Where counsel represents a governmental body, the court may for good cause shown authorize that counsel to attend the Conference even if unable to enter into settlement without consultation with counsel s client.

8. Extensions of Time for Final Pretrial Order or Conference

It is essential that parties adhere to the scheduled dates for the Order and Conference, for the Conference date governs the case's priority for trial. Because of the scarcity of Conference dates, courtesy to counsel in other cases also mandates no late changes in scheduling. Accordingly, *no* extensions of the Order and Conference dates will be granted without good cause, and no request for extension should be made less than 14 days before the scheduled Conference.

9. Action Following Final Pretrial Conference

At the conclusion of the Conference the court will enter an appropriate order reflecting the action taken, and the case will be added to the civil trial calendar. Although no further pretrial conference will ordinarily be held thereafter, a final

conference may be requested by any of the parties or ordered by the court prior to trial. Any case ready for trial will be subject to trial as specified by the court.

10. Documents Promulgated with the *Standing Order*

Appended to this *Standing Order* are the following:

(a) a form of final pretrial order;

(b) a form for use as Schedule (c), the schedule of exhibits for the final pretrial order;

(c) a form of pretrial memorandum to be attached to the completed final pretrial order in personal injury cases;

(d) a form of pretrial memorandum to be attached to the completed final pretrial order in employment discrimination cases; and

(e) guidelines for preparing proposed findings of fact and conclusions of law.

Each of the forms is annotated to indicate the manner in which it is to be completed.

Form LR16.1.1. Final Pretrial Order Form

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
[*indicate Eastern or Western*] DIVISION

Plaintiff[1],	)	
v.	)	Civil Action No.
Defendant.	)	Judge [*Insert name of assigned judge*]

FINAL PRETRIAL ORDER

This matter having come before the court at a pretrial conference held pursuant to Fed. R. Civ. P. ("Rule") 16, and [*insert name, address and telephone number*] having appeared as counsel for plaintiff(s) and [*insert name, address and telephone number*] having appeared as counsel for defendant(s), the following actions were taken:

(1) This is an action for [*insert nature of action, e.g., breach of contract, personal injury*] and the jurisdiction of the court is invoked under [*insert citation of statute on which jurisdiction based*]. Jurisdiction is (not) disputed.[2]

(2) The following stipulations and statements were submitted and are attached to and made a part of this Order:[3]

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[1] Singular forms are used throughout this document. Plural forms should be used as appropriate. Where a third-party defendant is joined pursuant to Rule 14(a), the Order may be suitably modified. In such cases, the caption and the statement of parties and counsel shall be modified to reflect the joiner.

[2] In diversity cases or other cases requiring a jurisdictional amount in controversy, the Order shall contain either a stipulation that the required jurisdictional amount is involved or a brief written statement citing evidence supporting the claim that such sum could reasonably be awarded.

[3] The asterisked (*) options shall not be required unless the court explicitly orders inclusion of one or more of them. On motion of any party or on the court's own motion, any other requirement of the Order may be waived.

(a) a comprehensive stipulation or statement of all uncontested facts, which will become a part of the evidentiary record in the case (and which, in jury trials, may be read to the jury by the court or any party);[4]

(b) for jury trials a short agreed description of the case to be read to prospective jurors.

(c) except for rebuttal exhibits, schedules in the form set out in the attached Schedule (c) of—

(1) all exhibits (all exhibits shall be marked for identification before trial), including documents, summaries, charts and other items expected to be offered in evidence and

(2) any demonstrative evidence and experiments to be offered during trial;[5]

(d) a list or lists of names and addresses of the potential witnesses to be called by each party, with a statement of any objections to calling, or to the qualifications of, any witness identified on the list;[6]

(e) stipulations or statements setting forth the qualifications of each expert witness in such form that the statement can be read to the jury at the time the expert witness takes the stand;[7]

(f) a list of all depositions, and designated page and line numbers,

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[4] Counsel for plaintiff has the responsibility to prepare the initial draft of a proposed stipulation dealing with allegations in the complaint. Counsel for any counter-, cross- or third-party complainant has the same responsibility to prepare a stipulation dealing with allegations in that party's complaints. If the admissibility of any uncontested fact is challenged, the party objecting and the grounds for objection must be stated.

[5] Items not listed will not be admitted unless good cause is shown. Cumulative documents, particularly x-rays and photos, shall be omitted. Duplicate exhibits shall not be scheduled by different parties, but may be offered as joint exhibits. All parties shall stipulate to the authenticity of exhibits whenever possible, and this Order shall identify any exhibits whose authenticity has not been stipulated to and specific reasons for the party's failure so to stipulate. As the attached Schedule (c) form indicates, non-objected-to exhibits which have been explicitly referred to in testimony or stipulation or published to the jury are received in evidence by operation of this Order, without any need for further foundation testimony. Copies of exhibits shall be made available to opposing counsel and a bench book of exhibits shall be prepared and delivered to the court at the start of the trial unless excused by the court. If the trial is a jury trial and counsel desires to display exhibits to the members of the jury, sufficient copies of such exhibits must be made available so as to provide each juror with a copy, or alternatively, enlarged photographic copies or projected copies should be used.

[6] Each party shall indicate which witnesses *will* be called in the absence of reasonable notice to opposing counsel to the contrary, and which *may* be called as a possibility only. Any witness not listed will be precluded from testifying absent good cause shown, except that each party reserves the right to call such rebuttal witnesses (who are not presently identifiable) as may be necessary, without prior notice to the opposing party.

[7] Only one expert witness on each subject for each party will be permitted to testify absent good cause shown. If more than one expert witness is listed, the subject matter of each expert's testimony shall be specified.

to be read into evidence and statements of any objections thereto;[8]

(g) an itemized statement of damages;

(h)* for a jury trial, each party shall provide the following:

(i) trial briefs except as otherwise ordered by the court;[9]

(ii) one set of marked proposed jury instructions, verdict forms and special interrogatories, if any;[10] and

(iii) a list of the questions the party requests the court to ask prospective jurors in accordance with Fed.R.Civ.P. 47(a);

(i) a statement that each party has completed discovery, including the depositions of expert witnesses (unless the court has previously ordered

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[8] If any party objects to the admissibility of any portion, both the name of the party objecting and the grounds shall be stated. Additionally, the parties shall be prepared to present to the court, at such time as directed to do so, a copy of all relevant portions of the deposition transcript to assist the court in ruling *in limine* on the objection. All irrelevant and redundant material including all colloquy between counsel shall be eliminated when the deposition is read at trial. If a video deposition is proposed to be used, opposing counsel must be so advised sufficiently before trial to permit any objections to be made and ruled on by the court, to allow objectionable material to be edited out of the film before trial.

[9] (*Note: The use of the asterisk (*) is explained in Footnote 3.*) No party's trial brief shall exceed 15 pages without prior approval of the court. Trial briefs are intended to provide full and complete disclosure of the parties' respective theories of the case. Accordingly, each trial brief shall include statements of—

(a) the nature of the case,

(b) the contested facts the party expects the evidence will establish,

(c) the party's theory of liability or defense based on those facts and the uncontested facts,

(d) the party's theory of damages or other relief in the event liability is established, and

(e) the party's theory of any anticipated motion for directed verdict.

The brief shall also include citations of authorities in support of each theory stated in the brief. Any theory of liability or defense that is not expressed in a party's trial brief will be deemed waived.

[10] *Agreed* instructions shall be presented by the parties whenever possible. Whether agreed or unagreed, each marked copy of an instruction shall indicate the proponent and supporting authority and shall be numbered. All objections to tendered instructions shall be in writing and include citations of authorities. Failure to object may constitute a waiver of any objection.

