

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**LOCAL RULES OF PROCEDURE
FOR CIVIL, CRIMINAL, ADMIRALTY
AND MAGISTRATE PROCEEDINGS**

**EFFECTIVE OCTOBER 31, 1980
(5th Printing - January 1982)**

Extra copies of these Rules are obtainable for \$2.00 each at the offices of the Clerk of the United States District Court, Southern District of New York, Foley Square, New York, New York, 10007.

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UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

GENERAL RULES

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GENERAL RULES

Rule 1. Clerks Office — Court Sessions

(a) The offices of the clerk shall be open from 8:30 a.m. to 5 p.m. and from 9:00 a.m. to 12 noon on Saturdays, and closed on Sundays and legal and court holidays. In cases of emergency, applications may be made to any available judge.

(b) The court shall be open for trials and motions at 10 a.m. and close at 5 p.m. except as otherwise directed by the sitting judge.

Rule 2. Admission to the Bar

(a) A member in good standing of the bar of the state of New York, or a member in good standing of the bar of the United States district court in New Jersey, Connecticut or Vermont and of the bar of the State in which such district court is located, provided such district court by its rule extends a corresponding privilege to members of the bar of this court, may be admitted to practice in this court on compliance with the following provisions:

Each applicant for admission shall file with the clerk of this court, at least ten days prior to hearing thereon (unless, for good cause shown, the judge shall shorten the time), a verified written petition for admission stating: (1) his residence and office address; (2) the time when, and court where, admitted; (3) his legal training and experience; (4) whether he has ever been held in contempt of court, and if so the nature of the contempt and the final disposition thereof; (5) whether he had ever been censured, suspended or disbarred by any court, and if so, the facts and circumstances connected therewith, and (6) that he had read and is familiar with (a) the provisions of the Judicial Code (Title 28, U.S.C.) which pertain to the jurisdiction of, and practice in, the United States district courts, (b) the Rules of Civil Procedure for the district courts; (c) the Rules of Criminal Procedure for the district courts, (d) the Rules of the United States District Court for the Southern District of New York; and (e) that he has read the Code of Professional Responsibility of the American Bar Association, and will faithfully adhere thereto.

The petition shall be accompanied by an affidavit of an attorney of this court who has known the applicant for at least one year, stating when the affiant was admitted to practice in this court, how long and under what circumstances he has known the applicant, and what he knows of the applicant's character and experience at the bar. Such petition shall be placed at the head of the calendar and, on the call thereof, the attorney whose affidavit accompanied the petition shall personally move the admission of the

applicant. If the petition is granted, the applicant shall take the oath of office and sign the roll of attorneys.

(b) A member in good standing of the bar of the United States District Court for the Eastern District of New York may be admitted to the bar of this court without formal application (1) upon filing in this court a certificate of the Clerk of the United States District Court for the Eastern District of New York, issued within 30 days, that he is a member in good standing of the bar of that court and (2) upon taking the oath of office, signing the roll of attorneys of this court, and paying the fee required in this district.

(c) A member in good standing of the bar of any state or of any United States district court, may upon motion be permitted to argue or try a particular cause in whole or in part as counsel or advocate. Only an attorney of this court may enter appearances for parties, sign stipulations or receive payments upon judgments, decrees or orders.

Rule 3. Attorneys of Record and Parties Appearing

(a) No member of the bar of this court not having an office within the Southern or Eastern District of New York shall appear as attorney of record in any cause without designating with his initial notice or pleading a member of the bar of either district having an office within the Southern [or Eastern] District of New York upon whom service of papers may be made.

(b) A party appearing *pro se* shall file with his initial notice of pleading either (1) a designation of an address within the Southern or Eastern District of New York at which service of papers may be made upon him, in which case service may be made upon him at that address in like manner as service may be made upon an attorney or, (2) a designation of the clerk of this court is brought as the person upon whom service may be made, and an address to which the clerk may mail any papers so served upon the clerk. The clerk within three (3) days of the receipt of papers so served shall mail them to the party at that address.

Any application for leave to serve any papers in less than five days before the return day, upon a party who has so designated the clerk, shall contain a statement of such designation.

(c) An attorney who has appeared as attorney of record for a party may be relieved or displaced only by order of the Court and may not withdraw from a case without leave of the Court granted by order. Such an order may be granted only upon a showing by affidavit of satisfactory reasons for withdrawal or displacement and the posture of the case, including its position, if any, on the calendar.

Rule 4. Discipline of Attorneys

(a) The chief judge shall have charge of all matters relating to discipline of members of the bar.

(b) Any member of the bar of this court who shall be convicted of a felony in any federal court, or in the court of any State, Territory, District, Commonwealth or Possession, shall upon notice and opportunity to be heard, be suspended from practice before this court and upon the judgment of conviction becoming final, shall cease to be a member of the bar of this court.

Upon the presentation to the court of a certified or exemplified copy of the judgment of such conviction, the respondent attorney shall be given notice and opportunity to be heard why he (she) should not be suspended from practicing before this court and the attorney may introduce such evidence as was not available at the time of conviction and upon presentation of proof of identity and that the judgment of conviction is final the name of the respondent attorney so convicted shall, by order of the court, be struck from the roll of members of the bar of this court.

(c) Any member of the bar of this court who shall resign from the bar of any federal court or of any State, Territory, District, Commonwealth or Possession while an investigation into allegations of misconduct is pending shall, after notice and opportunity to be heard, cease to be a member of the bar of this court.

Upon the presentation to the court of a certified and exemplified copy of the order accepting such resignation, and no sufficient reason otherwise being shown, the name of the respondent attorney so resigning shall, by order of the court, be struck from the roll of members of the bar of this court.

(d) Any member of the bar of this court who shall be disciplined by any federal court or by State, Territory, District, Commonwealth or Possession, shall after notice and opportunity to be heard, be disciplined to the same extent by this court unless an examination of the record resulting in such discipline discloses (1) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or (2) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this court could not consistently with its duty accept as final the conclusion on that subject; (3) that the imposition of the same discipline by this court would result in grave injustice; or (4) that the misconduct established has been held by this court to warrant substantially different discipline.

Upon the presentation to the court of a certified or exemplified copy of the order imposing such discipline, the respondent attorney so disciplined shall, by order of the court, be disciplined to the same extent by this court, provided, however, that within 90 days of the service upon the respondent attorney of the order of this court disciplining him, either the respondent at-

torney or a bar association designated by the chief judge in the order imposing discipline may apply to the chief judge for an order to show cause why the discipline imposed in this court should not be modified on the basis of one or more of the grounds set forth in this Paragraph (d). The term "bar association" as used in this rule shall mean any one of the following:

- Association of the Bar of the City of New York;
- Federal Bar Association;
- Federal Bar Council;
- Bronx County Bar Association;
- Dutchess County Bar Association;
- New York County Lawyers Association;
- Orange County Bar Association;
- Putnam County Bar Association;
- Rockland County Bar Association;
- Sullivan County Bar Association;
- Westchester County Bar Association.

(e) Any member of the bar of this court who shall be convicted of a misdemeanor, in any federal court or in the court of any State, Territory, District, Commonwealth or Possession, upon such conviction may be after notice and opportunity to be heard, disbarred, suspended or censured, as a member of the bar of this court.

Upon the presentation to the court of a certified or exemplified copy of the judgment of such conviction, the chief judge shall designate a bar association to prosecute a proceeding. The bar association shall obtain an order requiring the respondent attorney to show cause within 30 days after service thereof upon him, personally or by mail, why he should not be disciplined. Upon the filing of such certified or exemplified copy of judgment of conviction, the chief judge, may after notice and opportunity to be heard, for good cause, temporarily suspend the respondent attorney pending the determination of the proceeding. Upon the respondent attorney's answer to the order to show cause, the chief judge may set the matter for prompt hearing before a court of one or more judges, or may appoint a master to hear and report his findings and recommendations. After such a hearing or report, or if no timely answer is made by the respondent attorney or the answer raises no issue requiring a hearing, the court shall take such action as justice may require. In all proceedings hereunder, the certificate of conviction shall constitute conclusive proof of the respondent attorney's guilt of the conduct for which he was convicted.

(f) Any member of the bar of this court who is guilty of fraud, deceit, malpractice; conduct prejudicial to the administration of justice; conduct violative of the Code of Professional Responsibility of the American Bar Association or of any violation of a Disciplinary Rule of the Code of the Professional Responsibility of the New York State Bar Association; or any

other conduct unbecoming of a member of the bar of this court; may be disbarred, suspended or censured.

Complaints alleging that an attorney has been guilty of such conduct shall be presented to the Chief Judge, and if he deems the charges of misconduct of sufficient weight, he shall direct an order together with a statement of charges be served on the respondent to show cause why he should not be disciplined. The Chief Judge may, in his discretion appoint counsel to prosecute the proceeding. Upon the respondent attorney's answer to the petition, the Chief Judge may set the matter for prompt hearing before a court of one or more judges, of which the Chief Judge may be a member, or may appoint a master to hear and report his findings and recommendations. After such a hearing or report, or if no timely answer is made by the respondent attorney or the answer raises no issue requiring a hearing, the court shall take such action as justice may require.

(g) Whenever it appears that an attorney at law admitted to practice in the court of any State, Territory, District, Commonwealth or Possession, is convicted of any crime or is disbarred, suspended or censured in this court, the Clerk shall transmit to the court of any State, Territory, District, Commonwealth or Possession where the attorney was admitted, a certified copy of the judgment of conviction or order of disbarment, suspension or censure and a statement of his last known office and resident addresses.

(h) A visiting lawyer permitted to argue or try a particular cause in accordance with Rule 2(c) who is found guilty of misconduct may be precluded from again appearing at the bar of this court. Upon the entry of an order of preclusion, the Clerk shall transmit to the court of the State, Territory, District, Commonwealth, or Possession where the attorney was admitted to practice, a certified copy thereof, and of the court's opinion.

Rule 5. Duty of Attorneys — Default Sanctions — Imposition of Costs on Attorneys

(a) *Duty of Attorneys.* It shall be the continuing duty of each attorney appearing in any case to bring promptly to the attention of the clerk all facts which he believes are relevant to a determination that his case and one or more other pending cases should, in order to avoid unnecessary duplication of judicial effort, be heard by the same judge. As soon as the attorney becomes aware of such relationship, he shall notify the clerk in writing, who shall transmit that notification to the judges to whom the cases have been assigned.

(b) *Default Sanctions.* Failure of counsel for any party to appear before the court at a conference, or to complete the necessary preparations, or to be prepared to proceed to trial at the time set, may be considered an abandonment of the case or failure to prosecute or defend diligently, and an ap-

propriate order may be entered against the defaulting party either with respect to a specific issue or on the entire case.

(c) *Imposition of Costs on Attorneys.* If counsel fails to comply with Rule 5(a) or a judge finds that the sanctions in subdivision (b) are either inadequate or unjust to the parties, he may assess reasonable costs directly against counsel whose action has obstructed the effective administration of the court's business.

Rule 6. Fees of Clerks and Reporters

(a) The clerk shall not be required to render any service for which a fee is prescribed by statute or by the Judicial Conference of the United States unless the fee for the particular service is paid to him in advance.

