

**UNITED STATES DISTRICT COURTS
FOR THE
SOUTHERN AND EASTERN DISTRICTS
OF NEW YORK**

**GENERAL, CIVIL, CRIMINAL,
ADMIRALTY AND MAGISTRATE
PROCEEDINGS**

EFFECTIVE OCTOBER 26, 1983

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Copies of these rules are obtainable for \$3.50 each at the following locations:

Southern District of New York

Office of the Clerk
Room 14
40 Foley Square
New York, New York 10007

Room 12
101 East Post Road
White Plains, New York 10601

Eastern District of New York

Office of the Clerk
Room 130
225 Cadman Plaza East
Brooklyn, New York 11201

Uniondale Avenue at
Hempstead Turnpike
Uniondale, New York 11553

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GENERAL RULES

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GENERAL RULES

Rule 1. Clerk's Office — Court Sessions

(a) The offices of the clerk are open from 8:30 a.m. to 5:00 p.m. Monday through Friday. The offices of the clerk are closed Saturdays, Sundays, and legal holidays. After hours, papers may be submitted for the district court only, in a night depository located in the courthouse lobby. These papers will be considered to have been filed as of 8:30 a.m. the following business day.

(b) The court is open for trials and motions at 9:30 a.m. and closes at 5:00 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, at least ten (10) days prior to hearing (unless, for good cause shown, the judge shall shorten the time), a verified written petition for admission stating: (1) applicant's residence and office address; (2) the time when, and court where, admitted; (3) applicant's legal training and experience; (4) whether applicant has ever been held in contempt of court, and if so, the nature of the contempt and the final disposition thereof; (5) whether applicant has ever been censured, suspended or disbarred by any court, and if so, the facts and circumstances connected therewith; and (6) that applicant has 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 Federal Rules of Civil Procedure for the district courts; (c) the Federal Rules of Criminal Procedure for the district courts; (d) the Federal Rules of Evidence for the United States Courts and Magistrates; (e) the Rules of the United States District Court for the Southern and Eastern Districts of New York; and (f) that applicant 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 the attorney has known the applicant, and what the attorney 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 either the Southern or Eastern District of New York may be admitted to the bar of the other district without formal application (1) upon filing in that district a certificate of the clerk of the United States district court for the district in which the attorney is a member of the bar, issued within thirty (30) days, that the applicant 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 that district, and paying the fee required in that 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 case 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.

(d) If an attorney changes his or her residence or office address, the attorney shall immediately notify the clerk of the district in which the attorney is admitted.

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 case without designating, in the initial notice or pleading, a member of the bar of either district having an office within either district upon whom service of papers may be made.

(b) A party appearing pro se shall file with that party's 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 that party, in which case service may be made upon that party at that address in like manner as service may be made upon an attorney or, (2) a designation of the clerk of this court 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 (5) 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 appoint a committee of the board of judges known as the committee on grievances, which under the direction of the chief judge shall have charge of all matters relating to discipline of attorneys. The committee on grievances may entertain complaints in writing from any source. Complaints, and any files based on them, shall be treated as confidential. The chief judge shall appoint a committee of attorneys who are members of the bar of this court to advise or assist the committee on grievances. Members of this committee will investigate complaints, and will serve as members of hearing panels.

(b) If it appears, after notice and opportunity to be heard, that any member of the bar of this court has been convicted of a felony in any federal court, or in the court of any state, territory, district, commonwealth or possession, the member's name shall be struck from the roll of members of the bar of this court.

(c) If it appears, after notice and opportunity to be heard, that any member of the bar of this court has been convicted of a misdemeanor, in any federal court or in the court of any state, territory, district, commonwealth, or possession, the member may be disciplined by this court, in accordance with the provisions of paragraph (g).

(d) If it appears, after notice and opportunity to be heard, that any member of the bar of this court has been disciplined by any federal court or by the court of any state, territory, district, commonwealth or possession, the member may be disciplined by this court, in accordance with the provisions of paragraph (g).

(e) If it appears, after notice and opportunity to be heard, that any member of the bar of this court has resigned from the bar of any federal court or the court of any state, territory, district, commonwealth or possession while an investigation into allegations of misconduct by the attorney were pending, the member may be disciplined by this court, in accordance with the provisions of paragraph (g).

(f) If, in connection with activities in this court, any attorney is found guilty by clear and convincing evidence, after notice and opportunity to be heard, of conduct violative of the Codes of Professional Responsibility of the American Bar Association or the New York Bar Association from time to time in force, the attorney may be disciplined by this court, in accordance with the provisions of paragraph (g).

(g) Discipline imposed pursuant to paragraphs (c), (d), (e), or (f) may consist of suspension or censure. In the case of an attorney who is a member of the bar of this court, it may also consist of striking the name of the attorney from the roll. In the case of an attorney admitted pro hac vice, it may also consist of precluding the attorney from again appearing at the bar of this court. Upon the entry of an order of preclusion, the clerk shall transmit to the court or courts where the attorney was admitted to practice a certified copy of the order, and of the court's opinion, if any.