In diversity and other cases where Illinois law provides the rules of decision, use of Illinois Pattern Instructions ("IPI") as to all issues of substantive law is required. As to all other issues, and as to all issues of substantive law where Illinois law does not control, the following pattern jury instructions shall be used in the order listed, e.g., an instruction from (b) shall be used only if no such instruction exists in (a):

(a) the Seventh Circuit pattern jury instructions; or,

(b) any pattern jury instructions published by a federal court. (Care should be taken to make certain substantive instructions on federal questions conform to Seventh Circuit case law.)

At the time of trial, an unmarked original set of instructions and any special interrogatories (on 8 ½" x 11" sheets) shall be submitted to the court; to be sent to the jury room after being read to the jury. Supplemental requests for instructions during the course of the trial or at the conclusion of the evidence will be granted solely as to those matters that cannot be reasonably anticipated at the time of presentation of the initial set of instructions.

otherwise). Absent good cause shown, no further discovery shall be permitted;[11] and

(j) subject to full compliance with all the procedural requirements of Rule 37(a)(2), a brief summary of intended motions in limine. Any briefs in support of and responses to such motions shall be filed as directed by the Court.

(2.1) The following *optional* stipulations and statements were submitted and are attached to and made a part of this Order:

(k)* an agreed statement or statements by each party of the contested issues of fact and law and a statement or statements of contested issues of fact or law not agreed to;

(l)* waivers of any claims or defenses that have been abandoned by any party;

(m)* for a non-jury trial, each party shall provide proposed *Findings of Fact and Conclusions of Law* in duplicate (see guidelines available from the court's minute clerk or secretary);[12]

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(3) Trial of this case is expected to take [*insert the number of days trial expected to take*] days. It will be listed on the trial calendar, to be tried when reached.

(4) [*Indicate the type of trial by placing an X in the appropriate box*]

Jury ☐ Non-jury ☐

(5) The parties recommend that [*indicate the number of jurors recommended*][13] jurors be selected at the commencement of the trial.

(6) The parties [*insert "agree" or "do not agree" as appropriate*] that the issues of liability and damages [*insert "should" or "should not" as appropriate*] be bifurcated for trial. On motion of any party or on motion of the court, bifurcation may be ordered in either a jury or a non-jury trial.

---

[11] If this is a case in which (contrary to the normal requirements) discovery has not been completed, this Order shall state what discovery remains to be completed by each party.

[12] These shall be separately stated in separately numbered paragraphs. Findings of Fact should contain a detailed listing of the relevant material facts the party intends to prove. They should not be in formal language, but should be in simple narrative form. Conclusions of Law should contain concise statements of the meaning or intent of the legal theories set forth by counsel.

[13] Rule 48 specifies that a civil jury shall consist of not fewer than six nor more than twelve jurors.

(7) [*Pursuant to 28 U.S.C. § 636(c), parties may consent to the reassignment of this case to a magistrate judge who may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case. Indicate below if the parties consent to such a reassignment.*]

☐ The parties consent to this case being reassigned to a magistrate judge for trial.

(8) This Order will control the course of the trial and may not be amended except by consent of the parties and the court, or by order of the court to prevent manifest injustice.

(9) Possibility of settlement of this case was considered by the parties.

_____
United States District Judge[14]

Date: _____

[*Attorneys are to sign the form before presenting it to the court.*]

_____ _____
Attorney for Plaintiff Attorney for Defendant

[14] Where the case has been reassigned on consent of parties to a magistrate judge for all purposes, the magistrate judge will, of course, sign the final pretrial order.

Schedule (c)
Exhibits[15]

1. The following exhibits were offered by plaintiff, received in evidence and marked as indicated:

[*State identification number and brief description of each exhibit.*]

2. The following exhibits were offered by plaintiff and marked for identification. Defendant(s) objected to their receipt in evidence on the grounds stated:[16]

[*State identification number and brief description of each exhibit. Also state briefly the ground of objection, such as competency, relevancy or materiality, and the provision of Fed.R.Evid. relied upon. Also state briefly plaintiff's response to the objection, with appropriate reference to Fed.R.Evid.*]

3. The following exhibits were offered by defendant, received in evidence and marked as indicated:

[*State identification number and brief description of each exhibit.*]

4. The following exhibits were offered by defendant and marked for identification. Plaintiff objected to their receipt in evidence on the grounds stated:[17]

[*State identification number and brief description of each exhibit. Also state briefly the ground of objection, such as competency, relevancy or materiality, and the provision of Fed.R.Evid. relied upon. Also state briefly defendant's response to the objection, with appropriate reference to Fed.R.Evid.*]

5. Non-objected-to exhibits are received in evidence by operation of this Order. However, in jury trials, exhibits that have not been explicitly referred to in testimony or otherwise published to the jury prior to the close of all evidence or in argument are not in evidence.

Committee Comment

The amendment to the Final Pretrial Order Form will improve efficiency in litigation.

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[15] As in the Final Pretrial Order form, references to "plaintiff" and "defendant" are intended to cover those instances where there are more than one of either.

[16] Copies of objected-to exhibits should be delivered to the court with this Order, to permit rulings *in limine* where possible.

[17] *See* footnote 17.

Adopted October 4, 2006

LR16.1.2. Form of Pretrial Memorandum for Use in Personal Injury Cases

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
_____ DIVISION

) Civil Action No.
)
) Judge [*Insert name of assigned judge*]
v.)
) Plaintiff requests $_____
)
) Defendant offers $_____

PRETRIAL MEMORANDUM

Plaintiff's Name: _____
Age: _____
Occupation: _____
Marital status: _____

Attorney for plaintiff [*indicate name and phone number of trial attorney*]:
_____
_____
_____
_____
_____
_____

Attorney for defendant [*indicate name and phone number of trial attorney*]:
_____
_____
_____
_____
_____
_____

Summary of injuries [*note especially any permanent pathology*]:
_____
_____
_____
_____
_____
_____

Date, hour, and place of occurrence:

_____

_____

Attending physicians:

_____

_____

Hospitals:

_____

_____

Place of employment:

_____

_____

_____

_____

Part A. Compensatory Damages [*Parts A & B are to be completed by plaintiff's counsel.*]

1. Liquidated Damages:
   - (a) Medical fees $_____
   - (b) Hospital bills $_____
   - (c) Loss of income $_____
   - (d) Miscellaneous expenses $_____
   - TOTAL $_____

2. What is the total amount of compensatory damages claimed in this action?

$_____

Part B. Punitive Damages

a. Does the plaintiff claim punitive damages?

Yes ☐ No ☐ If yes, how much? $_____

Brief Statement of Circumstances of Occurrence:

Plaintiff's view:

_____

_____

_____

_____

_____

_____

_____

_____

Defendant's view:

_____

_____

_____

_____

_____

_____

[*At the direction of the court the parties are to attach to this memorandum any medical reports or other materials useful for discussion at the pretrial conference.*]

LR16.1.3. Form of Pretrial Memorandum for Use in Employment Discrimination Cases

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
_____ DIVISION

	)	Civil Action No.
	)	
	)	Judge [*Insert name of assigned judge*]
v.	)	
	)	
	)	

PRETRIAL MEMORANDUM

Attorney for plaintiff [*Indicate name and phone number of trial attorney*]:

_____
_____
_____
_____

Plaintiff's brief summary of claim and statement of employment action:

_____
_____
_____
_____
_____
_____

Attorney for defendant [*Indicate name and phone number of trial attorney*]:

_____
_____
_____
_____

Defendant's brief summary of defenses and statement of employment action:

_____
_____
_____
_____
_____
_____

[*Plaintiff's counsel will complete Part A, Plaintiff's Summary of Damages, and defendant's counsel will complete Part B, Defendant's Summary of Damages, Assuming Liability. As indicated in the title to Part B, defendant's counsel must complete the section using the assumption of liability, even though defendant disputes liability.*]

Part A. Plaintiff's Summary of Damages

1. Lost Wages and Benefits: [*For each year for which damages are claimed, indicate (A) the total wages and benefits that would have been earned working for defendant but for the discrimination, (B) the total wages, benefits, and other income earned in substitute employment that plaintiff was able to obtain, (C) additional wages and benefits defendant maintains plaintiff could have earned, and (D) the difference between (A) and the total of [(B) + (C)*].