(b) Every attorney appearing in any proceeding who orders a transcript of any trial, hearing, or any other proceeding, shall thereby become obligated to pay the cost thereof to the court reporters of this court upon rendition of the invoice unless at the time of such order, the attorney, in writing, advises the court reporter that only his client is obligated to pay. Any attorney who fails to pay as herein provided shall be subject to disciplinary action under Rule 4 of the General Rules.

Rule 7. Photographs, Radio, Recordings, Television

The taking of photographs and the use of recording devices in the courtroom or its environs, except by officials of the Court in the conduct of the court's business, or radio or television broadcasting from the courtroom or its environs, during the progress of or in connection with judicial proceedings or otherwise, whether or not court is actually in session, is prohibited.

Environs as used in this Rule, shall include the entire United States Courthouse at Foley Square, including all entrances to and exits from the said building.

Rule 8. Procedural Questions

Whenever a procedural question arises which is not covered by the provision of any statute of the United States, or of the Rules of Civil Procedure, or of the Rules of the United States District Courts for the Southern District

of New York, it shall be determined, if possible by the parallels or analogies furnished by such statutes and rules. If, however, no such parallels or analogies exist, then the procedure heretofore prevailing in courts of equity of the United States shall be applied, or in default thereof, in the discretion of the court, the procedure which shall then prevail in the Supreme Court or the Surrogates Court as the case may be of the State of New York may be applied.

**UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT
OF NEW YORK
CIVIL RULES**

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CIVIL RULES OF THE DISTRICT COURT

Rule 1. Filing Papers

Unless a judge of this court shall otherwise direct, no paper shall be received for filing unless (1) it is plainly written, a typed ribbon copy, printed, or a usually identical facsimile without erasures or inter-lineations which materially deface it, (2) it bears the index number, if any, assigned to the action or proceeding and (3) it bears endorsed upon the cover the name, office and post office address and telephone number of the attorney of record for the party filing the same.

Rule 2. Address of Party or Original Owner of Claim to be Furnished

A party shall furnish to any other party, within five days after a demand, a verified statement setting forth his post office address and residence, and like information as to partners if a partnership is involved and, if a corporation or an unincorporated association, the names, post office addresses and residences of its principal officers. In the case of an assigned claim, the statement shall include the post office address and residence of the original owner of the claim and of any assignee thereof. Upon non-compliance with the demand, the court, on *ex parte* application, shall order the furnishing of the statement, and in a proper case, on motion, may direct that the proceedings on the part of the non-complying party be stayed, or make such other order as justice requires.

Rule 3. Motions

(a) Except as otherwise provided by statute, rule or order of the court, notice of motion in all actions or proceedings shall be in the time and manner as provided in the Rules of Civil Procedure for the United States District Courts.

(b) Upon any motion the moving party shall serve and file with the motion papers a memorandum setting forth the points and authorities relied upon in support of the motion divided, under appropriate headings, into as many parts as there are points to be determined. The opposing party shall serve and file with the papers in opposition to the motion and an answering memorandum, similarly divided, setting forth the points and authorities relied upon in opposition. Failure to comply may be deemed sufficient cause for the denial of the motion or the granting of the motion by default as the case may be.

(c) The notice of motion, supporting affidavits and memoranda, with proof of due service, shall be served in accordance with the following:

(1) All motions and exceptions under Rules 26 through 37 inclusive of the Rules of Civil Procedure, and under Rules 27 and 30 (insofar as they apply to interrogatories), 31, 32, 32A, 32B and 32C of the Rules of Practice in Admiralty and Maritime Cases, shall be served at least five (5) days before the return day unless otherwise provided by statute or directed by the court. Where such service is made opposing affidavits and answering memoranda of law shall be served no later than noon of the day preceding the return day.

5 days before return

opposing affidavits at no later than noon.

(2) In all other motions and exceptions except those in criminal proceedings, other than as provided in subparagraph (1) hereof; and all writs of habeas corpus other than in criminal proceedings or as 28 U.S.C.A. Sec. 2243 may otherwise require including deportation and exclusion, the notice of motion, supporting affidavits and accompanying memoranda of law shall be served at least ten (10) days before the return day unless otherwise provided by statute or directed by the court. Where such service is made opposing affidavits and answering memoranda shall be served at least three (3) days before the return day.

10 days 3 days

(3) No papers, either in support of or in opposition to the motion, which have not been served as heretofore provided will be accepted for filing or received by the court except upon special permission granted by the court for good cause shown.

(4) No order to show cause to bring on a motion will be granted except upon a clear and specific showing by affidavit of good and sufficient reasons why procedure other than by notice of motion is necessary.

(d) Upon any motion based upon rules or statutes the notice of motion or order to show cause shall specify the rules or statutes upon which the motion is predicated. If such specification has not been made the motion may be stricken from the calendar.

(e) Upon any motion, objections or exceptions addressed to interrogatories, answers to interrogatories or requests for admissions, under Rule 37(a), Federal Rules of Civil Procedure, the moving party shall specify and quote verbatim in the motion papers each interrogatory, answer or request to which the objection or exception is taken and immediately following each specification shall set forth the basis of the objection or exception.

(f) No motion of the type described in subparagraph (1) of subdivision (c) of this rule shall be heard unless counsel for the moving party files with the court at or prior to the argument an affidavit certifying that he has conferred with counsel for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion without the interven-

tion of the court and has been unable to reach such an agreement. If part of the issues raised by motion have been resolved by agreement the affidavit shall specify the issues so resolved and the issues remaining unresolved.

(g) Upon any motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, there shall be annexed to the notice of motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried. Failure to submit such a statement constitutes grounds for denial of the motion.

The papers opposing a motion for summary judgment shall include a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party.

(h) Motions marked off the calendar shall not be restored by consent or stipulation.

(i) The judge may direct the parties to submit, and may determine motions without oral hearing.

(j) A notice of motion for reargument shall be served within ten (10) days after the filing of the court's determination of the original motion and shall be served at least the same number of days before the return day as was required for the original motion. There shall be served with the notice of motion a memorandum setting forth concisely the matters or controlling decisions which counsel believes the court has overlooked. No oral argument shall be heard unless the court grants the motion and specifically directs that the matter shall be reargued orally. No affidavits shall be filed by any party unless directed by the court.

(k) A motion for leave to bring in a third party defendant under Rule 14 of the Federal Rules of Civil Procedure shall be made within six months from the date of service of the moving party's answer to the complaint or reply to the counterclaim, except that motions of this nature may be granted after the expiration of such period in exceptional cases upon showing of special circumstances and of the necessity for such relief in the interest of justice and upon such terms and conditions as the court deems fair and appropriate.

Rule 4. Class Actions

In any action sought to be maintained as a class action:

(a) The complaint shall bear next to its caption the designation "Complaint — Class Action." Comparable designations shall appear on any other pleading (counterclaim or crossclaim) asserting a claim for or against a class.

(b) The complaint (or other pleading asserting a claim for or against a class) shall contain next after the jurisdictional grounds and under the separate heading “Class Action Allegations”:

(1) A reference to the specific part or parts of Rule 23(B), Federal Rules of Civil Procedure, under which it is claimed that the action is properly maintainable as a class action.

(2) Appropriate averments to justify such claim — including, but not necessarily limited to:

(i) the number (or approximate number) of members of the class,

(ii) a description of the members of the class,

(iii) the basis upon which it is claimed that the party asserting the claim will fairly and adequately protect the interests of the class, or, if the claim is asserted against a class, that the named members of the class will fairly and adequately protect the interests of that class,

(iv) the question of law or fact claimed to be common to the class, and

(v) in actions claimed to be maintainable as class actions under subdivision (b) (3) of Rule 23, Federal Rules of Civil Procedure, averments to support the findings required by that subdivision, including those noted under (A), (B), (C) and (D) of the subdivision.

(c) Within sixty (60) days after the filing of a pleading asserting a claim for or against a class, the party asserting that claim shall move for a determination under Rule 23(c) (1), Federal Rules of Civil Procedure, as to whether the action is to be maintained a class action and, if so, the membership of the class. In ruling upon such a motion, the court may allow the action to be so maintained, may disallow and strike the class action averments, or may order postponement of the determination pending discovery or such other preliminary procedures as appear to be appropriate and necessary in the circumstances. Whenever possible, where the determination is ordered to be postponed, a date will be fixed in the order for renewal of the motion.

(d) If the party asserting the claim for or against a class fails to make a timely motion under subsection (c) of this rule, the opposing party shall move, within thirty (30) days after expiration of the time allowed for such a motion, to dismiss the action as a class action. In ruling upon such a motion, the court may grant or deny it in the exercise of its informed discretion, may deny it, but award costs, expenses and counsel fees against the party seeking the maintenance of the claim as a class action or his counsel, or may grant such other relief as may be appropriate in all the circumstances.

Rule 5. Fees in Stockholder and Class Actions

Fees for attorneys or others shall not be paid upon the recovery or compromise in a derivative or class action on behalf of a corporation or class except as allowed by the court after a hearing upon such notice as the court may direct. The notice shall include a statement of the names and addresses of the applicants for such fees and the amounts requested respectively and shall disclose any fee sharing agreements with anyone. The court, in its discretion, may direct that the notice also be given the New York Regional Office of the Securities and Exchange Commission. Where the court directs notice of a hearing upon a proposed voluntary dismissal or settlement of a derivative or class action, the above information as to the applications shall be included in the notice.

(a) *Application for Attorneys' Fees and Expenses Against the United States.* All applications for attorneys' fees and expenses, pursuant to 28 U.S.C. Sec. 2412(d) (1) (B), and all petitions for leave to appeal an agency fee determination, pursuant to 5 U.S.C. Sec. 504(c) (2), must be filed within thirty (30) days after the date of the final judgement of the court or of the agency fee determination. Any response shall be filed within fifteen (15) days after service of such application or petition.

Rule 6. Orders

(a) A memorandum signed by the judge of the decision on a motion that does not finally determine all claims for relief shall constitute the order unless the memorandum directs the submission or settlement of an order in more extended form.

The notation in the appropriate docket of such memorandum, which does not direct the submission or settlement of an order in more extended form, shall constitute the entry of an order. The notation in the appropriate docket of an order in more extended form, as required to be submitted or settled by such memorandum, shall constitute the entry of the order.

(b) No ex parte order shall be granted, unless based upon an affidavit, showing cause therefor, and stating whether a previous application for similar relief has been made.

Rule 7. Form of Orders, Judgments and Decrees

The form of an order, judgment or decree shall be entitled substantially as follows:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAPTION:

Docket No.

The date shall immediately precede the signature of the judge, magistrate, referee or clerk and shall be substantially as follows:

“Dated: New York, New York, July 1, 1980”.

Rule 8. Submission of Orders, Judgments and Decrees

Proposed orders, judgments and decrees shall be presented to the clerk, and not presented directly to the judge. Unless the form of order, judgment or decree is consented to in writing, or unless the court otherwise directs, two-days' notice of settlement is required. One-day's notice is required of all counter-proposals. Unless adopted by the court, such proposed orders, judgments or decrees shall not form any part of the record of the action.