Discipline may be imposed by this court with respect to paragraphs (d) and (e) unless the member of the bar concerned establishes by clear and convincing evidence: (1) with respect to paragraph (d) that there was such an infirmity of proof of misconduct by the attorney as to give rise to the clear conviction that this court could not consistently with its duty accept as final the conclusion of the other court; or (2) that the procedure resulting in the investigation or discipline of the attorney by the other court was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or (3) that the imposition of discipline of this court would result in grave injustice.

(h) If it appears, after notice and opportunity to be heard, that any lawyer not a member of the bar of this court has appeared at the bar of this court without permission to do so, said lawyer 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 or courts where the attorney was admitted to practice a certified copy of the order, and of the court's opinion, if any.

(i) Complaints in writing alleging that any member of the bar of this court is in a category described in paragraphs (b) through (e), or that any attorney practicing in this court has committed the misconduct referred to

in paragraph (f), will be directed to the chief judge, who shall refer such complaints to the committee on grievances, which may designate an attorney selected from the panel of attorneys to investigate the allegations if it deems investigation necessary or warranted. If, with or without investigation, the committee on grievances deems that the charges require prosecution, a statement of charges shall be served on the attorney concerned together with an order to show cause why discipline should not be imposed. Upon the respondent attorney's answer to the charges the matter will be scheduled for prompt hearing before a panel of attorneys, which will report findings and recommendations. After such a hearing and report, or if no timely answer is made by the respondent attorney or if the answer raises no issue requiring a hearing, such action shall be taken as justice and this rule may require.

(j) Any attorney who has been suspended or whose name has been struck from the roll of the members of the bar of this court may apply in writing to the chief judge, for good cause shown, for the lifting of suspension or for reinstatement to the rolls. The committee on grievances shall act upon the application, either immediately or after receiving findings and recommendations from a hearing panel of attorneys to which the application has been referred.

(k) Misconduct of any attorney in the presence of this court or in any manner in respect to any matter pending in this court may be dealt with directly by the judge in charge of the matter or at said judge's option referred to the committee on grievances, or both.

(l) Whenever it appears that an attorney admitted to practice in the court of any state, territory, district, commonwealth or possession, or in any other federal court, has in this court been convicted of any crime or disbarred, suspended or censured the clerk shall send to such other court or courts a certified copy of the judgment of conviction or order of disbarment, suspension or censure, and a statement of the attorney's last known office and resident address.

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

(a) Duty of Attorneys in Related Cases

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 said attorney believes are relevant to a determination that said case and one or more pending cases should be heard by the same judge, in order to avoid unnecessary duplication of judicial effort. As soon as the attorney be-

comes aware of such relationship, said attorney 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, or of a party appearing pro se, 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 appropriate 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 paragraph (b) are either inadequate or unjust to the parties, the court 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 the clerk in advance or the court orders otherwise.

(b) Every attorney appearing in any proceeding who orders a transcript of any trial, hearing, or any other proceeding, is 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 the client is obligated to pay. Any attorney who fails to pay as 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 Courthouses at Foley Square and 225 Cadman Plaza East, including all entrances to and exits from the buildings.

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 Federal Rules of Civil Procedure, or of the Rules of the United States District Courts for the Southern and Eastern Districts 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 prevailing in courts of equity of the United States shall be applied. In default thereof and in the discretion of the court, the procedure which prevails in the Supreme Court or the Surrogates Court of the State of New York may be applied.

Rule 9. Disclosure of Interested Parties

To enable judges and magistrates of the court to evaluate possible disqualification or recusal, counsel for a private (non-governmental) party shall submit at the time of initial pleading a certificate of identification of any corporate parents, subsidiaries, or affiliates of that party.

CIVIL RULES

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CIVIL RULES

Rule 1. Filing Papers

(a) Unless a judge of this court shall otherwise direct, papers submitted for filing must (1) be plainly written, typed, printed, or copied without erasures or inter-lineations which materially deface it, (2) bear the docket number and judge's initials, if any, assigned to the action or proceeding and (3) bear endorsed upon the cover the name, office and post office address and telephone number of the attorney of record for the filing party.

(b) All pleadings, motions, and other papers that are submitted for filing must be signed by an attorney of record in said attorney's own name and must show the attorney's address and telephone number. Failure to sign any document will result in the clerk refusing to accept the document for filing.

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

A party shall furnish to any other party, within five (5) days after a demand, a verified statement setting forth said party's 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 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. 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 provided in the Federal Rules of Civil Procedure.

(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.

(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 Federal Rules of Civil Procedure, and under Rules 27 and 30 (insofar as they apply to interrogatories), 31, 32, 32A, 32B, and 32C of the Federal 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.

(2) In all other motions and exceptions except those in criminal proceedings, other than as provided in subparagraph (1), and all writs of habeas corpus other than in criminal proceedings or as 28 U.S.C. 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.

(3) No papers, either in support of or in opposition to the motion, which have not been served as 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 imme-

diately following each specification shall set forth the basis of the objection or exception.