	A	**B**	**C**	**D**
Year[1]	Amounts Lost Due to Discrimination	Amounts Earned in Substitute Employment	Additional Amounts Could Have Earned	Difference (A-(B+C))
19_____	_____	_____	_____	_____
19_____	_____	_____	_____	_____

Total Lost Wages & Benefits: $_____

2. (a) Attorneys Fees (to date): $_____
   (b) Costs (to date): $_____

3. Do you claim:
   (a) Pain, suffering, emotional injury, etc.?
   Yes ☐ No ☐ If yes, how much?
   $_____
   (b) Punitive or liquidated (double) damages?
   Yes ☐ No ☐ If yes, how much?
   $_____
   (c) Pre-judgment interest?[2]
   Yes ☐ No ☐ If yes, how much?
   $_____

4. Do you claim any other kinds of damage?
   Yes ☐ No ☐ If yes, what kind and how much? _____
   $_____

5. Total Amount Claimed:
   $_____

[1] Only two years are shown. Use the appropriate number of years in completing the form.

[2] The inclusion of both liquidated damages and pre-judgment interest in this form is not intended to suggest that both are or are not recoverable.

Part B. **Defendant's Summary of Damages, Assuming Liability** [*This portion is to be completed in good faith even though defendant disputes liability.*]

1. [*For each year for which damages are claimed, indicate (A) the total wages and benefits that would have been earned working for defendant but for the discrimination, (B) the total wages, benefits, and other income earned in substitute employment that plaintiff was able to obtain, (C) additional wages and benefits defendant maintains plaintiff could have earned, (D) other amounts received, such as disability or pension payments, and (E) the difference between (A) and the total of (B) + (C) + (D).*]

Year[3]	**A** Amounts Lost Due to Discrimination	**B** Amounts Earned in Substitute Employment	**C** Additional Amounts Could Have Earned	D Other Amounts Received	E Difference (A-(B+C+D))
19_____	_____	_____	_____	_____	_____
19_____	_____	_____	_____	_____	_____

Total Lost Wages & Benefits:

$_____

2. Does the defendant dispute the amount claimed for attorney's fees and costs?

Yes ☐ No ☐ If yes, explain, giving estimated amount due:

_____

_____ $_____

3. Does the defendant dispute the amount claimed for pain, suffering, emotional injury, etc?

Yes ☐ No ☐ If yes, explain, giving estimated amount due:

[3] Only two years are shown. Use the appropriate number of years in completing the form.

_____
_____ $_____

4. Does the defendant dispute the claim for pre-judgment interest?

Yes ☐ No ☐ If yes, explain, giving estimated amount due:

_____
_____
_____ $_____

5. Does the defendant dispute the claim for punitive damages?

Yes ☐ No ☐ If yes, explain, giving estimated amount due:

_____
_____
_____ $_____

6. Does the defendant dispute any other claims for damages made by the plaintiff?

Yes ☐ No ☐ If yes, explain, giving estimated amount due:

_____
_____
_____ $_____

7. Total amount owed, assuming liability:

$_____

_____

GUIDELINES FOR PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

(a) Plaintiff shall first provide the court with proposed findings and conclusions, which shall have been served on each defendant. Each defendant shall then provide the court with answering proposals, which shall have been served on each plaintiff.

(b) Plaintiff's proposals shall include (a) a narrative statement of *all facts* proposed to be proved and (b) a concise statement of plaintiff's legal contentions and the authorities supporting them:

(1) Plaintiff's narrative statement of facts shall set forth in simple declarative sentences all the facts relied upon in support of plaintiff's claim for relief. It shall be complete in itself and shall contain no recitation of any witness' testimony or what any defendant stated or admitted in these or other proceedings, and no references to the pleadings or other documents or schedules as such. It may contain references in parentheses to the names of witnesses, depositions, pleadings, exhibits or other documents, but no party shall be required to admit or deny the accuracy of such references. It shall, so far as possible, contain no pejoratives, labels or legal conclusions. It shall be so constructed, in consecutively numbered paragraphs (though where appropriate a paragraph may contain more than one sentence), that each of the opposing parties will be able to admit or deny each separate sentence of the statement.

(2) Plaintiff's statement of legal contentions shall set forth all such plaintiff's contentions necessary to demonstrate the liability of each defendant to such plaintiff. Such contentions shall be separately, clearly and concisely stated in separately numbered paragraphs. Each paragraph shall be followed by citations of authorities in support thereof.

(c) Each defendant's answering proposals shall correspond to plaintiff's proposals:

(1) Each defendant's factual statement shall admit or deny each separate sentence contained in the narrative statement of fact of each plaintiff, except in instances where a portion of a sentence can be admitted and a portion denied. In those instances, each defendant shall state clearly the portion admitted and the portion denied. Each separate sentence of each defendant's response shall bear the same number as the corresponding sentence in the plaintiff's narrative statement of fact. In a separate portion of each defendant's narrative statement of facts, such defendant shall set forth all affirmative matter of a factual nature relied upon by such defendant, constructed in the same manner as the plaintiff's narrative statement of facts.

(2) Each defendant's separate statement of proposed conclusions of law shall respond directly to plaintiff's separate legal contentions and shall contain such additional contentions of the defendant as may be necessary to demonstrate the non-liability or limited liability of the defendant. Each defendant's statement of legal contentions shall be constructed in the same manner as is provided for the similar statement of each plaintiff. [NOTE: This Guideline was amended by General Order of May 4, 2004]

Appendix to Local Rule 54.3

Pursuant to section (e) of LR54.3, the parties submit the following Joint Statement with respect to the motion for fees and expenses filed by [*name of movant*]:

1. [*name of movant*] claims attorney's fees of $102,425 and related nontaxable expenses of $12,578.40. [*name of movant*] calculates this claim as follows:

Lawyer	Hours	Rate	Totals
Smith	300	$245	73,500
Jones	175	$110	19,250
Johnson	65	$95	6,175
Wilson (paralegal)	70	$50	3,500
Total			$102,425

2. The position of [*name of respondent*] is that fees should be awarded on the following basis:

Lawyer	Hours	Rate	Totals
Smith	200	$200	40,000
Jones	175	$110	19,250
Johnson	40	$95	3,800
Wilson	70	$50	3,500
Total			$ 66,550

Respondent's position is that related nontaxable expenses of $11,380.00 should be awarded.

3. The specific disputes remaining between the parties are the following:
   (a) The appropriate hourly rate for Smith;
   (b) Whether 100 hours spent by Smith and 25 hours spent by Johnson on the state claim should be compensated;
   (c) Whether $1,198.40 spent on deposition transcripts of four specific witnesses (Banks, Davis, George, and Penny) should be compensable.
4. The underlying judgment in the case will not be appealed and the only remaining dispute in the litigation is the appropriate fee award.

Form LR83.28. Declaration of Admissions to Practice Required by LR83.28(d)

DECLARATION OF ADMISSIONS TO PRACTICE

In Re _____
Disciplinary No. _____

I, _____, am the attorney who has been served with an order to show cause why disciplinary action should not be taken in the above captioned matter.

I am a member of the bar of this Court.

I have been admitted to practice before the following state and federal courts, in the years, and under the license record numbers shown below:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
(Date)

_____
(Signature)

_____
(Full name - typed or printed)

_____

_____

_____
(Address of Record)

This declaration must be signed, and delivered to the court with the attorney's answer to the order to show cause or any waiver of an answer. Failure to return this declaration may subject an attorney to further disciplinary action. Under 28 U.S.C. § 1746, this declaration under perjury has the same force and effect as a sworn declaration made under oath.