The attorneys causing the entry of an order or judgment shall append to or endorse upon it a list of the names of the parties entitled to be notified of the entry thereof and the names and addresses of their respective attorneys.

Rule 9. Clerk to Sign Certain Orders

The clerk shall sign orders specifically appointing persons 18 years old or over to serve a summons and complaint.

Rule 10. Preparation and Entry of Judgments, Decrees and Final Orders

Upon the verdict of a jury or the decision of a cause by an opinion, memorandum, findings or other direction of the court, a separate document which shall constitute the judgment, decree or final order shall be signed by the clerk and entered. The judgment, decree or final order shall contain no recitals other than a recital of the verdict or any direction by the court upon which such judgment, decree or final order is entered. Unless the judge specifically directs otherwise, the clerk shall promptly prepare the judgment, decree or final order. He shall forthwith sign and enter it, except that where approval by the judge is required by Rule 58, Federal Rules of Civil Procedure, he shall first submit the judgment, decree or final order to the judge, who shall manifest such approval by adding his signature thereto or noting his approval on the margin. The notation in the appropriate docket of the judgment, decree or final order herein provided, whether prepared by the clerk or the attorney, shall constitute the entry of judgment.

Rule 11. Default Judgment

(a) By the clerk. When a party is entitled to have the clerk enter a default judgment pursuant to Rule 55(b)(1), Federal Rules of Civil Procedure, he shall submit with his form of judgment a statement showing the principal amount due which shall not exceed the amount demanded in the complaint, giving credit for any payments and showing the amounts and dates thereof, a computation of the interest to the day of judgment, and the costs and taxable disbursements claimed. An affidavit of the party or his attorney shall be appended to the statement showing: (1) that the party against whom judgment is sought is not an infant or an incompetent person; (2) that he has made default in appearance in the action; (3) that the amount shown by the statement is justly due and owing and that no part thereof has been paid except as therein set forth; (4) that the disbursements sought to be taxed have been made in the action or will necessarily be made or incurred therein. The clerk shall thereupon enter judgment for principal, interest and costs.

(b) By the court. An application to the court for the entry of a default judgment, pursuant to Rule 55(b)(2), Federal Rules of Civil Procedure, shall be accompanied by a certificate of the clerk of the notation of the default, and by a copy of the pleading to which no response has been made.

Rule 12. Taxable Disbursements

A party to whom costs are awarded in an action to foreclose a mortgage on real property is entitled to tax his necessary disbursements for the expenses of searches made by title insurance, abstract or searching companies, or by any public officer authorized to make official searches and certify to the same, or by the attorney for the party to whom costs are awarded, taxable at rates not exceeding the cost of similar official searches.

Rule 13. Stenographic Transcript

Subject to the provisions of Rule 54(d), Federal Rules of Civil Procedure, the expense of any party in necessarily obtaining all or any part of a transcript, for purposes of a new trial, or for amended findings or for appeal shall be a taxable cost against the unsuccessful party at the rates prescribed by the Judicial Conference.

Rule 14. Entering Satisfaction of Judgments or Decrees

Satisfaction of a money judgment recovered or registered in this district shall be entered by the clerk as follows:

(a) Upon the payment into the court of the amount thereof, plus interest, and the payment of the clerk's and marshal's fees, if any;

(b) Upon the filing of a satisfaction piece executed and acknowledged by (1) the judgment creditor; or (2) his legal representatives or assigns, with evidence of their authority; or (3) his attorney if within ten years of the entry of the judgment or decree.

(c) If the judgment creditor is the United States, upon the filing of a satisfaction piece executed by the United States Attorney.

(d) In admiralty, pursuant to an order of satisfaction, but such an order will not be made on the consent of the attorneys only, unless such consent is given within ten years from the entry of the decree to be satisfied.

(e) Upon the registration of a certified copy of a satisfaction entered in another district.

Rule 15. Order of Taking Depositions

After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule (4)(e), Federal Rules of Civil Procedure, except that leave is not required if, (1) a defendant has served a notice of taking deposition or otherwise sought discovery, or, (2) if special notice is given as provided in subdivision (b)(2) of Rule 30, Federal Rules of Civil Procedure. Neither the service of a notice to take the deposition upon oral examination of party or witness, nor the pendency of any such deposition, shall prevent another party, adverse or otherwise, from noticing or taking the deposition upon oral examination of party or witness concurrently with the taking of such deposition noticed or commenced earlier.

Rule 16. Counsel Fees on Taking Depositions in Certain Cases

(a) When a proposed deposition upon oral examination, including a deposition before action or pending appeal, is sought to be taken at a place more than 100 miles from the courthouse, the court may provide in the order therefor, or in any order entered under Rule 30(b), Federal Rules of Civil Procedure, that prior to the examination the applicant pay the expense of the attendance at the place where the deposition is to be taken of one attorney for each adversary party, or expected party including a reasonable counsel fee. The amounts so paid, unless otherwise directed by the Court, shall be taxable cost in the event that the applicant recovers costs of the action or proceeding.

(b) An order pursuant to Rule 27(a) (2), Federal Rules of Civil Procedure, appointing an attorney to represent the absent expected adversary party and to cross-examine the proposed witness, shall fix his compensation to include his expenses; the compensation so fixed shall be paid by the petitioner prior to the appearance of such attorney upon the examination.

Rule 17. Deposition for Use Abroad

A person desiring to take the deposition of a witness who resides or may be found within the district for use in a judicial proceeding pending in a foreign country may apply ex parte to the court for an order designating a commissioner before whom such deposition may be taken. If a person has been appointed to take such deposition by the court in which the action is pending, the court shall designate that person commissioner unless there be good cause for withholding such designation. If no such appointment has been made, the court, if requested, shall designate as commissioner a person authorized to administer oaths by the laws of the United States or of the State of New York.

The entry of such an order constitutes a sufficient authorization for the issuance by the clerk of subpoenas for the persons named or described therein. The Federal Rules of Civil Procedure, so far as applicable, including the provision for punishment for contempt for disobedience of a subpoena, shall govern the taking of such deposition.

Rule 18. Commission to Take Testimony

(a) Except as otherwise provided by law, in all actions or proceedings where the taking of depositions of witnesses or of parties is authorized, the procedure for obtaining and using the same shall be that provided in the Federal Rules of Civil Procedure. The party seeking the deposition shall furnish the officer to whom the commission is issued with a copy of Rules 26(b), (c), 28(c), 30(c), (d), (e) and (f) and 43(b), the Federal Rules of Civil Procedure.

(b) Upon receipt of a deposition the clerk, unless otherwise ordered, shall file it forthwith and give notice thereof by mail to the attorneys for the parties.

Rule 19. Filing of Discovery Items

Parties serving interrogatories or answers thereto or taking depositions shall maintain custody thereof until the same are required by the Court for pretrial or trial purposes.

Rule 20. Masters

(a) Agreement on a master. The parties to a civil action may stipulate in writing for the appointment of a master to report on particular issues, or upon all the issues. The stipulation may suggest the master, in which case the court may appoint the person named. The procedure covering such a reference shall be the same as that governing any other reference to a master.

(b) May sit outside district. A master may sit within or outside the district. Where he is requested to sit outside the district for the convenience of a party and there is opposition thereto by another party, he 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. Such order may be reviewed by the court upon motion of any party, served within ten (10) days after notice to all parties by the master of the making of the order.

(c) Report. The court in passing upon the report of a master in non-jury actions shall be deemed to have adopted the findings of fact enumerated in the report, except where its order rejects the report in its entirety, or except to the extent that specifically rejects enumerated findings.

(d) Fees taxable. 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 party 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 or 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.

(e) Order of reference. Whenever an order of reference to a master is made, the attorney procuring the order shall, at the time of filing thereof, deposit with the clerk a copy to be furnished to the master.

(f) Filing of report. Upon the filing of his report the master shall furnish the clerk with sufficient copies of a notice of filing thereof addressed severally to the parties or their attorneys, to enable the clerk to mail copies to them.

(g) Confirmation etc, of master's 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.

Rule 21. Oath of Master, Commissioner, etc.

Every person appointed master, special master, commissioner, special commissioner, assessor or appraiser shall before entering his duties take and subscribe an oath, which, except as otherwise prescribed by statute or rule, shall be to the effect that he will faithfully and impartially discharge his duties conformably to the order of appointment to the best of his ability and understandings. Such an 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.

Rule 22. Marked Pleadings

(a) Counsel for plaintiff shall at least one day before a case is scheduled actually to go to trial (unless a shorter time is allowed by the judge) supply to the judge designated to preside at the trial a ribbon copy of marked pleadings which shall consist of the following:

(b) a copy of the complaint or libel and of any third party complaint or third party libel briefly indicating in the margin thereof, at each numbered paragraph or article thereof, the manner in which the defendant or respondent, or any third party defendant or respondent impleaded who has filed an answer thereto, treats the allegations contained in said paragraph of the complaint or libel or third party complaint or third party libel;

(c) a complete and accurate copy of each answer filed by the defendant or respondent or any third party defendant or respondent impleaded in the cause, similarly marked in case a reply has been filed;

(d) a complete and accurate copy of each reply filed in the cause.

Rule 23. Six Member Jury Trials in Civil Cases

A jury for the trial of civil cases shall consist of six persons.

Rule 24. Proposed Findings of Fact and Conclusions of Law

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

Rule 25. Custody of Exhibits

(a) Except upon appeal and in proceedings before a master or commissioner, and unless the court orders otherwise, exhibits shall not be filed with the clerk, but shall be retained in the custody of the respective attorneys who produced them in court.

(b) In the case of an appeal or other review by an appellate court, the parties are encouraged to agree with respect to which exhibits are necessary for the determination of the appeal. In the absence of agreement and except as provided in subdivision (c) hereof, a party upon written request of any other party, or by order of the court, shall make available at the office of the clerk all the original exhibits in his possession, or true copies thereof, in order to enable such other party to prepare the record on appeal, at which time and place such other party shall also make available all the original exhibits in his possession. All exhibits made available at the clerk's office which are designated by any party as part of the record on appeal shall thereupon be filed with the clerk, who shall transmit the same together with the record on appeal to the clerk of the Court of Appeals. Exhibits not so designated shall remain in the custody of the respective attorneys who shall have the responsibility of promptly forwarding same to the clerk of the Court of Appeals upon his request.

(c) Documents of unusual bulk or weight and physical exhibits, other than documents, shall remain in the custody of the attorney producing them, who shall permit inspection of the same by any party for the purpose of preparing the record on appeal and who shall be charged with the responsibility for their safekeeping and transportation to the appellate court.

(d) Exhibits which have been filed with the clerk shall be removed by the party responsible for them (1) if no appeal is taken, within ninety (90) days after a final decision is rendered, or (2) if an appeal has been taken, within thirty (30) days after the mandate of the final reviewing court is filed. Parties failing to comply with this rule shall be notified by the clerk to remove their exhibits and upon their failure to do so within thirty (30) days, the clerk may dispose of them as he may see fit.

Rule 26. Removal of Cases from State Courts

(a) A defendant or defendants desiring to remove a civil action or proceeding from a state court in this district shall file in this court a verified petition as required by 28 U.S.C. Sec. 1446, and, except where a bond is not required by law, shall file a bond in the penal sum of \$500.00, conditioned that the defendant or defendants will pay costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removable or was improperly removed.