(f) No motion of the type described in subparagraph (1) of paragraph (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 said counsel 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 intervention 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 motions and may determine them without oral hearing.

(j) A notice of motion for reargument shall be served within ten (10) days after the docketing 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 (6) 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 claims—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 paragraph (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 said party's counsel, or may grant such other relief as may be appropriate in all the circumstances.

Rule 5. Fees in Stockholder and Class Actions

(a) 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.

(b) 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 judgment 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, or of an oral decision, 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
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, July 1, 1983”

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 (2) days' notice of settlement is required. One (1) 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 of 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. Preparation and Entry of Judgments, Decrees and Final Orders

Upon the verdict of a jury or the decision of a case 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. The clerk shall forthwith sign and enter it, except that where approval by the judge is required by Rule 58, Federal Rules of Civil Procedure, the clerk shall first submit the judgment, decree or final order to the judge who shall manifest such approval by signing the document or noting approval on the margin. The notation in the appropriate docket of the judgment, decree or final order, whether prepared by the clerk or the attorney, shall constitute the entry of judgment.

Rule 10. 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, said party shall submit with the 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 said party's 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 said party 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 has been paid except as therein set forth; and (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 clerk's certificate of the notation of the default, and by a copy of the pleading to which no response has been made.

Rule 11. Taxable Costs and Disbursements

(a) Request to Tax Costs

Within thirty (30) days after final judgment, or in the case of an appeal by either party, within thirty (30) days after the disposition of the appeal, the party recovering costs shall file with the clerk a request to tax

costs indicating the date and time of taxation. Costs will not be taxed during the pendency of any appeal. Any party failing to file a bill of costs within this thirty (30) day period will be deemed to have waived costs. The bill of costs shall include an affidavit of counsel that the costs claimed are allowable by law, are correctly stated and were necessarily incurred. Bills and cancelled checks in payment shall be attached as exhibits. Proof of service upon opposing counsel shall be indicated. Service of the bill of costs by mail is sufficient and constitutes notice as provided in Rule 54(d) of the Federal Rules of Civil Procedure.

(b) Objections to Bill of Costs

A party objecting to any cost item may serve objections in writing prior to or at the time for taxation. The clerk will proceed to tax costs at the time noticed and allow such items as are properly taxable. In the absence of objection, any item listed may be taxed within the discretion of the clerk. The taxation of costs by the clerk shall be final unless modified on review by the court on motion filed within five (5) days thereafter pursuant to Rule 54(d) of the Federal Rules of Civil Procedure.

(c) Items Taxable as Costs

(1) Transcripts

The cost of an original trial transcript or a transcript of matters prior to or subsequent to trial is taxable only when authorized in advance or ordered by the court.

(2) Depositions

The original transcript of a deposition, plus one copy is taxable if the deposition was received in evidence whether or not it was read in its entirety. Costs for depositions are also taxable if they were used by the court in ruling on a motion for summary judgment. Costs for depositions taken solely for discovery or used only for impeachment purposes are not taxable. Counsel's fees and expenses in attending the taking of a deposition are not taxable except as provided by statute, rule or order of the court. Fees, mileage, and subsistence for the witness at the deposition are taken at the same rate for attendance at trial if the deposition taken is received in evidence.

(3) Witness Fees, Mileage and Subsistence

Witness fees are taxable if the witness takes the stand. Subsistence pursuant to 28 U.S.C. Sec. 1821 is allowable if it is not practical for the witness to return to his or her residence from day to day. No party to the action may receive witness fees or subsistence. Fees for expert witnesses are taxable only to the extent of fees for ordinary witnesses unless prior court approval was obtained.

(4) Interpreting Costs

The reasonable fee of a competent interpreter is taxable if the fee of the witness involved is taxable. The reasonable fee of a translator is also taxable if the document translated is admitted into evidence.

(5) Exemplification and Copies of Papers

A copy of an exhibit is taxable if the original was not available and the copy was admitted into evidence. The cost of copies used for the convenience of counsel are not taxable. The fee for certification or proof of non-existence of a document is taxable.

(6) Maps, Charts, Models, Photographs and Summaries

The cost of photographs, 8" x 10" in size or less, is taxable if admitted into evidence. Enlargements greater than 8" x 10" are not taxable except by order of court. Costs of models are not taxable except by order of court. The cost of compiling summaries, statistical comparison and reports is not taxable.

(7) Docket Fees to Attorneys

Statutory docket fees pursuant to 28 U.S.C. Sec. 1923 are taxable. Other attorney costs, fees and paralegal expenses are not taxable except by order of the court.

(8) Masters, Receivers and Commissioner Fees

Fees to masters, receivers and commissioners are taxable as costs, unless otherwise ordered by the court.

(9) Costs for Title Searches

A party to whom costs are awarded in an action to foreclose a mortgage on real property is entitled to tax 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 12. 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 13. 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 executed and acknowledged by (1) the judgment creditor; or (2) said judgment creditor's legal representatives or assigns, with evidence of their authority; or (3) said judgment creditor's attorney if within ten (10) years of the entry of the judgment or decree.