Form LCrR46.1. Form to be Completed by the Person Depositing Cash to Secure a Bond

United States District Court
Northern District of Illinois
_____Division

FORM TO BE COMPLETED BY THE PERSON DEPOSITING CASH TO SECURE A BOND

Defendant's Name:_____
Case No:_____

I, (*Name of person depositing cash*) state that I am the person making the cash deposit of (*Amount of cash*) to secure the bond of defendant (*Name of the defendant whose bond is secured by this deposit*).

I directed the Clerk of the Court to refund this cash deposit as follows (*Initial one or both and indicate the amount(s) to be refunded*):

$(*Amount*) to me_____(*Initials*)__

$(*Amount*) to (*Name of person to receive refund*)___(*Initials*) of _____(*Street address*)_____
__(*City, State and ZIP code*)___
_____(*Signature of depositor*)____

Date:_____ __(*Street address of depositor*)___
Receipt No._____ (*City, State and ZIP code of depositor*)

INSTRUCTIONS

1. The person depositing cash with the clerk to secure the release of a defendant in a criminal case shall complete the form on the reverse. (The cashier will provide the receipt number.)

2. Refunds of cash deposits are governed by LCrR46.1(c).

3. The clerk will refund monies deposited without additional order of court only to the person or persons indicated on the reverse of this document.

4. In order to make the payment without specific order of court the clerk requires that this document, the original receipt, and the assignment, if any, be surrendered to the cashier at the time the request for refund was made.

Form LCrR46.5.(b)(2) Non-disclosure Agreement for Research Groups

NON-DISCLOSURE AGREEMENT FOR RESEARCH GROUPS

Whereas (*Name of person or organization*) has been granted access to records, reports and files of the Pretrial Services Agency (Agency) of the United States District Court for the (*name of district*) (District Court) hereby acknowledges and agrees that any information, including records, reports, files, or oral communications, it receives from the Agency with respect to criminal defendants is strictly confidential as provided by LCrR46.5, a copy of which is attached and is not to be disclosed to any parties, other than the Agency and Federal District Court, except in the matter of a research analysis and paper which shall not identify, directly or indirectly, the identities of any of the Agency subjects.

Upon a breach of this non-disclosure agreement, the Agency may withdraw access to its files and records by (*Name of person or organization*), or take such lesser steps as are commensurate with the breach of confidentiality.

Form LCrR46.5(b)(3). Non-disclosure Agreement for Organizations Providing Contract Services

TO BE ADDED AS COVENANT TO
CONTRACT NON-DISCLOSURE
AGREEMENT FOR CONTRACT SERVICES

(*Name of person or organization*) hereby acknowledges and agrees that any information, including records, reports, files, or oral communications, it receives from the Pretrial Services Agency (Agency) of the United States District Court for the (*Name of district*) (District Court) with respect to criminal defendants is strictly confidential as provided by LCrR46.5, a copy of which is attached, and is not to be disclosed, except as provided by that rule, to any parties, individuals or organizations, other than the Agency and District Court. (*Name of person or organization*) further agrees that it will not identify, directly or indirectly any individual Agency subject in any report of research, evaluation, periodic audits or studies, or in any articles for publication of any kind, or in any verbal disclosures, except in reports required by or to the referring Agency or the District Court.

It is understood and agreed that the Agency will be notified promptly by (*Name of person or organization*) of any subpoena or other request for information that pertains to Agency information.

Upon a breach of this non-disclosure agreement, the Agency is entitled to terminate the contract relationship with (*Name of person or organization*) or to take whatever lesser steps are necessary to prevent further breaches of this agreement.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

APPENDIX B

PROCEDURES FOR VOLUNTARY MEDIATION PROGRAM FOR LANHAM ACT CASES

The procedures were adopted pursuant to Local Rule 16.3.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

PROCEDURES FOR VOLUNTARY MEDIATION PROGRAM
FOR LANHAM ACT CASES
Adopted Pursuant to Local Rule 16.3(b)

I. Screening and Assignment of Cases.

A. Pursuant to Local Rule 16.3, cases that are filed under the Federal Trademark Act of 1946, 15 U.S.C. §§ 1051-1127 (the "Lanham Act"), shall be assigned to the program of court-annexed mediation (Program). Cases that are filed under seal pursuant to local General Rule 10L and cases that are under seal pursuant to court order shall not be assigned to the Program during the time they remain under seal. Any time periods specified in these procedures shall be adjusted to exclude periods when cases are under seal.

B. Cases shall be assigned to the Program on the basis of information recorded in the Integrated Case Management System (ICMS). The information used for this purpose will be the nature of suit and cause of action recorded for each civil case.1 A computer program will be run on a weekly basis to identify all civil cases filed during the previous week where the cause of action entered in ICMS is a Lanham Act citation or the nature of suit code entered in ICMS is 840 (i.e., the nature of suit code for trademark cases).

C. A member of the staff of the Clerk of Court will check the complaint for each case identified by the weekly computer program to verify that the complaint indicates that the case has been filed pursuant to the Lanham Act.

II. Notice of Assignment

A. For a case assigned to the Program, the Clerk shall provide notice of the assignment to the attorney who filed the action. If the case was commenced by a party filing *pro se*, the notice will be provided to the party. The notice will include a description of the Program. Along with the notice the Clerk will send a List of Lanham Act Organizations and Neutrals.

B. The Clerk will notify the judge that the case has been assigned to the Program.

C. Upon receiving the notice and accompanying material from the Clerk, each attorney notified as provided for in section II.A above must promptly provide a copy of

the notice and accompanying descriptive material to that attorney's client and to the attorney for each defendant, if known, or to each defendant, if the attorney is not known. Defense atttorneys must promptly provide copies of the material they receive to each party they represent.

III. List of Lanham Act Organizations and Neutrals

A. Maintenance by the Clerk of a List of Lanham Act Organizations and Neutrals

The clerk of the Court shall maintain and make available to the public a List of Lanham Act Organizations and Neutrals consisting of the name, address, and telephone numbers of each organization and person who has filed with the clerk the certificate specified by section C of this rule, and whose name has not been withdrawn or removed pursuant to section E of this rule. The clerk shall further maintain and make available to the public a file containing the certificates filed by those persons whose names are included on the list of mediators. Inclusion on the list does not constitute certification by the Court of the qualifications of the organization or neutral.

B. Minimum Criteria

No organization or person may file a certificate pursuant to paragraph C below or be included in the List of Lanham Act Organizations and Neutrals unless such person or organization meets the following minimum criteria:

(1) For Organizations:

a. A minimum of three years involvement with alternative dispute resolution in providing, sponsoring or training neutrals; and

b. Affiliation with two or more individuals who meet the minimum criteria set forth below.

(2) For Individuals:

a. Five years or more experience in the practice of Lanham Act law; or

b. Three years or more experience as a neutral (not necessarily in Lanham Act law).

C. Certificates

An organization may be included in the List of Lanham Act Organizations and Neutrals by filing with the Clerk of this Court a certificate containing the following information:

(1) For Organizations:

a. Name, address, and nature and duration of involvement in alternative dispute procedures and activities;

b. procedures and programs for training individuals in techniques of mediation and arbitration;

c. experience in training such individuals in connection with disputes under the Lanham Act;

d. experience in providing neutrals to mediate or arbitrate disputes under the Lanham Act;

e. names and addresses of individuals the organization represents are qualified by experience or training, or both, to mediate or arbitrate disputes under the Lanham Act, together with copies of their curricula vitae; and

f. representative cases (including citations to published decisions) in which the organization has participated, including the names and addresses of counsel and parties (unless such information is deemed confidential).