(b) If the court's jurisdiction is based upon diversity of citizenship (28 U.S.C. Sec. 1332) the petition for removal shall set forth the States of citizenship and residence, address of each party named in the caption and, in the case of a corporation, the State of incorporation and of its principal place of business, regardless of whether service of process has been effected on all parties. If such information or a designated part thereof is unknown to defendant, defendant may so state, and in that case plaintiff within twenty (20) days after removal shall file in the office of the clerk a statement of the omitted information.

(c) Within twenty (20) days after filing the petition and bond, the petitioner shall file with the clerk a copy of all records and proceedings had in the state court.

(d) Upon the entry of an order, remanding the case to the state court, the plaintiff shall deposit with the clerk a copy thereof to be certified and mailed by the clerk to the clerk of the state court.

Rule 27. Transfer of Cases to Another District

In a case ordered transferred from this district, the clerk, unless otherwise ordered, shall upon the expiration of five days mail to the court to which the case is transferred (1) certified copies of the court's opinion ordering the transfer, of its order thereon, and of the docket entries in the case, and (2) the originals of all other papers on file in the case.

Rule 28. Review of Causes; Dismissal for Want of Prosecution

Civil causes which have been pending for more than one year and are not on the trial calendar may be called for review upon not less than fifteen (15) days' notice addressed to the attorneys or proctors of record by mail, by telephone, or in person. Notice of the call of such causes shall be published in the New York Law Journal, or otherwise as the court directs. The court may thereupon enter an order dismissing the cause for want of prosecution, or continuing it, or may make such other order as justice may require.

Rule 29. Actions by or on Behalf of Infants or Incompetents

An action by or on behalf of an infant or incompetent shall not be settled or compromised, or voluntarily discontinued, dismissed or terminated, without leave of the court embodied in an order, judgment or decree. The proceeding upon an application to settle or compromise such an action shall conform, as nearly as may be, to the New York State statutes and rules, but

the court, for cause shown, may dispense with any New York State requirement.

The court shall authorize payment of a reasonable attorney's fee and proper disbursements from the amount recovered in such an action, whether realized by settlement, execution or otherwise and shall determine the said fee and disbursements, after due inquiry as to all charges against the fund.

The court shall order the balance of the proceeds of the recovery or settlement to be distributed as it deems may best protect the interest of the infant or incompetent.

Rule 30. Settlements, Apportionments and Allowances in Wrongful Death Actions

In an action for wrongful death

(a) the court shall apportion the avails of the action only where required by statute;

(b) the court shall approve a settlement only in a case covered by subdivision (a);

(c) the court shall approve an attorney's fee only upon application in accordance with the provisions of the Judiciary Law of the State of New York.

Rule 31. Proceedings to Enjoin Expulsion in Deportation and Exclusion Cases

(a) The Petition or Complaint.

(1) Any application to enjoin an alien's expulsion must be verified and, if made by someone other than the alien, must show either that the applicant has been authorized by the alien to make the application, or that the applicant is the parent, child, spouse, brother, sister, attorney or next friend of the alien.

(2) The application must state in detail why the alien's expulsion is invalid. This shall include a statement (a) describing the irreparable harm the alien will suffer if the application is not granted and (b) setting forth the reasons it is believed the application has a probable chance to succeed on the merits. The application shall also state in what manner the applicable administrative remedies have been exhausted and whether any prior application to the Court for the same or similar relief has been made.

(3) The application shall recite the source of the factual allegations it contains. If the Immigration and Naturalization Service has been requested to grant the alien, his attorney or his representative access to the alien's

records and access has been refused, the application shall state who made the request to review the records, when and to whom it was made, and by whom access was refused. In the event it is claimed that insufficient time was available to examine the alien's records, the application shall state when the alien was informed of his expulsion and why he has been unable to examine the records since that time.

(4) Every application to enjoin the alien's expulsion shall contain the alien's immigration file number and the decision, if any, he seeks the Court to review. In the event this decision was oral, the application shall state the nature of the relief requested, who denied the request, the reasons therefor, and the date the request was denied.

(b) Commencement of the Proceeding.

In any proceeding to enjoin the expulsion of an alien, the original verified petition or complaint shall be filed with the clerk. In addition to service pursuant to Rule 4, Federal Rules of Civil Procedure, a copy of the petition or complaint, and application for a writ of habeas corpus or order to show cause shall be delivered to the United States Attorney prior to the issuance of any writ or order enjoining the expulsion; if the United States Attorney's office is closed, delivery shall be made before 10 A.M. the following business day, unless the Court otherwise directs.

(c) Procedure for Issuance of an Order or Writ

(1) in the event the Court determines to enjoin temporarily an alien's expulsion, it shall (a) briefly set forth why the order of writ was issued, (b) endorse upon the order or writ the date and time it was issued, and (c) set the matter for prompt hearing on the merits.

(2) All orders or writs temporarily enjoining an alien's expulsion shall expire by their terms within such time after entry, not to exceed 10 days, as the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the Government consents to an extension for a longer period.

Rule 32. Service of Writ or Order Enjoining Expulsion of an Alien

(a) In all cases except those described in Rule 32(b), service of the writ or order upon the United States Attorney's office within the time specified by the Court shall be sufficient service to enjoin an alien's expulsion.

(b) After delivery of an alien for expulsion to the master of a ship or the commanding officer of an airplane, the writ or order enjoining the alien's expulsion shall be addressed to and served upon only such master or commanding officer. Notice to the respondent, or the United States Attorney's office, of the allowance of the writ or issuance of the order shall not operate to enjoin an alien's expulsion if the alien is no longer in the Government's

custody. Service of the writ or order may not be made upon a master after his ship has cast off her moorings or upon a commanding officer once the airplane has closed its doors and left the terminal.

Rule 33. Habeas Corpus and Motions Pursuant to 28 U.S.C. Sec. 2255

(a) The petition in all habeas corpus proceedings shall set forth whether or not applications previously have been made for writs or for similar relief, stating to what court or judge they were made, the determination in each case, and any new facts upon the present application that were not previously shown.

(b) The original verified petition shall be filed with the clerk. In addition to the service on the respondent of the writ of habeas corpus or order to show cause why such a writ should not issue in all cases where an official or employee of the United States is respondent, a copy of the petition and writ or order to show cause shall be delivered to the United States attorney prior to issuance of the writ or granting of the order; if the office of the United States Attorney is closed, these papers shall be delivered there before 10 A.M. on the following business day unless otherwise ordered by the Court.

(c) All pro se petitions for writs of habeas corpus by state prisoners and by federal prisoners and all pro se motions under 28 U.S.C. Sec. 2255 by persons in custody shall be deemed to include a petition for leave to appear in forma pauperis and the Clerk is directed to file all such petitions without prepayment of fees, unless the appropriate judge otherwise directs.

Rule 34. Notice of Claim of Unconstitutionality

If, at any time prior to the trial of any action, suit or proceeding, to which neither the United States nor any agency, officer employee thereof is a party, a party draws in question the constitutionality of an act of Congress affecting the public interest, such party (to enable the court to comply with 28 U.S.C.A. Sec. 2403) shall notify the chief judge in writing of the existence of such question, giving the title of the cause, a reference to the questioned statute sufficient for its identification, and the respects in which it is claimed that the statute is unconstitutional.

Rule 35. Three-Judge Court

Whenever upon an application for injunctive relief counsel is of opinion

that the relief is such as may be granted only by a three-judge court, the petition shall so state, and the proposed order to show cause (whether or not continuing a stay), or the notice of motion, shall include a request for a hearing before a three-judge court. Upon the convening of a three-judge court, in addition to the original papers on file, there shall be handed up three copies of the pleadings, three copies of the motion papers and three copies of all briefs.

Rule 36. Publication of Advertisements

All advertisements except notices of sale of real estate or of any interest in land shall, in civil and admiralty causes, be published in a newspaper published in the City of New York and which has a general circulation or a circulation calculated to give public notice of a legal publication. The court may direct the publication of such additional advertisement as it may deem advisable.

Unless otherwise ordered, notices for the sale of real estate or of any interest in land shall be published in a newspaper of general circulation in the county in which the real estate or the land in question is located.

Rule 37. Notice of Sale

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

UNITED STATES DISTRICT COURT
Southern District of New York

NOTICE OF SALE

Pursuant to of the United
(Order or Judgment)
States District Court for the Southern District of New York, filed in the of-
fice of the Clerk of said Court on
(Date)
in the cause entitled
..... the undersigned will sell
at (Name and Docket Number)
(Place of Sale)
on at
(Date and Hour of Sale)
o'clock in this noon the property in
said described and therein
(Order or Judgment)
directed to be sold, to which
(Order 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:

Signature and Official Title

The notice need not describe the property by metes and bounds or other-
wise 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 approx-
imate 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 im-
provements upon the property.

Rule 38. Sureties

(a) Whenever a bond, undertaking or stipulation is required, it shall be sufficient, except in bankruptcy or criminal cases, or as otherwise prescribed by law, if the instrument is executed by the surety or sureties only.

(b) Except as otherwise provided by law, every bond, undertaking or stipulation must be secured by (1) the deposit of cash or government bonds in the amount of the bond, undertaking or stipulation, 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 Southern District of New York, each of whom owns real or personal property within the district worth double the amount of the bond, undertaking or stipulation, over all his debts and liabilities, and over all obligations assumed by him on other bonds, undertakings, or stipulations, and exclusive of all legal exemptions.

(c) In the case of a bond, or undertaking, or stipulation executed by individual sureties, each surety shall attach his affidavit of justification, giving his full name, occupation, residence and business addresses, and showing that he is qualified as an individual surety under subdivision (b) of this rule.

(d) Members of the bar, administrative officers or employees of this court, the marshal, his deputies or assistants, shall not act as surety in any suit, action or proceeding pending in this court.

Rule 39. Approval of Bonds of Corporate Sureties

Except as otherwise provided by law, all bonds, undertakings and stipulations of corporate sureties holding certificates of authority from the Secretary of the Treasury, where the amount of such bonds or undertakings has been fixed by a judge or by court rule or statute, may be approved by the clerk.

Rule 40. Security for Costs

The court, on motion or in its own initiative, may order any party to file an original bond for costs or additional security for costs in such an amount and so conditioned as it may designate. For failure to comply with the order the court may make such orders in regard to non-compliance as are just, and among others the following: an order striking out pleadings or staying further proceedings until the bond is filed or dismissing the action or rendering a judgment by default against the non-complying party.

Rule 41. Appeals

(a) A notice of appeal shall exhibit the names of the several parties to the judgment, and the names and addresses of their respective attorneys of record. Upon the filing of the notice of appeal the appellant shall furnish the

clerk with a sufficient number of copies thereof to enable him to comply with the provisions of Rule 3(a), Federal Rules of Appellate Procedure.

(b) 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 Rule 8(b), Federal Rules of Appellate Procedure, the party making such motion shall deposit with the clerk one additional copy for each surety to be served.