(c) If the judgment creditor is the United States, upon the filing of a satisfaction 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 (10) 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 14. 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 thirty (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 15. 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 one hundred (100) miles from the courthouse, the court

may provide in the order 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 including a reasonable counsel fee of one attorney for each adversary party at the place where the deposition is to be taken. The amounts so paid, unless otherwise directed by the court, shall be a 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 said attorney's compensation and expenses; the compensation so fixed shall be paid by the petitioner prior to the appearance of such attorney upon the examination.

Rule 16. 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. The Federal Rules of Civil Procedure, so far as applicable, including the provision for punishment for contempt or disobedience of a subpoena, shall govern the taking of such deposition.

Rule 17. 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), and 30(c), (d), (e), (f), Rules 607 and 611 (b) and (c), Federal Rules of Evidence and the Federal Rules of Civil Procedure.

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

Rule 18. Filing of Discovery Materials

(a) Pursuant to Rule 5(d) of the Federal Rules of Civil Procedure, depositions, interrogatories, requests for documents, requests for admissions, and answers and responses shall not be filed with the clerk's office except by order of the court.

(b) A party seeking relief under Rule 26(c), or seeking to determine sufficiency under Rule 36, or seeking to compel under Rule 37(a)(2) of the Federal Rules of Civil Procedure shall file only that portion of the deposition, interrogatory, requests for documents, or requests for admissions that are objected to.

(c) When discovery material not on file is needed for an appeal, upon an application and order of the court or by stipulation of counsel, the necessary portion of discovery material shall be filed with the clerk.

Rule 19. 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 the master is requested to sit outside the district for the convenience of a party and there is opposition by another party, said master may make an order for the holding of the hearing, or a part thereof, outside the district, upon such terms and conditions as shall be just. 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, deposit with the clerk a copy to be furnished to the master.

(f) Filing of report

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

(g) Confirmation or rejection 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 20. Oath of Master, Commissioner, etc.

Every person appointed master, special master, commissioner, special commissioner, assessor or appraiser shall before entering upon those duties take and subscribe an oath, which, except as otherwise prescribed by statute or rule, shall be to the effect that those duties will be faithfully and impartially discharged and in conformance with the order of appointment and to the best of the master's ability and understanding. 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 21. Marked Pleadings

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

(a) A copy of the complaint or libel and of any third party complaint or third party libel briefly indicating in the margin at each numbered paragraph or article, the manner in which the defendant or respondent,

or any third party defendant or respondent impleaded who has filed an answer, treats the allegations contained in said paragraph of the complaint or libel or third party complaint or third party libel.

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

(c) A complete and accurate copy of each reply has been filed in the case.

Rule 22. Six Member Jury Trials; Assessment of Juror Costs

(a) A jury for the trial of civil cases shall consist of six persons, unless the court orders otherwise.

(b) All counsel in civil cases must seriously discuss the possibility of settlement a reasonable time prior to trial. The trial judge may, in his discretion, assess the parties or counsel with the cost of one day's attendance of the jurors if a case is settled after the jury has been summoned or during trial, the amount to be paid to the clerk of the court. For the purposes of interpreting this paragraph, a civil jury is considered summoned for a trial as of noon of the business day prior to the designated date of the trial.

Rule 23. 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 24. 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), 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 said party's possession, or

true copies, 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 that party's possession. All exhibits made available at the clerk's office which are designated by any party as part of the record on appeal shall be filed with the clerk who shall transmit them 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 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 their inspection 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 the clerk may see fit.

Rule 25. Removal of Cases from State Courts

(a) A defendant or defendants desiring to remove a civil action or proceeding from a state court 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 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 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 to be certified and mailed by the clerk to the clerk of the state court.

Rule 26. 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 (5) 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, and of the docket entries in the case, and (2) the originals of all other papers on file in the case.

Rule 27. Review of Cases; Dismissal for Want of Prosecution

Civil cases 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 cases shall be published in the New York Law Journal, or otherwise as the court directs. The court may enter an order dismissing the case for want of prosecution, or continuing it, or may make such other order as justice may require.

Rule 28. 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 29. 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 30. 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 describing the irreparable harm the alien will suffer if the application is not granted and 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, the alien's attorney or the alien's 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, the alien 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 for the denial 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 10:00 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 briefly set forth why the order or writ was issued, endorse upon the order or writ the date and time it was issued, and 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 ten (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 31. Service of Writ or Order Enjoining Expulsion of an Alien

(a) In all cases except those described in Rule 30(b) of the Federal Rules of Civil Procedure, 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 the ship has cast off her moorings or upon a commanding officer once the airplane has closed its doors and left the terminal.

Rule 32. 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 10:00 A.M. on the following business day unless otherwise ordered by the court.

(c) All pro se petitions for writ 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 33. 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 or employee thereof is a party, a party draws in question the constitutionality of an act of Congress affecting the public interest, such party shall notify the chief judge in writing of the existence of such question (to enable the court to comply with 28 U.S.C.A. Sec. 2403) giving the title of the case, a reference to the questioned statute sufficient for its identification, and the respects in which it is claimed that the statute is unconstitutional.