(2) For Individuals:

a. Name, address, and academic and legal education credentials;
b. years in the practice of Lanham Act law, including trademark and unfair competition law and false advertising law;
c. experience in mediating or arbitrating disputes under the Lanham Act, other intellectual property law disputes, or general commercial disputes;
d. a summary of Law School or C.L.E. courses in Lanham Act subject matter taken or taught, including seminars or meetings of the American Bar Association, ALI-ABA, American Intellectual Property Law Association, International (formerly The United States) Trademark Association, Practicing Law Institute, Chicago Bar Association, or other groups or organizations;
e. membership and committee activity in professional organizations dealing with intellectual property law, including the Lanham Act;
f. publications on Lanham Act or other intellectual property law subject matter;
g. Any other experience, including litigation experience, he or she believes relevant to serving as a neutral;
h. representative cases (including citations to published decisions) in which the individual has participated as a mediator or arbitrator, including the names and addresses of counsel and parties (unless such information is deemed confidential); and
i. a copy of his or her curriculum vitae.

D. Amendment and Updating.

Any organization and individual who files a certificate with the Clerk shall promptly file amendments to the certificates, whenever necessary or appropriate, to disclose any substantial change in the information provided in the certificate. In addition, each such organization or individual shall file a complete, updated certificate at no more than five year intervals.

E. Withdrawal and Removal from the List of Lanham Act Organizations and Neutrals

Any organization or neutral may voluntarily withdraw from the List of Lanham Act organizations and neutrals at any time by providing written notification to the clerk of the Court, who shall thereupon remove the name of the organization or neutral from said List and remove that organization or neutral's certificate from the file of such certificates. If an organization or neutral fails to update his, her or its certificate pursuant to section D of this rule, or for good cause as certified to the clerk by the Chief Judge, the clerk shall remove the name of that organization or neutral from said List and remove that organization or neutral's certificate from the file of certificates.

IV. Attorney Certification

As soon as practicable but in no event later than 20 days after receiving the notice provided pursuant to section II.A, each attorney for a party shall file with the Clerk a certificate stating that the attorney has mailed or otherwise provided a copy of the notice and all information about the program to each party that the attorney represents in the action, or to the guardian or representative
of each party.

V. Notice of Participation or Non-Participation

A. Nothing in these Procedures shall be construed to affect the time within which a party is to answer or otherwise plead to a complaint. If a pleading in lieu of answer, or a motion for a temporary restraining order or a preliminary injunction is filed before the notice of participation or non-participation required by subsection B of this section has been filed, the court may fix a new time by which the parties must file the joint notice, or may find that the case is not appropriate for the program and excuse the parties from filing the joint notice, or may enter such other order as may be appropriate. Such action by the court shall be in writing, or on the record.

The parties in cases assigned to the Program are not required to participate in the Program but are strongly encouraged to do so. At the earliest of the first scheduling conference, or 90 days from filing of the complaint, the parties in cases assigned to the Program will file a jointly written notice indicating one of the following:

(1) that they wish to participate in the Program;
(2) that they do not wish to participate in the Program; or
(3) that they are already participating in some other mediation program.

B. If the notice indicates that the parties do not wish to participate in the Program, a brief statement of the reason or reasons must be included in the notice. Such a statement shall not disclose the position of any individual party concerning participation in the Program. If the notice indicates that the parties are participating in some other mediation program, the notice must provide a brief description of the nature of the program.

C. The judge to whom a case eligible for the Program is assigned may impose sanctions for failure to notify clients pursuant to paragraph II.C. and/or failure to file the notice pursuant to paragraphs V.A and B.

VI. Mediation Procedure

A. Mediation is a flexible, nonbinding and confidential dispute resolution process in which an impartial and qualified neutral facilitates negotiations among the parties in an attempt to help them reach settlement.

B. The mediation process does not contemplate testimony by witnesses. The neutral does not review or rule upon questions of fact or law, or render any final decision in the case, but may provide an opinion on questions of fact or law, or on the merits of the case if the case if requested or if desirable.

C. The parties shall select a neutral and obtain the consent of the neutral to act as mediator not more than 14 days after the filing of the joint notice of participation. The parties may request an extension of time for good cause shown. The parties may agree to select a neutral from the List of Lanham Act Organizations and Neutrals provided with the notice of assignment. In the event the parties wish to participate in the Program, but cannot agree on a panel neutral, the parties may contact any organization or individual identified in the List, which or who will assist in selecting a neutral for them.

D. The neutral shall disqualify himself or herself in any case in which the circumstances listed in 28 U.S.C. § 455 exist, and would apply if the neutral were a judge.

E. The neutral shall select a time and a place for the mediation conference, and any adjourned mediation session, that is reasonably convenient for the parties, and shall give them at least 14 days written notice of the initial conference. Except as ordered by the court for good cause shown, the date of the first mediation conference shall be not later than 45 days after the filing of the joint notice of participation and the date of the last conference shall be not more than 30 days following the first conference. If the

parties settle the case prior to the mediation conference, they shall promptly advise the neutral and the judge assigned to the case that a settlement has been reached.

F. The neutral may require the parties to submit memoranda, on a confidential basis and not served on the other parties, addressing the strengths and weaknesses in that party's case and the terms that party proposes for settlement.

G. The following individuals shall attend the mediation conference unless excused by the mediator:

(1) each party who is a natural person;

(2) for each party that is not a natural person, either

(a) a representative who is not the party's attorney of record and who has full authority to negotiate and settle the dispute on behalf of that party, or

(b) if the party is an entity that requires settlement approval by a committee, board or legislative body, a representative who has authority to recommend a settlement to the committee, board or legislative body;

(3) the attorney who has primary responsibility for each party's case; and

(4) any other entity determined by the mediator to be necessary for a full resolution of the dispute referred to mediation.

H. Except where a party has been excused as provided for by section VI.H. above, failure of an attorney or a party to attend the mediation conference as required shall be reported to the assigned judge and may result in the imposition of sanctions as the judge may find appropriate.

VII. Reporting on the Program

A. Within 10 days following the conclusion of the mediation session, the neutral shall file a concise report with the court disclosing only whether required parties were present and the disposition of the case, including:

(1) the case settled;

(2) the parties agreed to adjourn for further mediation; or

(3) the neutral determined that the negotiations are at an impasse.

B. All written and oral communications made in connection with the mediation conference, including any statement made by any party, attorney or other participant, shall, in all respects, be privileged and not reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission. No party shall be bound by anything done or said at the conference unless a settlement is reached, in which event the agreement upon a settlement shall be reduced to writing and shall be binding upon all parties to that agreement. In addition, the parties are free to enter confidentiality agreements covering all information disclosed in memoranda and during the mediation session.

VIII. Costs

A. Absent agreement to the contrary, the parties shall share equally all costs incurred as a result of the mediation, including the costs of the neutral's services, except that each party shall be responsible for its own attorneys' fees.

B. Neutrals shall be reimbursed for the expenses and compensated by the hourly rate disclosed by them during the selection process, or as agreed in writing in advance between the neutral and the parties.

C. Except as provided in section VIII.B., a neutral shall not charge or accept anything of value from any source whatsoever for or relating to his or her duties as a neutral.

NORTHERN DISTRICT OF ILLINOIS

APPENDIX C

REGULATIONS PERTAINING TO TRIAL BAR ADMISSION

(*The Regulations were promulgated by the District Admissions Committee as interpretive and procedural guides to the admission rules. The District Admissions Committee was disbanded by the abrogation of General Rules 3.20, 3.21, 3.22 and 3.23 effective December 19, 1997. However, the following regulations remain in effect.)*

REGULATIONS PERTAINING TO TRAIL BAR ADMISSION

The following regulations were promulgated by the District Admissions Committee as interpretive and procedural guides to the admission rules. The District Admissions Committee was disbanded by the abrogation of General Rules

3.20, 3.21, 3.22 and 3.23 effective December 19, 1997. However, the following regulations remain in effect.