Rule 42. Supersedeas

A supersedeas bond, where the judgment is for a sum of money only, shall be in the amount of the judgment plus 11% to cover interests and such damages for delay as may be awarded, plus \$250 to cover costs and, if eligible under Rule 39, may be approved by the clerk.

When the stay may be effected solely by the giving of the supersedeas bond, but the judgment or order is not solely for a sum of money, the court, on notice, shall fix the amount of the bond. In all other cases, it may, on notice, grant a stay on such terms as to security and otherwise as it may deem proper.

Upon approval a supersedeas bond shall be filed with the clerk, and a copy thereof, with notice of filing, promptly served on all parties affected thereby. If the appellee raises objections to the form of the bond or to the sufficiency of the surety, short notice of a hearing before the court on such objections shall be given.

Rule 43. Remand by an Appellate Court

Whenever an appellate court has remanded a cause or matter to the district court, and further proceedings not requiring the trial of an issue of fact are appropriate, an application with reference thereto, whether made on motion or otherwise, shall be referred for such further proceedings to the judge who heard the cause or matter below unless the appellate court otherwise directs.

Any other order or judgment of an appellate court, when filed in the office of the clerk of the district court, shall automatically become the order or judgment of the district court and be entered as such by the said clerk without further order, except if such order or judgment of the appellate court requires further proceedings in the district court other than a new trial, an order shall be entered making the order or judgment of the appellate court the order or judgment of the district court.

Rule 44. Contempts

(a) A proceeding to adjudicate a person in civil contempt of court, including a case provided for in Rule 37(b) (2) (iv), Federal Rules of Civil Procedure, shall be commenced by the service of a notice of motion or order to

show cause. The affidavit upon which 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 proceedings, may be included as an item of damage. Where the alleged contemnor has appeared in the action by an attorney, the notice of motion or order to show cause and the papers upon which it is based may be served upon his attorney; otherwise service shall be made personally, in the manner provided for by the Federal Rules of Civil Procedure for the service of a summons. If an order to show cause is sought, such order may upon necessity shown therefor, embody a direction to the United States marshal to arrest the alleged contemnor and hold him in bail in an amount fixed by the order, conditioned for his appearance at the hearing, and further conditioned that the alleged contemnor will hold himself thereafter amenable to all orders of the court for his surrender.

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

(c) In the event the alleged contemnor is found to be in contempt of court, an order shall be made and entered (1) reciting or referring to the verdict or findings of fact upon which the adjudication is based; (2) setting forth the amount of damages to which the complainant is entitled; (3) fixing the fine, if any, imposed by the court, which fine shall include the damages found, and naming the person to whom such fine shall be payable; (4) stating any other conditions, the performance whereof will operate to purge the contempt; and (5) directing the arrest of the contemnor by the United States marshal and his confinement until the performance of the condition fixed in the order and the payment of the fine, or until the contemnor be otherwise discharged pursuant to law. Unless the order otherwise specifies, the place of confinement shall be the Metropolitan Correction Center. 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 the non-payment of the fine for a period exceeding six 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) In the event the alleged contemnor shall be found not guilty of the

charges made against him, he shall be discharged from the proceeding and, in the discretion of the court, may have judgment against the complainant for his costs and disbursements and a reasonable counsel fee.

Rule 45. Payment of Fees in Advance

The clerk shall not be required to render any service for which a fee is prescribed by statute or by the Judicial Conference of the United States unless the fee for the particular service is paid to him in advance.

Rule 46. Procedure in Absence of Rule

Whenever a procedural question arises which is not covered by the provisions of any statute of the United States, or of the Federal Rules of Civil Procedure, or of the Rules of the United States District Court for the Southern District of New York, it shall be determined, if possible, by the parallels or analogies furnished by such statutes and rules. If, however, no such parallels or analogies exist, then the procedure heretofore prevailing in courts of equity of the United States shall be applied, or in default thereof, in the discretion of the court, the procedure which shall then prevail in the Supreme Court or the Surrogates Court as the case may be of the State of New York may be applied.

Rule 47. Service of Process

(a) *Service of Process Certified by Registered Mail.* The marshal may serve a summons or other civil process upon all persons within the purview of Rule 4(d) (1) and (3) of the Federal Rules of Civil Procedure by certified or registered mail, provided the delivery is restricted to the addressee. The marshal shall attach to his return on the process the return receipt delivered to him by the Postal Service. Such return receipt shall constitute prima facie evidence of the service of process, but such service shall not be the basis for the entry of a default or a judgment of default unless the person so served has appeared either in person or by counsel. If the person so served fails to appear in person or by counsel in the action or proceeding involved, supplemental service other than by certified or registered mail shall be made as provided by the Federal Rules of Civil Procedure. Consistent with Rule 4(d) (7) of the Federal Rules of Civil Procedure, this local Rule does not apply to persons within the purview of Rule 4(d) (2), (4), (5) and (6) of said Federal Rules, nor does it affect service as provided by Rule 4(e) of the same Rules.

(b) *Personal Service of Process.* All process shall be served by private process servers except for good cause shown or otherwise required by statute or Rule. (see F.R.Civ. P. Rule 4(D) (7)).

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

CRIMINAL RULES

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CRIMINAL RULES

Rule 1. Notice of Appearance

Attorneys representing defendants named in an information or indictment shall file a notice of appearance in the clerk's office and serve a copy on the United States Attorney; or, in cases wherein a complaint has been filed with the United States Magistrate, a notice of appearance shall be filed with him and a copy served on the United States Attorney.

Rule 2. Attendance of Defendants

A defendant in a criminal prosecution admitted to bail shall attend before the court at all times required by the Rules of Criminal Procedure for the United States District Courts, and at any time upon notice from the United States Attorney.

Rule 3. Motions

To curtail undue delay in the administration of criminal justice, this Court may hereafter refuse to hear all motions under Rules 7(f), 15(a), and 16 of the Federal Rules of Criminal Procedure, unless counsel for the moving party certifies to the Court that he has conferred with his adversary in an effort in good faith to resolve by agreement the issues raised by the motion, without the intervention of the Court, and has been unable to reach such an agreement.

Rule 4. Bail Pending Appeal

Application for bail pending appeal shall be made orally upon the clerk's or stenographer's minutes to the trial judge, upon notice. The action taken thereon and the reasons therefor shall be recorded. The judge may direct that the application be made upon notice and written petition setting forth briefly the questions to be reviewed by the appellate court.

Rule 5. Approval of Bail Bonds

In causes wherein the amount of bail has been fixed by the judge, the clerk may approve the bond of a corporate surety holding a certificate of authority from the Secretary of the Treasury, and may approve the bond of

an individual furnishing such bail in cash or Government bonds.

Bail bonds of individual sureties shall be approved by one of the officers specified in 18 U.S.C. Sec. 3041.

Rule 6. Sentence; Sentencing Guidelines; Notification of Rights on Appeal

(a) Sentencing Guidelines

I. The Role of Counsel.

A. Defense Counsel

1. Defense counsel prior to entry of plea or commencement of plea agreement discussions, if any, shall assure himself that the defendant understands the nature and consequences of the plea, sentencing proceedings, and any sentencing alternatives.
2. Defense counsel, on his prompt request, shall be entitled to be present to protect defendant's rights whenever the defendant is interviewed by probation officers regarding a presentence report to the Court.
3. Defense counsel shall timely familiarize himself with the contents of the presentence report, including the evaluative summary, and any special medical psychiatric reports pertaining to his client, and shall freely make sentence recommendations to the Judge.

B. The United States Attorney.

At the defendant's request, the prosecutor shall inform the judge, on the record or in writing, of any cooperation rendered by the defendant to the government; this writing may be submitted by the agency to which cooperation was furnished. The prosecutor shall make specific sentence recommendations to the Judge when requested.

II. The Role of the Probation Officer

In addition to his normal functions in connection with the preparation of the presentence report, the probation officer shall:

1. Attend presentence and sentencing hearings when requested by the Judge;
2. Consult with the Judge regarding any queries which the latter may have;

3. Make specific sentence recommendations to the Judge when requested by the court and
4. Notify counsel that the presentence report has been completed and by the court transmitted to the Judge.

III. Notification of Rights on Appeal

(a) After imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of his right to appeal and other rights in that connection as set forth in and required by Rule 32(a)(2), F.R. Crim. P. (1966). If the defendant at that time indicates to the court that he desires to appeal the judgment of conviction, the Court shall direct trial counsel for defendant or the clerk of the court to file a timely notice of appeal on defendant's behalf. The court at that time shall also entertain either or both of the following applications:

- (1) application of defendant to appeal in forma pauperis;
- (2) application for transcription of all or portions of the trial record at public expense.

Alternatively, the court may direct that such applications be made at a later date in writing. The court shall also advise defendant and his trial counsel that the latter is not relieved from his representation of defendant until the Court of Appeals so directs.

(b) In connection with the foregoing proceedings, the court in appropriate circumstances may direct the clerk to furnish defendant with a notice of appeal form, together with a form for application for leave to appeal in forma pauperis and for a transcript of all or a part of the trial proceedings at public expense.

Rule 7. Free Press—Fair Trial Directives

(a) It is the duty of the lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by means of public communication, in connection with pending or imminent criminal litigation with which a lawyer or a law firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice. With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a

suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

From the time of arrest, issuance of an arrest warrant or the filing of a complaint, information, or indictment, in any criminal matter until the commencement of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication, relating to that matter and concerning:

- (1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status; and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his apprehension or to warn the public of any dangers he may present;
- (2) The existence or contents of any confession, admission or statement given by the accused, or the refusal or failure of the accused to make any statement;
- (3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;
- (4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;
- (5) The possibility of a plea of guilty to the offense charged or a lesser offense;
- (6) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of his or its official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him.

During a jury trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or

defense shall give or authorize any extrajudicial statement or interview, relating to the trial or the parties or issues in the trial which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that the lawyer or the law firm may quote from or refer without comment to public records of the court in the case.

Nothing in this Rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him.

(b) All court supporting personnel, including among others, marshals, deputy marshals, court clerks, bailiffs and court reporters and employees or subcontractors retained by the court appointed official reporters, are prohibited from disclosing to any person, without authorization by the court, information relating to a pending grand jury proceeding or criminal case that is not part of the public records of the court. The divulgence of information concerning grand jury proceedings, in camera arguments and hearings held in chambers or otherwise outside the presence of the public is also forbidden.

(c) In a widely publicized or sensational case, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order.

**UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT
OF NEW YORK**

ADMIRALTY RULES

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RULES FOR ADMIRALTY AND MARITIME CLAIMS

Rule 1. Application

These rules apply to the procedure in the claims governed by the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure for the United States Courts.

Rule 2. Summons to Show Cause Why Funds Should not be Paid into Court

A summons issued pursuant to Rule C(3) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Rules of Procedure for the United States District Courts, dealing with freight or the proceeds of property sold or other intangible property, shall direct the person having control of the funds, at a date fixed thereby which shall be at least 10 days after service thereof (unless the court, for good cause shown, shortens the period) to show cause why said funds should not be paid into court to abide the judgment.