If, at any time prior to the trial of any action, suit or proceeding, to which neither a state nor any agency, officer or employee thereof is a

party, a party draws in question the constitutionality of any statute of that state affecting the public interest, such notice shall also be given.

Rule 34. 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 35. 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 36. 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

..... District of New York

NOTICE OF SALE

Pursuant to of the United States
(Order or Judgment)

Court for the District of New York, filed in the office
of the clerk on
(Date)

in the case entitled
(Name and Docket Number)

..... the undersigned will sell
at
(Place of Sale)

on
(Date and Hour of Sale)

the property in said
(Order or Judgment)

described and therein 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 otherwise in detail and will be sufficient if in general terms it identifies the property by specifying its nature and location. However, it shall state the approximate acreage of any real estate outside the limits of any town or city, the street, lot and block number of any real estate within any town or city, and a general statement of the character of any improvements upon the property.

Rule 37. 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 the deposit of cash or government bonds in the amount of the bond, undertaking or stipulation, or the undertaking or guaranty of a corporate surety holding a certificate of authority from the Secretary of the Treasury, or the undertaking or guaranty of two individual residents of the district in which the case is pending, each of whom owns real or personal property within the district worth double the amount of the bond, undertaking or stipulation, over all his or her debts and liabilities, and over all obligations assumed by said surety 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 the surety's, affidavit of justification, giving the surety's full name, occupation, residence and business addresses, and showing that the surety is qualified as an individual surety under paragraph (b) of this rule.

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

Rule 38. 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 39. 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 40. 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 the clerk 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 41. 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 interest and such damages for delay as may be awarded and, if eligible under Rule 38, 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, with notice of filing, promptly served on all parties affected. 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 42. Remand by an Appellate Court

Whenever an appellate court has remanded a case or matter to the district court, and further proceedings not requiring the trial of an issue of fact are appropriate, an application, whether made on motion or otherwise, shall be referred for such further proceedings to the judge who heard the case 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 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 43. Contempt

(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 said 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, embody a direction to the United States marshal to arrest the alleged contemnor and hold such person in bail in an amount fixed by the order, conditioned on the appearance of such person at the hearing, and further conditioned that the alleged contemnor will hold himself or herself amenable to all orders of the court for surrender.

(b) If the alleged contemnor puts in issue his or her alleged misconduct or the damages thereby occasioned, said person shall upon demand, be entitled to have oral evidence taken, 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, said person shall make written demand on or before the return day or adjourned day of the application; otherwise said person 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 con-

temnor by the United States marshal and 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, said person shall be discharged from the proceeding and, in the discretion of the court, may have judgment against the complainant for costs and disbursements and a reasonable counsel fee.

Rule 44. Order of Summation

After the close of evidence in civil trials, the order of summation shall be determined in the discretion of the trial judge.

Rule 45. Exemption from Mandatory Scheduling Order (Eastern District only)

Matters involving habeas corpus petitions, social security disability cases, motions to vacate sentences, forfeitures, and reviews from administrative agencies are exempted from the mandatory scheduling order required by Rule 16(b) of the Federal Rules of Civil Procedure. (Adoption of this rule is under consideration in the Southern District.)

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 the magistrate 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

(a) Except as otherwise provided by statute, rule or order of the court, motions in criminal proceedings and motions for remission of forfeiture of bail shall be made upon five (5) days' notice.

(b) Notice of motion and any supporting affidavits must be filed with the clerk at least two (2) days before the return day. No note of issue is required.

(c) Motions for correction or reduction of sentence under Rule 35, Federal Rules of Criminal Procedure, or to suspend execution of sentence under 18 U.S.C. Sec. 3651, or in arrest of judgment under Rule 34, Federal Rules of Criminal Procedure, shall be referred to the trial judge. If the trial judge served by designation and assignment under 28 U.S.C. Secs. 291-296, and is absent from the district, such motions may be referred to said judge for consideration and disposition.

(d) Upon any motion, objections or exceptions addressed to a bill of particulars or answers or to discovery and inspection, the moving party shall:

(1) File a copy simultaneously with the filing of the moving papers in all instances in which the demand for a bill of particulars or the answers or the demand for discovery and inspection have not been filed previously; and

(2) Specify and quote verbatim in the moving papers each requested particular or answer and each item as to which discovery and inspection is sought to which objection or exception is taken and immediately following each specification shall set forth the basis of the exception or objection.

No motion described in this subparagraph shall be heard unless counsel for the moving party files with the court simultaneously with the filing of the moving papers an affidavit certifying that said counsel has conferred with counsel for the opposing party in an effort in good faith to resolve by agreement the issue raised by the motion without the intervention of the court and has been unable to reach such an agreement. Such affidavit shall specify the time when, the place where and the duration of the said conference. 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.

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 and the reasons for such action shall be recorded. The judge may direct that the application be made upon notice and written petition setting forth briefly the question to be reviewed by the appellate court.