D.A.C.REG.1 PARTICIPATION UNITS (Local Rule 83.11)

Promulgated by the District Admissions Committee as an interpretive guide to definitions of "participations" and qualifying trial "days" as set forth in LR83.11.

A. "Participation" and "participates" defined

The terms "participation" or "participates" as used in LR83.11, defining a participation unit, refer to an active and open involvement in the presentation of a case as contrasted with passive observation or rendition of services solely to another attorney who was actively involved. A minimum criterion for the requisite level of involvement contemplated by the rule for participation credit shall be that the applicant be present at the testimonial proceeding and prepared for and/or conducted the examination or cross examination of at least two (2) witnesses in the qualifying trial.

B. "One day" defined

The term "one day" as used in LR83.11, defining a qualifying trial refers to not less than three (3) hours of actual appearance time in open court during which testimony is taken and/or exhibits are offered. Notwithstanding the foregoing:

(1) In the event interruptions or recesses in a trial prevent attainment of the aforesaid 3-hour minimum in a single 24-hour day, it is permissible to aggregate appearance time in the same trial so as to achieve a total of three (3) hours, provided that such added appearance time is of the character referred to in the preceding paragraph B.

(2) In no event shall more than one (1) day of qualifying trial credit be claimed for any 24-hour day nor shall any appearance time in excess of three (3) hours be carried over to a subsequent day.

(3) A trial which is completed in less than three (3) hours shall be deemed to entail "one day" of credit if it is in all other respects a testimonial proceeding under LR83.11 and if the applicant gave an opening statement and/or closing argument in the trial.

D.A.C.REG.2 OBSERVATION UNITS (Local Rule 83.11)

Promulgated by the District Admissions Committee as an interpretive guide to observation units as set forth in LR83.11.

A. Basic requirements for receiving credit for an observation unit

An applicant will be entitled to receive credit for an observation unit pursuant to LR83.11 if, in conjunction with a trial involving testimonial proceedings in a state or federal court within the scope of LR83.11 of the Local Rules of this Court and which constitutes as qualifying trial within the scope of LR83.11 of the Local Rules of this Court, he or she, at the time of the submission of the application:

(1) was supervised in the observation of the trial by counsel for one of the parties;

(2) became familiar with the factual and legal issues;

(3) attended a substantial amount of the court sessions during trial;

(4) observed any opening and closing arguments;

(5) observed a substantial portion of the direct testimony and cross examination presented by all parties;

(6) consulted with the supervising attorney from time to time; and

(7) is a member in good standing of the bar of this court.

B. Requirements for supervising attorney

The supervising attorney shall be required to complete an observation affidavit on behalf of the applicant attesting to the fulfillment of the above requirements and specifying certain other information regarding the trial which was the basis for the supervision. The supervising attorney must, at the time of the supervision, have been either admitted as a member of the trial bar of the Court or, should the supervision have taken place prior to such admission of the supervising attorney, give evidence of the equivalent of four (4) participation units achieved by affiant prior to the supervision activity.

C. "Substantial" defined

The term "substantial," as used in paragraph A(3) and A(5) of this Regulation, is defined as at least fifty (50) percent of the court sessions and fifty (50) percent of the direct testimony and cross examination except that, if the trial lasted less than three (3) days, the term "substantial" shall be defined as having attended all court sessions and having observed all of the testimony presented.

D. Supervising attorneys: no renumeration, limit on numbers supervised

There shall be no remuneration for supervising applicants for observation units, and the ratio of applicants to supervising attorneys shall not exceed three (3) to one (1), unless a greater ratio has been approved in advance by the District Admissions Committee.

D.A.C.REG.3 SIMULATION UNITS (Local Rule 83.11)

Promulgated by the District Admissions Committee as an interpretive guide to simulation units as set forth in LR 83.11.

A. Trial advocacy programs & simulation units: general

A trial advocacy program will qualify a participant for simulation credit pursuant to LR83.11 if the focus of the program is experiential in accordance with paragraphs B and C below, with any lecture being incidental thereto and, in any event, comprising less than 25% of the program hours.

B. Standards for trial advocacy programs

In general, to qualify the applicant for simulation unit credit, the trial advocacy program should, with respect to each unit of credit:

(1) provide the following hours of classroom or courtroom instruction:
   (a) 24 hours in the case of a continuing education pro-gram for practicing lawyers; or
   (b) 40 hours in the case of a law school program for second or third year law students.

(2) provide each participant the opportunity to do opening statements, closing arguments, direct and cross examination, and introduction of exhibits.

(3) provide each participant the opportunity to conduct one mock trial with a maximum of two participants on each side in which each participant examines at least one witness and gives an opening or closing argument.

(4) provide a ratio of participants to full-time or part-time instructors -of not more than ten to one (10:1).

C. Approval of simulation unit in certain instances where trial advocacy program does not meet the standards

If a trial advocacy program does not meet the standards set forth in paragraph B above, an applicant, nonetheless, may be entitled to a simulation unit if it is demonstrated to the satisfaction of the District Admissions Committee, or a subcommittee thereof, that the program fulfills the objectives of providing the applicant with substantial hands-on experience in the phases of a trial set forth in paragraph B (2) above under competent supervision. In particular, the Committee, or a subcommittee thereof, shall consider the relationship between the hours of instruction and the participant/faculty ratio, the number of student presentations, the experience of the instructors, the syllabus for the program, and the quality of the instructional materials.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

APPENDIX D

PLAN FOR THE ADMINISTRATION OF THE DISTRICT COURT FUND

The Plan was initially adopted by the Court on Wednesday, 16 March 1983. It was subsequently amended on Thursday, 20 June 1985 and on January 12, 2001. A technical amendment was added on April 16, 2004.

PLAN FOR THE ADMINISTRATION OF THE DISTRICT COURT FUND

A. Creation of the Fund; Purpose of Plan

A District Court Fund was created by the General Rules of this court promulgated on April 13, 1965. Rule 6 A (iii) of those rules required newly admitted attorneys to pay to the Clerk a fee in addition to that established by the Judicial Conference of the United States pursuant to 28U.S.C.§1914. On July 12, 1982 new practice rules were promulgated including General Rule 3.02. General Rule 3.02 replaced the earlier General Rule 6 A (iii) and required in addition to the fee for new attorneys, a fee for attorneys admitted to the trial bar of the court, the receipts from both fees to be deposited in the District Court Fund. This plan is adopted to provide procedures for the administration of funds deposited in the District Court Fund.

B. Advisory Committee

There shall be an advisory committee to advise the court on matters of policy relating to the administration of the fund. The committee shall consist of three judicial officers of the district, the Clerk of the court, and three attorneys. The judicial officers, one of whom shall serve as chairperson, shall be designated by the chief judge and shall include the district judge designated as liaison judge to the William J. Campbell Library. The three attorneys shall be designated by the chairpersons of the District Admissions and the District Performance Assistance Committees.

C. Custodian of the Fund

Pursuant to Internal Operating Procedure 32 the clerk of the court is the custodian of the District Court Fund. In the event of the death, retirement, or resignation of the clerk, the chief deputy clerk, or such other person as the chief judge designates, shall become the custodian until such time as the next clerk assumes office.

D. Duties and Responsibilities of the Custodian

The responsibilities of the custodian are as follows:

(1) to receive, safeguard, deposit, disburse, and account for all funds in accordance with the law, this plan, and the policies established by the court;.
(2) to establish an accounting system for the fund; -
(3) to insure that financial statements and operating reports are prepared in a timely fashion and to sign such statements and reports, thereby certifying that they accurately present the financial condition of the fund;
(4) to sign checks drawn on the fund, which checks shall be countersigned by the chief judge or a judge designated by him/her;
(5) to invest funds in accordance with the provisions of this plan; and
(6) to perform such other functions as may be required by the court.