Rule 3. Publication: Sale

(a) The notice required by Rule C(4) of the Supplemental Rules of Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure shall be published at least once and shall contain the fact and date of the arrest, the title of the cause, the nature of the action, the amount demanded, the name of the marshal, the name and address of the attorney for the plaintiff, and a statement that claimants must file their claims with the clerk of this court within ten days after the arrest or within such additional time as may be allowed by the court and must serve their answers within twenty 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.

(b) When the res 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 the property, not perishable, arrested under process in rem, unless publication of notice of arrest in that cause shall have been duly made.

(c) Except in the event of private sale pursuant to 28 U.S.C. Secs. 2001 and 2004, or unless otherwise ordered as provided by law, notice of sale of the property after condemnation in suits in rem shall be published daily for at least six days before sale.

(d) No sale of the res shall be ordered by interlocutory judgment before the sum chargeable thereon is fixed by the court, except by consent of the parties or by order of the court.

(e) A private sale of the res may be ordered by the Court in accordance with 28 U.S.C. Secs. 2001 and 2004.

Rule 4. Property in Possession of Collector

(a) In suits in rem when the res is in the custody of the collector of customs the marshal shall, in addition to the publication of the process provided for by Rule 3, 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.

(b) In case the collector is not found within the district, then a copy of such process and notice shall be delivered to the custodian of the property within the district.

(c) Notice of the arrest shall also be given to the owner or his agent if found within the district and, if the owner or his agent cannot be found within the district or if such owner or agent be unknown, then the publication of such notice shall be deemed sufficient, unless the court shall otherwise direct.

Rule 5. Suits in Forma Pauperis

Unless allowed by the court, no process in rem shall issue in forma pauperis suits except upon proof of twenty-four hours' notice to the owner of the res or his agent, of the filing of the complaint.

Rule 6. Security for Costs

No complaint in an action provided for in Rule D or Rule F of the Supplemental Rules of the Federal Rules of Civil Procedure shall be filed, except on the part of the United States, or on the special order of the court, unless the party offering the same shall file a stipulation in the sum of \$250 for costs, conditioned that the principal shall pay all costs awarded by the court, and, in case of appeal, by any appellate court, against him, it or them. In lieu of a stipulation the party may deposit the necessary amount in the registry of the court.

Rule 7. Stipulations

(a) 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 and that thereupon execution may issue against their goods, chattels, lands, and tenements or other real estate.

(b) Where the party offering a stipulation for costs resides or has a place of business within the Southern or Eastern District of New York, one surety shall be sufficient, if a resident of either district.

Rule 8. General or Standing Stipulations

Whenever the owner or owners of any vessel shall execute and deliver to the clerk a general bond or stipulation as provided by Rule E(5) (b) of said Supplemental Rules of the Federal Rules of Civil Procedure, 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.

Rule 9. Stipulators, Justification by

(a) Stipulators may justify on short notice before the clerk, a commissioner, or a notary public, who, if required by the opposite party, shall examine the sureties under oath as to their sufficiency, and annex their depositions to the bond or stipulation.

(b) In all cases where the surety or 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 attorneys, reasonable notice of application for approval by a judge shall be given. In the absence of the judges, the approval of the clerk, on like notice, shall be sufficient.

Rule 10. Attachments

(a) 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 due return thereof by the marshal the plaintiff, on proof satisfactory to the court that the property belongs to the defendant, may proceed to a hearing and final judgment in the cause.

(b) In actions in rem, process against freight or proceeds of property in possession of any person, may be served in like manner.

(c) In any action where any property of a defendant is attached, the plaintiff shall give prompt notice to the defendant of the attachment. Such notice shall be in writing, and may be given by telex, telegram or cable. Failure to give such notice may be regarded as an improper practice within the meaning of Rule 12.

Rule 11. Appraisements and Appraisers

(a) In case of seizure of property in behalf of the United States, an appraisal for the purpose of bonding the same may be had by any party in interest, on giving one day's previous 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 previous notice.

(b) Orders for the appraisal of property under arrest or attachment at the suit 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 their respective parties.

(c) Only one appraiser is to be appointed, unless otherwise ordered, and, if the respective parties do not agree in writing upon the appraiser to be appointed, the judge shall name him.

(d) 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 when made shall be filed with the clerk.

Rule 12. Summary Release From Arrest or Attachment

Where property is arrested or attached, any person claiming an interest in the property arrested or attached, may upon a showing of any improper practice or a manifest want of equity on the part of the plaintiff be entitled to an order requiring the plaintiff to show cause forthwith why the arrest or attachment should not be vacated, or other relief granted consistent with these rules or the Supplemental Rules. This rule shall have no application to suits for seamen's wages when process is issued upon a certificate of suffi-

cient cause filed pursuant to Sections 4546 and 4547 of the Revised Statutes (Title 46 U.S. Code, Sections 603 and 604).

Rule 13. Judicial Sale, Return of, by Marshal

(a) 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 thereon and a statement of the time of receipt of the money and upon the filing of the statement and the taxation of the charges 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) Wharfage, storage and like charges which accrue while the vessel or other property is in the marshal's custody shall not be included in the marshal's bill of charges, except by consent of all interested parties, lienors who have appeared, or their attorneys. If such charges are not consented to in the marshal's bill, they may be claimed by petition filed, unless otherwise ordered, not later than ten days after sale of the vessel or other property, against the proceeds or against any party claimed to be responsible therefor. The wharfinger or other person entitled to such charges shall be given notice of settlement of the final judgment and order of distribution of proceeds.

Rule 14. Claims After Sale, How Limited

In proceedings in rem, claims upon the proceeds of sale of property under a final 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.

Rule 15. Rules for Summary Determination on Consent of Admiralty and Maritime Claims Not Exceeding \$25,000.

(a) These rules shall apply to admiralty and maritime claims within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and which do not exceed \$25,000. They shall not apply to personal injury or death claims, nor to claims for maintenance and cure, wages or wage penalties, and claims of a similar nature.

(b) Claims subject to these rules may be submitted for summary deter-

mination on consent in accordance with these rules by filing a stipulation for a summary determination with the Judge assigned to the cause.

(c) Testimony may be presented by the personal attendance of witnesses, by deposition, by stipulation of facts, by documentary evidence, by affidavits and by any other papers which may be considered on a motion for summary judgment pursuant to Rule 56(c) of the Federal Rules of Civil Procedure provided that the determination and the form of such affidavits shall not be subject to the rule governing summary judgment. Copies of affidavits and documents to be offered in evidence will be submitted with the consent order for summary determination.

(d) Proceedings under these rules shall not be governed by the rules of evidence and the court may consider copies of documents stated to be accurate by counsel in place of the originals, although the court may apply such rules of evidence in its discretion.

(e) The procedure to be followed in obtaining a summary determination shall be prescribed in each case at a preliminary conference before the Judge assigned to the cause.

(f) The Court's determination shall not be subject to review on appeal, except as to any specific questions of law which counsel have requested the court to decide.

(g) Findings of fact and conclusions of law need not be made in a proceeding for summary determination and are deemed waived, unless a question of law is involved in accordance with the provisions of Rule (f) of these rules. In such cases proposed findings of fact and conclusions of law shall be made.

Rule 16. Funds: Interest Bearing Accounts

Except for funds which are received as security for costs, funds which come into the custody of the Court under these Rules or under the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure shall, unless otherwise ordered by the Court, be placed in a separate account, accruing interest thereon, in an insured bank which is permitted by law to act as a depository of public money of the United States.

**UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF
NEW YORK**

MAGISTRATES RULES

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RULES FOR PROCEEDINGS BEFORE MAGISTRATES

1. All full-time magistrates shall have jurisdiction to discharge the duties set forth in 28 U.S.C. Sec. 636.

2. All full-time magistrates shall have jurisdiction to discharge the duties set forth in 18 U.S.C. Sec. 3401. Unless there is a pending related indictment before a district judge, the Clerk shall automatically refer all misdemeanor cases initiated by information or indictment or transferred to this District under Rule 20 of the Federal Rules of Criminal Procedure to a magistrate for arraignment.

3. The part-time magistrates at Poughkeepsie shall have jurisdiction to discharge the duties set forth in 28 U.S.C. Sec. 636(a).

4. Matters arising under 28 U.S.C. Secs. 2254 and 2255 or challenging the conditions of the confinement of prisoners may be referred to a magistrate by the judge to whom the case has been assigned. A magistrate may perform any or all of the duties imposed upon a judge by the rules governing such proceedings in the United States District Courts. In so doing, a magistrate may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for disposition of the matter by the judge. Any order disposing of the petition may only be made by a judge.

5. A petition by the government for trial of a misdemeanor before the District Court pursuant to 18 U.S.C. Sec. 3401(f) shall be filed prior to arraignment of the defendant.

6. Magistrates may issue subpoenas, writs of habeas corpus ad testificandum or ad prosequendum or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings, either civil or criminal.

7. A magistrate shall mail copies of any determination made pursuant to 28 U.S.C. Sec. 636(b)(1)(A), or any findings and recommendations made pursuant to 28 U.S.C. Sec. 636(b)(1)(B) to all parties who shall have ten days from the date of mailing within which to serve on the opposing parties and to file with the magistrate and the judge to whom the case has been assigned written objections to such determinations, findings and recommendations. Such objections shall set forth with specificity the matters objected to.

8. (a) When a civil action is filed with the Clerk, he shall give the filing party notice of the magistrate's consent jurisdiction in a form approved by the Court, with sufficient copies to be served with the complaint on adversary parties. A copy of such notice shall be attached to any third-party complaint served by a defendant.

(b) The consent form shall not be accepted for filing unless it has been signed by all parties to the action who have been served. Pursuant to 28

U.S.C. Sec. 636(c)(2) no attempt shall be made to persuade or induce any party to consent to the reference of any matter to a magistrate. This rule, however, shall not preclude a judge or magistrate from informing the parties that they may have the option of referring the case to a magistrate.

(c) When a completed form has been filed, the Clerk shall draw by lot the name of a magistrate, unless a magistrate has previously acted in the matter, and forward the consent form with the name of such magistrate for final approval to the judge to whom the case is assigned. When the Judge has approved the transfer and returned the consent form to the Clerk's Office for filing, the Clerk shall forward a copy of the consent form to the magistrate to whom the case is assigned. The Clerk shall also indicate on the file the name of the magistrate to whom the case has been assigned.

(d) The magistrate may hear and determine any and all pretrial and post-trial matters which are filed by the parties, including case-dispositive motions in a case which has been assigned upon consent of the parties.

(e) Appeals, if made to the district court, from a magistrate's judgment shall be heard by the judge to whom the case was originally assigned.

9. Pursuant to 18 U.S.C. Sec. 3184 all magistrates are empowered to issue warrants for the apprehension of persons and conduct hearings and consider the evidence in the extradition proceedings referred to therein.

10. All magistrates are authorized to entertain ex parte applications by appropriate representatives of the United States Government for the issuance of administrative inspection orders or warrants or orders authorizing the use of so-called "pen register" devices by the Department of Justice.

11. (a) A person who is charged with a petty offense as defined in 18 U.S.C. Sec. 1(3), or with violating any regulation promulgated by any department or agency of the United States Government, may, in lieu of appearance, post collateral in the amount indicated in schedules filed in the office of the Clerk of this court, waive appearance before a United States magistrate, and consent to forfeiture of collateral.