Rule 5. Approval of Bail Bonds

In cases 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) The Role of Counsel

(1) Defense Counsel

Defense Counsel shall:

(i) Prior to entry of plea or commencement of plea agreement discussions, if any, assure himself or herself that the defendant understands the nature and consequences of the plea, sentencing proceedings, and any sentencing alternatives.

(ii) On prompt request, 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.

(iii) Timely familiarize himself or herself with the contents of the presentence report, including the evaluative summary, and any special medical and psychiatric reports pertaining to the client, and shall freely make sentence recommendations to the judge.

(2) 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.

(b) The Role of the Probation Officer

In addition to the 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 transmitted to the judge.

(c) Notification of Rights on Appeal

(1) 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 or her right to appeal and other rights in that connection as set forth in and required by Rule 32(a)(2), Federal Rules of Criminal Procedure. If the defendant at that time indicates to the court that he or she 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:

(i) application of defendant to appeal in forma pauperis;

(ii) 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 trial counsel that the latter is not relieved from representation of defendant until the Court of Appeals so directs.

(2) 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 the accused's apprehension or to warn the public of any dangers the accused 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, her, 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 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.

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 said lawyer.

(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.

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 of Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, 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 ten (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 case, 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 (10) days after the arrest or within such additional time as may be allowed by the court and must serve their answers within twenty (20) days after the filing of their claims. The notice shall also state that all interested persons should file claims and answers within the times so fixed otherwise default will be noted and condemnation ordered.

(b) When the res remains in custody of the marshal, the case will not be heard until after publication of notice of arrest shall have been made in that case or in some other pending case 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 case 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 (6) 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 provide 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 the owner's agent if found within the district and, if the owner or the owner's 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 the owner's 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 or parties 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 said party or parties. 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 not affect the liability under such bond; all other notices shall be given and the case shall 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 the garnishee 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 the garnishee's usual residence or place of business, with notice of the property attached. On due return by the marshal, the plaintiff, on proof satisfactory to the court that the property belongs to the defendants, may proceed to a hearing and final judgment in the case.

(b) In an 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 appraisalment 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 appraisalment 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 the appraiser.

(d) The appraiser shall give one day's notice of the time and place of making the appraisalment to the attorneys in the action. The appraisalment 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 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 sufficient cause filed pursuant to Sections 4546 and 4547 of the Revised Statutes (46 U.S.C. Secs. 603 and 604).

Rule 13. Release of Seizures

Property seized by the marshal may be released as follows:

(a) In suits for sums certain, by paying into court the amount alleged to be due, with interest as claimed, up to the first day of the month next succeeding the last day to answer the complaint or next succeeding the payment into court, whichever is later, or by filing an approved stipulation for such alleged amount, with interest, and by payment into court of the costs of officers of the court already accrued, and by depositing also the sum of \$250, to cover further costs; or in lieu of such deposit for costs giving a stipulation conditioned that the principal shall pay all costs awarded by the court, and, in case of appeal, by any appellate court, against said principal or principals. The stipulation shall be in the sum of \$250.

(b) By an order duly entered by the clerk upon the written consent of the attorney for the party on whose behalf the property is detained.

Rule 14. 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, the marshal shall present to the clerk a bill of the marshal's charges and a statement of the time of receipt of the money. Upon the filing of the statement and the taxation of the charges, the marshal shall pay to the clerk the amount of said money less the marshal's 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 15. 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 16. 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 determination on consent in accordance with these rules by filing a stipulation for a summary determination with the judge assigned to the case.

(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 case.

(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.

MAGISTRATE RULES

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RULES FOR PROCEEDINGS BEFORE MAGISTRATES

Rule 1. Jurisdiction—28 U.S.C. Section 636

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

Rule 2. Jurisdiction—18 U.S.C. Section 3401

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 misdemeanor cases initiated by information or indictment or transferred to the district under Rule 20 of the Federal Rules of Criminal Procedure to a magistrate for arraignment.

Rule 3. Jurisdiction—Part-time Magistrates

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

Rule 4. References Under 28 U.S.C. Sections 2254 and 2255

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.

Rule 5. Petition for Misdemeanor Trial

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.

Rule 6. Issuance of Subpoenas

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 and may sign in forma pauperis orders.

Rule 7. Notice of Determination and Objections Thereto

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 (10) 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.

Rule 8. Consent Jurisdiction Procedure

(a) When a civil action is filed with the clerk, the clerk 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.

Rule 9. Issuance of Warrants and Hearings

Pursuant to 18 U.S.C. Sec. 3184 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.

Rule 10. Inspection Orders and Warrants

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.

Rule 11. Petty Offenses—Collateral and Appearance

(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.

Rule 12. Rotation of Assignments—Southern District only

Except as provided in Rule 8(a), (b) and (c), matters and cases referred to a magistrate by a district judge in the Southern District 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 in the Southern District may adjust the rotation to maintain reasonable equality in the relative work levels of the available magistrates.

Rule 13. General Pretrial Supervision

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.