E. Responsibilities upon Appointment of a Successor Custodian

When a successor custodian is appointed, the outgoing custodian should prepare and. sign the following statements in conjunction with an exit audit or inspection conducted by an auditor or disinterested inspector designated by the chief judge:

(1) a statement of assets and liabilities;
(2) a statement of operations or of receipts and disbursements since the end of the period covered by the last statement of operations and net worth; and

(3) a statement of the balance in any fund accounts as of the date of transfer to the successor custodian.

The successor custodian will execute a receipt for all funds after being satisfied as to the accuracy of the statements and records provided by the outgoing custodian. Acceptance may be conditioned upon an audit and verification where circumstances warrant.

F. Audits and Inspections

The District Court Fund is subject to audit by the appropriate staff of the Administrative Office of the United States Courts or their contracted auditors. The chief judge may appoint an auditor or disinterested inspector (who may be a government employee) to conduct such audits as the court determines to be necessary. The written results of such audit or inspection will be provided to members of the advisory committee, each district judge, and, upon request, any member of the bar of the court.

In the event that the court orders a dissolution of the fund, a terminal audit or inspection will be performed and a written accounting rendered to the court.

G. Protection of the Fund's Assets

Except as otherwise provided in this plan, all receipts will be deposited in banks or savings institutions where accounts are insured by F.D.I.C. or F.S.L.I.C. Where practical and feasible the custodian shall place any substantial sums into interest bearing accounts, government securities, or a money market fund invested in government obligations. Such investment shall be at the direction of the advisory committee. Efforts should be made to maximize the return on investments consistent with the requirements of convenience and safety.

Funds held by the custodian must be segregated from all other monies in the custody of the clerk of the court, including other non-appropriated funds, if any.

H. Limitations on Use of Funds

Monies deposited in the fund must not be used to pay for materials or supplies available from statutory appropriations. Under no circumstances are such monies to be used to supplement the salary of any court officer or employee.

I. Uses of the Funds

In general the monies deposited in the fund are to be used for the benefit of the bench and bar in the administration of justice. Monies deposited in the fund may be used to pay for any of the following:

(1) the expenses related to attorney admission proceedings including expenses of the District Admissions Committee and expenses incurred in admissions ceremonies;
(2) the expenses of the District Performance Assistance Committee;
(3) the expenses related to attorney disciplinary proceedings, including the expenses of investigating counsel, and travel and witness fees in disciplinary proceedings;
(4) the cost of periodicals and publications purchased for the William J. Campbell library if appropriated funds are not available;
(5) the cost of anatomical charts and stands for courtroom use;
(6) the expenses associated with computerization of the library catalogue if appropriated funds are not available;

(7) the expenses associated with creating lawyer lounge facilities;
(8) the expenses of the plan's Advisory Committee;
(9) the expenses incurred by the custodian in performing his/her duties under the plan including the expense of a surety bond covering monies in the fund;
(10) the fees for services rendered by outside auditors or inspectors in auditing or inspecting the records of the fund;
(11) pursuant to the provisions of section J of this plan, the out-of-pocket expenses of attorneys appointed to represent indigent parties in civil proceedings in this court; and
(12) such other expenses as may from time to time be authorized by the full court or the Advisory Committee for the use and benefit of the bench and bar in the administration of justice.

J. Out-of-pocket Expenses in Pro Bono Cases

In a civil case where an attorney is appointed to represent an indigent party. reasonable out-of-pocket expenses not otherwise recoverable may be paid for out of the fund in accordance with regulations adopted by the full court or the Advisory Committee. Application to incur the expense or for reimbursement shall be on a form approved by the Executive Committee and available from the clerk.

Limits on the amounts to be reimbursed from the fund under this section for classes of expenses may be established in regulations adopted by the full court or the Advisory Committee. Except as provided in such regulations, no counsel appointed under LR83.36 of this court shall be reimbursed more than $3,000.00 for expenses incurred on behalf of any single party he or she was appointed to represent and no more than $7,000.00 shall be reimbursed for expenses incurred on behalf of multiple parties represented by appointed counsel in the same case. Only the expenses incurred by court appointed counsel on behalf of specific individuals are covered by this section.

K. Dissolution of the Fund

Should the court decide to dissolve the fund, the custodian will liquidate all outstanding obligations prior to the dissolution, including making provisions for the payment of any fees and expenses resulting from the required terminal audit or inspection. The court will direct the disposition of the assets of the fund in ways which fulfill the purpose of the fund.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

APPENDIX E

THE DISTRICT COURT FUND
REGULATIONS GOVERNING THE PREPAYMENT AND REIMBURSEMENT OF EXPENSES IN PRO BONO CASES

These Regulations were initially promulgated by the Court pursuant to the general order of June 27, 1985. They were amended by the general orders of November 1, 1990 and April 1, 1991. The Advisory Group added policies used in interpreting the Regulations. The policies were initially adopted on May 7, 1986 and amended in September 1992 and January 12, 2001. A copy of the policies is appended to the Regulations.

NOTE: Only counsel appointed by the court pursuant to Local Rule 83.36 are eligible to petition the court for the prepayment or reimbursement of expenses incurred in the preparation and presentation of the proceeding, subject to the restrictions of these regulations.

REGULATIONS GOVERNING THE PREPAYMENT & REIMBURSEMENT OF EXPENSES OF COURT APPOINTED COUNSEL IN PRO BONO CASES FROM THE DISTRICT COURT FUND

D.C.F. REG.1 ELIGIBILITY FOR PREPAYMENT OR REIMBURSEMENT OF EXPENSES

When a trial bar attorney has been appointed, pursuant to LR83.36, to represent an indigent party in a civil proceeding before this Court, that attorney shall be allowed to petition the Court for the prepayment or reimbursement of expenses incurred in the preparation and presentation of the proceeding, subject to the restrictions of these regulations.

D.C.F. REG.2 LIMITATIONS ON ELIGIBILITY.

A. Not Applicable if C.J.A. Funds are Available

In any proceeding where expenses are covered by the Criminal Justice Act (Title 18 U.S.C. §3006A), they shall be paid from such funds in accordance with C.J.A. guidelines and not from the District Court Fund.

B. Limit on Total Expenses Covered by Fund

The judge to whom the case is assigned is authorized to approve prepayments or reimbursements totaling $1,000.00 If the total of the prepayments or reimbursement requested and those already allowed exceed $1,000.00 the judge shall forward the request to the chief judge together with a recommendation. In no event will more than $3,000.00 in such expenses be paid for a party in any proceeding. Where two or more parties in the same proceeding are represented by counsel appointed pursuant to Local Rule 83.36, the limits established by this section shall apply to the costs incurred on behalf of each party, provided that in no proceeding shall the total amount paid from the Fund exceed $7,000.00, regardless of the number of parties so represented.

C. Limited to Civil Actions Before the District Court

Only those expenses associated with the preparation of a civil action in the U.S. District Court for the Northern District of Illinois shall be approved for reimbursement. No costs associated with the preparation or presentation of an appeal to the U.S. Court of Appeals or the U.S. Supreme Court shall be reimbursed from the District Court Fund unless otherwise approved by the Advisory Committee for the Administration of the District Court Fund and the Chief Judge of the U.S. District Court upon prior application by the appointed attorney.

D. Overhead Costs, Costs of Computer Assisted Legal Research, and Costs of Printing Briefs Not Covered

General office expenses, including personnel costs, rent, telephone services, secretarial help, office photocopying equipment, and any general expense that would normally be reflected in the fee charged to a client are not reimbursable from the District Court Fund. Any costs incurred in conducting computer assisted legal research is not reimbursable from the Fund. The expense of printing briefs, regardless of the printing method utilized, is not reimbursable.

E. Not Available to Pay Costs Awarded Against Party

Under no circumstances shall any payments be authorized from the Fund to pay for costs or fees taxed as part of a judgment obtained by an adverse party against a party for whom counsel was appointed pursuant to the rules of this Court.