(b) For all other petty offenses the person charged must appear before a magistrate.

12. Except as provided in Rule 8(a), (b) and (c), matters and cases referred to a magistrate by a District Judge shall be sent to the Administrative Magistrate to be assigned in sequence of regular rotation, except that the referring District Judge may indicate the magistrate to whom the judge wishes the matter to be referred, in selected cases. The Administrative Magistrate may adjust the rotation to maintain reasonable equality in the relative work levels of the available magistrates.

13. Any case referred to a magistrate by a District Judge for general pretrial supervision shall confer on the magistrate the jurisdiction set forth in 28 U.S.C. Sec. 636(b)(1)(A) unless specifically stated otherwise in the order of reference.

14. *Appeal from Judgments in Civil Cases Disposed of on Consent of the Parties* — 28 U.S.C. Section 636(c)

1. *Appeal to the Court of Appeals.*

Upon the entry of a judgment in any civil case disposed of by a magistrate on consent of the parties under authority of 28 U.S.C. Section 636(c) an aggrieved party may appeal directly to the United States Court of Appeals for this circuit in the same manner as an appeal from any other judgment of this court.

2. *Appeal to a District Judge.*

A. *Notice of Appeal.*

In accordance with 28 U.S.C. Sec. 636(c)(4), the parties may consent to appeal any judgment in a civil case to be disposed of by a magistrate to the district judge to whom the case was initially assigned, rather than directly to the court of appeals. In such case the appeal shall be taken by filing a notice of appeal with the clerk of the district court within thirty (30) days after entry of the magistrate's judgment; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within sixty (60) days of the judgment. A notice of cross appeal shall be filed within fourteen (14) days after the first timely notice of appeal was filed. For good cause shown, the magistrate or the judge may extend the time for filing the notice of appeal or cross appeal for an additional twenty (20) days. Any request for such extension, however, must be made before the original time period for such appeal has expired.

B. *Record on Appeal*

The record on appeal shall comply with the provisions of Rules 10 and 11 of the Federal Rules of Appellate Procedure.

C. *Briefs.*

The appellant shall within twenty (20) days of the filing of the notice of appeal file a typewritten brief with the clerk of the district court together with two (2) additional copies, stating the specific facts, points of law, and authorities on which the appeal is based. The appellee shall file an answering brief within fifteen (15) days of the filing of the appellant's brief. The appellant may serve and file a reply brief within seven (7) days after service of appellee's brief and at least three (3) days before any scheduled argument. The court may extend these time limits upon a showing of good cause

made by the party requesting the extension. Such good cause may include reasonable delay in the preparation of any necessary transcript. If an appellant fails to file his brief within the time provided by this rule, or any extension thereof, the court may dismiss the appeal.

D. *Oral Argument.*

After the appellee's brief has been filed, the chambers of the district judge will inform the parties of the time and place of any oral argument. By agreement of the parties and the judge, cases may be submitted for decision without oral argument.

E. *Disposition of the Appeal by a Judge.*

The judge shall consider the appeal on the record, in the same manner as if the case had been appealed from a judgment of the district court to the court of appeals and in accordance with the provisions of 28 U.S.C. Section 636(c)(4).

F. *Rehearing.*

A petition for rehearing must be filed within seven (7) days after judgment is entered on the appeal.

**UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK**

**RULES FOR THE DIVISION OF BUSINESS AMONG DISTRICT
JUDGES OF THE SOUTHERN DISTRICT OF NEW YORK
PURSUANT TO TITLE 28 U.S.C. Sec. 137**

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RULES FOR THE DIVISION OF BUSINESS AMONG DISTRICT JUDGES OF THE SOUTHERN DISTRICT OF NEW YORK PURSUANT TO TITLE 28 USC §137

These rules are adopted for the internal management of the case load of the Court and shall not be deemed to vest any rights in litigants or their attorneys and shall be subject to such amendments from time to time as shall be approved by the Court.

Rule 1. Individual Assignment System

This court shall operate under an individual assignment system to assure continuous and close judicial supervision of every case. Each civil and criminal action and proceeding, except as otherwise provided herein, shall be assigned by lot to one judge for all purposes. The system shall be administered by an Assignment Committee in such a manner that all active judges, except the Chief Judge, shall be assigned substantially an equal share and kind of the work of the court over a period of time. There shall be assigned or transferred to the Chief Judge such matters as the Chief Judge is willing and able to undertake, consistent with his administrative duties.

Rule 2. Assignment Committee

An Assignment Committee is hereby established for the administration of this assignment system. The Committee shall consist of the Chief Judge and two other active judges selected by him, each to serve for one year. The Chief Judge shall also select two other active judges, each to serve for a period of one year, as alternate members of the Committee.

The Assignment Committee shall supervise and rule upon all problems relating to assignments under this system, in accordance with these rules, as amended from time to time by the board of judges.

Rule 3. Part I

A Part I is hereby established for hearing and determining certain emergency and miscellaneous matters in civil and criminal cases and for processing criminal actions and proceedings through the pleading stage.

Judges shall choose assignment to Part I from an appropriate schedule, in order of their seniority, for periods not to exceed three weeks in each year. The Assignment Committee may, on consent of the judges affected, change

such assignments, if necessary, to meet the needs of the court.

Part I shall be open from 10 A.M. to 5 P.M. Monday through Friday except on Holidays and a Magistrate shall be available at the courthouse on Saturdays up to 12 Noon. The judge presiding in Part I shall be available for emergency matters.

The Judge presiding in Part I may fix such other times for any proceeding before him as he deems necessary.

Rule 4. Civil Actions or Proceedings (Filing and Assignment)

(A) *Filing with the Clerk*

All Civil actions and proceedings shall be numbered consecutively by year upon the filing of the first document in the case.

When a complaint or the first document is filed in a civil action or proceeding, counsel shall complete and file an information and designation form, in triplicate, indicating: (1) the title of the action; (2) the residence address and county of each plaintiff and defendant; (3) the basis of federal jurisdiction; (4) whether the action is a class action; (5) a brief statement of the nature of the action and amount involved; (6) whether the action is related to any other action pending in this court or whether there was an earlier filed action alleging a substantially identical claim and, if so, the docket number and name of the judge assigned to the related or earlier filed action; (7) the category of the case; (8) the name of the sentencing judge, if brought under Title 28, United States Code, Section 2255; and (9) the name, address, and telephone number of the attorney of record and of his firm, if any. Forms for this purpose will be on file in the office of the Clerk of the court and shall be furnished to counsel.

(B) *Assignment by the Clerk by Lot*

All civil actions and proceedings, except applications for leave to proceed *pro se* in *forma pauperis*, upon being filed and all appeals from the Bankruptcy Court upon being docketed in this Court shall be assigned by lot within each designated category to one judge for all purposes.

An action, case or proceeding may not be dismissed and thereafter refiled for the purpose of obtaining a different judge. If an action, case or proceeding, or one essentially the same, is dismissed and refiled, it shall be assigned to the same judge. It is the duty of every attorney appearing therein to bring the facts of the refiled to the attention of the clerk.

Rule 5. Civil Proceedings in Part I

Admissions to the Bar and civil matters other than emergencies shall be heard on Tuesdays commencing at 10 A.M. Naturalization proceedings shall be conducted on Wednesday, commencing at 10:30 A.M.

(1) *Miscellaneous Civil Matters.*

The judge presiding in Part I shall:

Hear and determine all miscellaneous proceedings in civil matters, such as application for naturalization, for admission to the bar, for relief relating to orders and subpoenas of administrative agencies and shall purge jurors in the Central Jury Part as and when required. When a modification or further action on such determination is sought, it shall be referred to the judge who made the original determination even though he is no longer sitting in Part I.

(2) *Civil Emergency Matters.*

The Part I judge shall hear and determine all emergency matters in civil cases which have been assigned to a judge when the assigned judge is absent or has expressly referred the matter to Part I because he is unavailable due to extraordinary circumstances. Depending on which he deems the more efficient, the Part I judge may either dispose of an emergency matter only to the extent necessary to meet the emergency, or on consent of the assigned judge and notice to the Clerk, transfer the action to himself for all further proceedings.

(3) *Subsequent Emergency Proceedings.*

If a civil emergency matter is brought before the Part I judge and he concludes that for lack of emergency or otherwise the proceeding should not be determined by him the party who brought the proceeding shall not present the same matter again to any other Part I judge unless relevant circumstances have changed in the interim in which case he shall advise the judge of the prior proceedings and changed circumstances.

Rule 6. Criminal Actions or Proceedings (Filing and Assignment)

(A) *Filing with the Clerk*

All criminal actions shall be numbered consecutively by year upon the filing of the indictment or information. The number of a superseding in-

dictment or information shall be preceded by the letter "S".

When an indictment or information is filed, the United States Attorney shall simultaneously file the original and two copies of the indictment or information. He shall also supply an information and designation form, in triplicate, indicating: (1) the category of crime charged and the number of counts; (2) the maximum penalty for each count; (3) a statement as to whether the defendant is in custody and, if so where; (4) the name and telephone extension of the Assistant United States Attorney in charge of the case; and (5) all other data required by the information and designation form.

(B) Assignment, to Part I Initially

All criminal actions and proceedings, including extradition proceedings, except those referable to a magistrate, shall be assigned in the first instance to the judge presiding in Part I for preliminary processing through the pleading stage, after which the case shall be assigned by lot to one judge for all further proceedings.

Rule 7. Criminal Proceedings in Part I.

Indictments may be returned by the Grand Jury to the Magistrate presiding in the Criminal Part, in open court. Alternatively, indictments may be returned in Part I by the Grand Jury whenever Part I is open. Other criminal matters and proceedings brought before Part I shall be conducted on Thursdays of each week, commencing at 10 A.M.

The judge presiding in Part I shall:

(1) Conduct all preliminary criminal proceedings, such as empanelling the grand jury, receiving indictments, accepting or rejecting offers to waive indictment, appointing counsel, taking all pleas, setting or reviewing bail, and assigning criminal cases to judges by lot.

(2) Hear and determine, except for matters referable to a magistrate, all proceedings in criminal actions before the entry of a plea, except as hereinafter provided in Rule 8(C), 8(D) and 8(E).

(3) Hear and determine all emergency matters in criminal cases which have been assigned to a judge when the assigned judge is absent or has expressly referred the matter to Part I because he is unavailable due to extraordinary circumstances.

(4) Hear and determine all matters relating to proceedings before the Grand Jury. When a modification or further action on such determination is sought, however, it shall be referred to the judge who made the original determination even though he is no longer sitting in Part I.

Rule 8. Arraignments and Assignments by Part I.

(A) *Calendaring of Pleas.*

All criminal actions shall be placed upon the criminal calendar of Part I for arraignment and pleading on the last Thursday occurring within ten days of (1) the filing of an indictment or information; (2) the opening of a sealed indictment or information; or (3) the date the defendant has been ordered held to answer on an indictment or information and has appeared before a judicial officer of this district. If the matter is instituted by waiver of indictment and the filing of an information, the action shall be placed on the Thursday calendar for waiver and pleading.