Rule 14. Appeals from Cases Heard on Consent

(a) 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. Sec. 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.

(b) Appeal to a District Judge

(1) 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. 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.

(2) Record on Appeal

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

(3) 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.

(4) 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.

(5) 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 of Appeals and in accordance with the provisions of 28 U.S.C. Sec. 636(c)(4).

(6) Rehearing

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

Rule 15. Entry of Mandatory Scheduling Orders (Eastern District only)

Magistrates are empowered to enter scheduling orders pursuant to Rule 16(b) of the Federal Rules of Civil Procedure. (Adoption of this rule is under consideration in the Southern District.)

EMERGENCY BANKRUPTCY RULE I

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EMERGENCY BANKRUPTCY RULE I

(a) Emergency Resolution

The purpose of this rule is to supplement existing law and rules in respect to the authority of the bankruptcy judges of this district to act in bankruptcy cases and proceedings until Congress enacts appropriate remedial legislation in response to the Supreme Court's decision in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, — U.S. —, 102 S. Ct. 2858 (1982), or until March 31, 1984, whichever first occurs.

The judges of the district court find that exceptional circumstances exist. These circumstances include: (1) the unanticipated unconstitutionality of the grant of power to bankruptcy judges in section 241(a) of Public Law 95-598; (2) the clear intent of Congress to refer bankruptcy matters to bankruptcy judges; (3) the specialized expertise necessary to the determination of bankruptcy matters; and (4) the administrative difficulty of the district court's assuming the existing bankruptcy caseload on short notice.

Therefore, the orderly conduct of the business of the court requires this referral of bankruptcy cases to the bankruptcy judges.

(b) Filing of Bankruptcy Papers

The court of bankruptcy constituted by Sec. 404 of Public Law 95-598 shall continue to be known as the United States bankruptcy court of this district. The clerk of the bankruptcy court is hereby designated to maintain all files in bankruptcy cases and adversary proceedings. All papers in cases or proceedings arising under or related to Title 11 shall be filed with the clerk of the bankruptcy court regardless of whether the case or proceeding is before a bankruptcy judge or a judge of the district court, except that a judgment by the district judge shall be filed in accordance with Rule 921 of the Bankruptcy Rules.

(c) Reference to Bankruptcy Judges

(1) All cases under Title 11 and all civil proceedings arising under Title 11 or arising in or related to cases under Title 11 are referred to the bankruptcy judges of this district.

(2) The reference to a bankruptcy judge may be withdrawn by the district court at any time on its own motion or on timely motion by a party. A motion for withdrawal of reference shall not stay any bankruptcy matter pending before a bankruptcy judge unless a specific stay is issued by the district court. If a reference is withdrawn, the district court may retain the entire matter, may refer part of the matter back to the bankruptcy

judge with instructions specifying the powers and functions that the bankruptcy judge may exercise. Any matter in which the reference is withdrawn shall be reassigned to a district judge in accordance with the court's usual system for assigning civil cases.

(3) Referred cases and proceedings may be transferred in whole or in part between bankruptcy judges within the district without approval of a district judge.

(d) Powers of Bankruptcy Judges

(1) The bankruptcy judges may perform in referred bankruptcy cases and proceedings all acts and duties necessary for the handling of those cases and proceedings except that the bankruptcy judges may not conduct:

- (A) a proceeding to enjoin a court;
- (B) a proceeding to punish a criminal contempt—
 - (i) not committed in the bankruptcy judge's actual presence; or
 - (ii) warranting a punishment of imprisonment;
- (C) an appeal from a judgment, order, decree, or decision of a United States bankruptcy judge; or
- (D) jury trials.

Those matters which may not be performed by a bankruptcy judge shall be transferred to a district judge.

(2) Except as provided in (d)(3), orders and judgments of bankruptcy judges shall be effective upon entry by the clerk of the bankruptcy court, unless stayed by the bankruptcy judge or a district judge.

(3) (A) Related proceedings are those civil proceedings that, in the absence of a petition in bankruptcy, could have been brought in a district court or a state court. Related proceedings include, but are not limited to, claims brought by the estate against parties who have not filed claims against the estate. Related proceedings do not include: contested and uncontested matters concerning the administration of the estate; allowance of and objection to claims against the estate; counterclaims by the estate in whatever amount against persons filing claims against the estate; orders in respect to obtaining credit; orders to turn over property of the estate; proceedings to set aside preferences and fraudulent conveyances; proceedings in respect to lifting of the automatic stay; proceedings to determine dischargeability of particular debts; proceedings to object to the discharge; proceedings in respect to the confirmation of plans; orders approving the sale of property where not arising from proceedings resulting

from claims brought by the estate against parties who have not filed claims against the estate; and similar matters. A proceeding is not a related proceeding merely because the outcome will be affected by state law.

(B) In related proceedings the bankruptcy judge may not enter a judgment or dispositive order, but shall submit findings, conclusions, and a proposed judgment or order to the district judge, unless the parties to the proceeding consent to entry of the judgment or order by the bankruptcy judge.