F. Reimbursement and Prepayment Where Party Prevails

Except as provided by this section, no reimbursement shall be authorized from the Fund in those instances where the party for whom counsel was appointed prevails or accepts a settlement and the amount awarded to or accepted by the party exceeds $2,500.00. Where the amount awarded to or accepted by the party is more than $2,500.00 and no provision is made to cover the expenses incurred by court-appointed counsel that would otherwise be covered by these regulations, prepayments and reimbursements may be authorized within the limits of these regulations, but the total amount to be paid from the Fund shall be the amount authorized by these regulations less fifty cents for each dollar received by the party in excess of $2,500.00.

G. Prepayments in Excess of the Allowable Limits

In any instance where amounts have been prepaid from the Fund and the party for whom counsel was appointed prevails or accepts a settlement and the amount awarded or accepted exceeds $2,500.00, the Clerk will notify court-appointed counsel that the prepaid amounts are to be repaid to the District Court Fund. The Clerk will send a copy of the notice to the assigned judge. On receipt of such notice counsel will promptly remit the amount in excess of the limit.

D.C.F. REG.3 PROCEDURES FOR OBTAINING PREPAYMENTS OR REIMBURSEMENTS

A. Request for Authority to Incur Expense

For those expenses where authority to incur is required prior to incurring them, the request for authority to incur the expense shall be made by motion filed with the judge to whom the case is assigned. The motion shall set forth briefly the reason for the request and the estimated amount of the expense.

B. Request for Prepayment or Reimbursement of Expenses

Any request for the prepayment or reimbursement of expenses shall be on the voucher form approved by the Executive Committee and available on request from the Clerk. The request shall be accompanied by sufficient documentation to permit the court to determine that the request is appropriate and reasonable and, where the request is for reimbursement, that the amounts have actually been paid out. The request shall be filed with the judge to whom the case is assigned. Requests may be made at any time during the pendency of the proceedings and up to thirty days following the entry of judgment in the proceedings. The assigned judge may, for good cause shown, extend the time for filing a request.

C. Requests for Reimbursement by Attorney No Longer Representing Party

Where an attorney appointed under this Court's *pro bono* rules is permitted to withdraw from representing the party in a proceeding and the attorney has incurred expenses which may be reimbursable under these regulations, he or she shall file a request for reimbursement within ninety days of the date of the entry of the order allowing the withdrawal. Except for good cause shown, the court will not allow reimbursement of expenses where the request was filed more than ninety days after the entry of the order of withdrawal.

D. Request May be Made *Ex Parte*

Any request made under sections A, B, or C of this regulation may be made *ex parte.*

E. Action by Assigned Judge and/or Chief Judge

The assigned judge or the chief judge may refuse to permit prepayment or disallow reimbursement of any expense based upon the absence of documentation that such

expense is appropriate or reasonable or, where reimbursement is requested, was actually incurred.

F. Processing by Clerk

On receipt of the voucher form indicating amounts approved for prepayment or reimbursement, the Clerk shall check to determine whether or not any payments had previously been made out of the Fund to cover expenses in the same proceeding. If no such payments had been made, the Clerk shall promptly issue the required check or checks in the amount indicated on the voucher form or the limit set by these regulations, whichever is lower. Where payments had previously been made from the Fund for expenses in the proceedings, the Clerk will check to see if the amounts authorized by the current voucher together with amounts previously paid would require additional approval by the Chief Judge because the total exceeds the limits set by these regulations for amounts approvable by the assigned judge. Where such approval is required, the clerk shall promptly transmit the voucher to the Chief Judge. On receipt of the voucher from the Chief Judge, the Clerk shall promptly issue the required check or checks in the amount indicated on the voucher form or limit set by these regulations, whichever is lower. If the Chief Judge disallowed any or all of the amounts requested, the Clerk shall promptly transmit to the submitting attorney a copy of the voucher showing the action of the Chief Judge.

G. Amounts Paid From Fund To Be Reimbursed From Any Fee Award

Where a fee award is made by a judge to an appointed attorney, the attorney awarded fees shall upon receipt of the monies awarded promptly repay the Fund any amounts paid to him or her under these regulations.

D.C.F. REG.4 EXPENSES AND COSTS COVERED BY REGULATIONS

A. C.J.A. Limits To Apply In Absence Of Specific Limits

Except as specified by these regulations, the amounts and types of expenses covered by these regulations shall be governed by the guidelines for administering the Criminal Justice Act (18 U.S.C. §3006A) (See also *Guide to Judiciary Policies and Procedures,* Volume VII, Section A, Chapters 2 and 3).

B. Deposition and Transcript Costs

The costs of transcripts or depositions shall not exceed the regular copy rate as established by the Judicial Conference of the United States and in effect at the time any transcript or deposition was filed unless some other rate was previously provided for by order of court. Except as otherwise ordered by the court, only the cost of the original of any transcript or deposition together with the cost of one copy each where needed by counsel and, for depositions, the copy provided to the court pursuant to Rule 18 C of the General Rules of this Court, shall be allowed.

C. Travel Expenses

Travel by privately owned automobile may be claimed at the rate currently prescribed for federal judiciary employees who use a private automobile for conduct of official business, plus parking fees, tolls, and similar expenses. Transportation other than by privately owned automobile may be claimed on an actual expense basis. Per diem in lieu of subsistence is not allowable; only actual expenses may be reimbursed. Actual expenses reasonably incurred shall be guided by the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing government travel regulations.

D. Service Of Papers; Witness Fees

Those fees for service of papers and the appearances of witnesses that are not otherwise avoided, waived or recoverable may be reimbursed from the District Court Fund.

E. Interpreter Services

Costs of interpreter services not otherwise avoided, waived, or recoverable may be reimbursed from the District Court Fund.

F. Costs Of Photocopies, Photographs, Telephone Toll Calls, Telegrams

Except as provided by section D of Regulation 2, actual, out-of-pocket expenses incurred for items such as photocopying services, photographs, telephone toll calls, and telegrams necessary for the preparation of a case may be prepaid or reimbursed from the District Court Fund.

G. Other Expenses

Expenses other than those described in sections B through F of this regulation may be approved by the judge to whom the case is assigned. No single expense under this section exceeding $100 shall be reimbursed unless approval was obtained from the judge prior to the expenditure. When requesting reimbursement for any expenses under this section, a detailed description of the expenses should be attached to the petition for reimbursement filed with the judge.

POLICIES ADOPTED BY THE ADVISORY COMMITTEE REGARDING THE REGULATIONS

1) PAYMENT OF EXPENSES UNDER THE PROVISIONS OF SECTION I(12) OF THE PLAN FOR THE ADMINISTRATION OF THE DISTRICT COURT FUND

Monies deposited in the District Court Fund which are to be distributed under the provisions of section I(12) of the *Plan for the Administration of the District Court Fund* may be used to pay expenses incurred in relation to functions:

(a) where the nature of the function is primarily related to the operation of the United States District Court for the Northern District of Illinois, and

(b) where participation in the function is not restricted to members or employees of the United States District Court for the Northern District of Illinois, and/or persons receiving reimbursement of travel expenses from the United States Courts.

2) AUTHORITY OF CUSTODIAN TO MAKE DISBURSEMENTS UNDER THE PROVISIONS OF SECTION I(12) OF THE PLAN FOR THE ADMINISTRATION OF THE DISTRICT COURT FUND

The custodian of the fund shall be authorized to make disbursements up to, but not more than $200.00 per event for expenses for the use and benefit of the bench and bar in the administration of justice, notwithstanding the restrictions of section I, paragraph 12 of the *Plan for the Administration of the District Court Fund* Such disbursements shall be subject to later review and approval by the full court or the District Court Fund Advisory Committee.