(B) *Assignment Upon Plea of Not Guilty.*

If the defendant pleads not guilty, or if the entry of such a plea is directed, the case shall be assigned forthwith by lot, in open court, to a judge for all further proceedings, and the defendant and his attorney advised of the name of the judge and informed that they will be notified by the Minute Clerk of the assigned judge when and where to appear. The docket number shall be stamped on the card drawn and shall be preserved.

(C) *Assignment Upon Plea of Guilty.*

Except as hereinafter provided in Rule 8(D) below, if a defendant pleads guilty before the judge presiding in Part I, the action shall be assigned forthwith to that judge for sentence and for all further proceedings if any.

(D) *Assignment Upon Mixed Pleas in Multiple Defendant Cases.*

When an indictment names multiple defendants and a not guilty plea is made by, or directed as to, one of them, the entire case shall be assigned to a judge by lot, including the plea and sentence of any defendant who offers to plead guilty.

(E) *Assignment Upon Failure to Plead.*

If a defendant does not plead at the required time, whatever the reason, the judge presiding in Part I shall assign the action to a judge by lot and issue a bench warrant or other appropriate order.

(F) *Assignment of Superseding Indictments and Informations.*

All superseding indictments and informations shall be assigned directly and immediately for the entry of a plea and all further proceedings to the same judge to whom the original indictment or information was assigned.

Rule 9. Cases Certified for Prompt Trial or Disposition.

Immediately after assignment to a judge, all civil and criminal actions shall be screened by the Assignment Committee for the purpose of identifying cases which are likely to be subject to delays and which, because of exceptional and special circumstances, demand extraordinary priority, prompt disposition, and immediate judicial supervision in the public interest.

When a case has been so identified by the Assignment Committee, the Committee shall certify that the case requires extraordinary priority and a prompt trial or other disposition within sixty (60) days and shall so advise the judge to whom the case has been assigned. The judge so assigned shall forthwith advise the Assignment Committee whether he can accord the case the required priority. In the event the judge so assigned shall advise the Assignment Committee that he cannot accord the required priority, the case shall immediately be assigned to another judge by lot and the same procedure followed until the case is assigned to a judge able to accord it the required priority. The name of the judge to be so assigned in place of the judge initially assigned shall be drawn by lot in the same manner as all other civil and criminal actions are initially assigned.

Rule 10. Motions

(A) *Civil Motions.*

All civil motions shall be made within the time required by the Federal Rules of Civil Procedure and the Civil Rules of this Court. Motions shall be made returnable before the assigned judge.

(B) *Criminal Motions.*

All motions in criminal actions shall be made returnable before the assigned judge at such time as he directs. All criminal motions must be made within the time required by the Federal Rules of Criminal Procedure and the Criminal Rules of this Court, except that the time for motions otherwise required by such rules to be made before the entry of a plea shall be made within ten (10) days after the entry of a plea, or at such other time as the assigned judge directs.

Rule 11. Assignment of Pro Se Petitions for Collateral Relief from Convictions

(A) *Federal Convictions.*

When a pro se motion for collateral relief under 28 U.S.C. § 2255 is

filed, the Pro Se Clerk shall first ascertain whether the petition is in proper form and, if not, take appropriate steps to have it corrected. Thereupon, the petition shall be submitted forthwith for all further proceedings to the judge who accepted the plea or sentenced the defendant, whichever is applicable. The judge may either act on the application without responsive papers or advise the United States Attorney of the date when answering or reply papers are due.

When, however, the judge concerned is deceased, or is a visiting judge who declines to entertain the application, or an active judge who is unable to entertain the application within a reasonable time because of illness, disqualification, disability or prolonged absence, or a senior judge who elects not to entertain the application, the application shall be assigned by lot.

(B) *State Convictions.*

When a pro se petition for collateral relief from a state conviction is filed, the Pro Se Clerk shall first ascertain whether the petition is in proper form and if not take appropriate steps to have it corrected. If the petitioner seeks leave to proceed in *forma pauperis*, the petition shall be first submitted to the Pro Se law clerk for study and when appropriate, a recommendation shall be submitted to a Magistrate designated by the Chief Judge for intermediate review and ultimate submission to the Chief Judge for disposition.

If the petition is not dismissed by the Chief Judge, the papers shall be sent to the Pro Se Clerk for further processing. The Pro Se Clerk shall ascertain if the petition is related to any prior application and, if so, advise the Clerk, who shall thereupon assign the case directly to the judge who last acted upon the related application. If the related application was before a deceased or a retired judge, or if the application is unrelated to any prior application, the Clerk shall assign the case by lot.

Rule 12. Assignments to New Judges.

When a new judge is inducted, the Assignment Committee shall transfer to the new judge an equal share of all cases then pending (including cases on the suspense docket). The cases shall be taken equally, by lot, from the dockets of each of the judges' most recent chronological list of cases which have been designated by the transferor as eligible for transfer. No case shall be transferred without the consent of the transferor judge. The Assignment Committee shall also direct the Clerk to add the name of the new judge to the random selection system for assigning new cases to active judges.

Rule 13. Assignments to Senior Judges

If a senior judge is willing and able to undertake assignment of new cases for all purposes, he shall advise the Assignment Committee of the number and categories of new cases which he is willing and able to undertake. New cases in the requested number in each category shall then be assigned to him in the same manner as new cases are assigned to active judges.

If a senior judge is willing and able to undertake assignment of pending cases from other judges, he may (1) accept assignment of all or any part of any case from any judge on mutual consent, or (2) advise the Assignment Committee of the number, status, and categories of pending cases which he is willing to undertake. Any case so transferred will be drawn by lot from current lists provided to the Assignment Committee by the judges wishing to transfer cases under this rule. If a senior judge does not terminate any action so transferred, it shall be reassigned to the transferor judge.

Rule 14. Assignments to Visiting Judges

When a visiting judge is assigned to this district, he shall advise the Assignment Committee of the number and categories of pending cases which he is required or willing to accept. The Assignment Committee shall then transfer to him the required number of cases in each category by drawing them equally and by lot from each judge's list of cases ready for trial, but no case shall be so transferred without the consent of the transferor judge. If the visiting judge does not terminate the action, it shall be reassigned to the transferor judge.

Rule 15. Transfer of Related Cases

If it appears from the information and designation sheet or otherwise that a civil action or proceeding is related to a previously filed civil case still pending in this court, the newer case (high docket number) shall be assigned to the same judge to whom the older case (low docket number) was assigned, and another case in the same category shall be assigned, by lot, to the transferor judge or judges.

Cases are related if they present common questions of law and fact, or arise from the same source or substantially similar transactions, happenings, events or relationships, or if for any other reason they would entail substantial duplication of labor if assigned to different judges.

If judges differ as to whether actions are related, the issue shall be decided by the Assignment Committee.

Rule 16. Transfer of Cases by Consent

Any active or senior judge, upon written advice to the Assignment Committee, may transfer directly any case or any part of any case on his docket to any consenting active or senior judge except where Rule 18 applies.

Rule 17. Transfers from Senior Judges

When an active judge becomes a senior judge of the court, or at such later time as he chooses, he shall keep as much of his existing docket as he desires and shall furnish the Assignment Committee with a list of all cases which he desires to have transferred. The Assignment Committee shall then transfer such cases by distributing them as equally as is feasible, by lot, to each active judge.

Rule 18. Transfer Because of Disqualification, etc.

In case the assigned judge is disqualified or upon his request, if he has presided at a mistrial or former trial of the case, upon written notice to it, the Assignment Committee shall transfer the case by lot.

Rule 19. Transfer of Cases Because of Death, Resignation, Prolonged Illness, Disability, Unavoidable Absence, or Excessive Backlog of a Judge.

The Assignment Committee shall, in the case of death or resignation, and may, in the event of prolonged illness, disability, unavoidable absence of an assigned judge, or the build-up of an excessive backlog, transfer any case or cases pending on the docket of such judge by distributing them as equally as is feasible by lot, to all remaining active judges and to such senior judges who are willing and able to undertake them.

Rule 20. Transfer of Cases to the Suspense Docket

A civil case which, for reasons beyond the control of the court, can neither be tried nor otherwise terminated shall be transferred to the Suspense Docket. In the event the case becomes activated thereafter it shall be restored to the docket of the transferor judge if he is available, otherwise to be reassigned by lot.

Court Notice

Motions, Applications, Orders

1. All papers, motions, applications, and orders presented for consideration or filing must bear the docket number of the matter followed by the initials of the Judge assigned thereto.

2. Applications for orders to show cause, provisional remedies, emergency relief or to proceed in *forma pauperis*, and orders and notice of settlement of judgments, shall be presented to the Orders and Appeals Clerk (Room 14A). Judgments shall be presented to the Judgment Clerk (Room 16). These documents will be examined as to form and thereafter transmitted to the assigned judge.

3. Motions and responses thereto, with proof of service thereof, should be submitted to the Clerk (Room 10) for docketing.

a) Any party wishing to make a motion should arrange for a pre-motion conference prior to preparation and submission of any papers in cases assigned to Judges Conner, Griesa, Haight, Knapp (as to summary judgment only), Leval, Pollack, Stewart (as to discovery only) and Werker.

b) The following Judges require that copies of all motion papers be delivered to their chambers on the same date as delivered to the Clerk: Judges Broderick, Conner, Cooper, Edelstein, Griesa, Knapp, Lasker, Leval, Lowe, Motley, Pierce, Sand, Sofaer, Stewart, Sweet, Tenney and Weinfeld.

4. All motions, except those of an emergency nature or requiring provisional relief, may be made returnable for docketing purposes on any business day at 9:30 A.M. and the motion and responsive and reply papers shall be lodged not less than two business days before the return day with the Clerk (Room 10) for docketing and transmittal to the assigned Judge. The notice and responses to be given shall conform to the times specified in General Rule 3 of this Court.

a) Oral argument is required on all motions in cases assigned to Judges Bonsal, Briant, Goettel, Knapp, Owen, Pollack, Sand, Sweet and Weinfeld. At the time of filing of papers, the Clerk will apprise Counsel of any *standing* instructions as to time and place for oral argument. The Clerk will have the information and will furnish the day of the week and time that the Judge will hear motions to be argued and counsel should appear at the time and place so specified and not on the return date.

b) As to the other Judges, Counsel will be notified by telephone of the time and place for oral argument, if desired by the Court. In the absence of such notification Counsel should not appear on the return date.

5. In cases assigned to Judges Cooper, Griesa, Lasker, Motley, Sweet and Werker, communication with Chambers on requests and inquiries shall be made by letter other than on urgent matters requiring the Court's immediate attention. Their telephone numbers are given below and may be used at the times indicated for any urgency. In cases assigned to the other Judges, those not named above in this paragraph, letters are not required and phone calls will be received during business hours.

Judge Cooper — 212-791-0972

Judge Griesa — 212-791-0907

Judge Lasker — 212-791-0955

Judge Motley — 212-791-0928

Judge Sweet — 212-791-1910

Judge Werker — 212-791-0953

Extra copies of these Rules are obtainable for \$2.00 each at the offices of the Clerk of the United States District Court, Southern District of New York, Foley Square, New York, New York 10007.