(e) District Court Review

(1) A notice of appeal from a final order or judgment or proposed order or judgment of a bankruptcy judge or an application for leave to appeal an interlocutory order of a bankruptcy judge, shall be filed within ten (10) days of the date of entry of the judgment or order or of the lodgment of the proposed judgment or order. As modified by sections (e) 2A and B of this rule, the procedures set forth in Part VIII of the Bankruptcy Rules apply to appeals of bankruptcy judges' judgments and orders and the procedures set forth in Bankruptcy Interim Rule 8004 apply to applications for leave to appeal interlocutory orders of bankruptcy judges. Modification by the district judge or the bankruptcy judge of time for appeal is governed by Rule 802 of the Bankruptcy Rules.

(2) (A) A district judge shall review:

- (i) an order or judgment entered under paragraph (d)(2) if a timely notice of appeal has been filed or if a timely application for leave to appeal has been granted;
- (ii) an order or judgment entered under paragraph (d)(2) if the bankruptcy judge certifies that circumstances require that the order or judgment be approved by a district judge, whether or not the matter was controverted before the bankruptcy judge or any notice of appeal or application for leave to appeal was filed; and
- (iii) a proposed order or judgment lodged under paragraph (d)(3), whether or not any notice of appeal or application for leave to appeal has been filed.

(B) In conducting review, the district judge may hold a hearing and may receive such evidence as appropriate and may accept, reject, or modify, in whole or in part, the order or judgment of the bankruptcy judge, and need give no deference to the findings of the bankruptcy judge. At the conclusion of the review, the district judge shall enter an appropriate order or judgment.

(3) When the bankruptcy judge certifies that circumstances require immediate review by a district judge of any matter subject to review under paragraph (e)(2), the district judge shall review the matter and enter an order or judgment as soon as possible.

(4) It shall be the burden of the parties to raise the issue of whether any proceeding is a related proceeding prior to the time of the entry of the order or judgment of the district court after review.

(f) Local Rules

In proceedings before a bankruptcy judge, the local rules of the bankruptcy court shall apply. In proceedings before a judge of the district court, the local rules of the district court shall apply.

(g) Bankruptcy Rules and Title IV of Public Law 95-598

Courts of bankruptcy and procedure in bankruptcy shall continue to be governed by Title IV of Public Law 95-598 as amended and by the bankruptcy rules prescribed by the Supreme Court of the United States pursuant to 28 U.S.C. Sec. 2075 and limited by Sec. 405(d) of the Act, to the extent that such Title and Rules are not inconsistent with the holding of *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, — U.S. —, 102 St. Ct. 2858 (1982).

(h) Effective Date and Pending Cases

This rule shall become effective December 25, 1982 in the absence of congressional action or extension of the stay and shall apply to all bankruptcy cases and proceedings not governed by the Bankruptcy Act of 1898 as amended, and filed on or after October 1, 1979. Any bankruptcy matters pending before a bankruptcy judge on December 25, 1982 shall be deemed referred to that judge.

SOUTHERN DISTRICT OF NEW YORK**SUPPLEMENTAL TO EMERGENCY BANKRUPTCY RULE I****(a) Purpose of Rules**

The purpose of these rules is to supplement the provisions of Emergency Bankruptcy Rule I promulgated by the district court and to provide the necessary mechanisms to implement that rule.

(b) Designation on Papers

Counsel should include in the caption of all papers (except proofs of claim) filed in the bankruptcy court a statement whether the matter is a related proceeding within the meaning of Emergency Bankruptcy Rule I(d)(3)(A).

(c) Consent to Entry of Judgment or Order

In a related proceeding within the meaning of Emergency Bankruptcy Rule I(d)(3)(A), consent to the entry of judgment or a dispositive order by the bankruptcy judge, in lieu of entry by a district judge, which consent is authorized by (d)(3)(B) of Emergency Bankruptcy Rule I, may be evidenced by counsel's signature or the signature of a party not represented by counsel on the proposed order or judgment or by a separate stipulation or may be made in open court on the record. Any party submitting a proposed dispositive order or judgment shall certify whether consent to the bankruptcy judge's entry in lieu of entry by a district judge has been obtained from all necessary parties.

(d) Findings, Conclusions, and Proposed Orders and Judgments

In a related proceeding within the meaning of Emergency Bankruptcy Rule I(d)(3)(A), in the absence of consent, the bankruptcy judge shall file findings, conclusions, and a proposed dispositive order or judgment with the clerk of the bankruptcy court. A copy shall forthwith be mailed by the clerk of the bankruptcy court to all parties who shall have ten (10) days from the date of mailing within which to serve written objections to such conclusions, findings, and proposed dispositive order or judgment on the opposing parties and to file the objections with the clerk of the bankruptcy court who shall send the objections to the clerk of the district court for transmittal to the assigned district judge.

(e) Dispute Whether Matter is Related Proceeding

The court on its own motion or any party by motion may seek a determination of whether a matter is a related proceeding within the meaning of Emergency Bankruptcy Rule I(d)(3)(A). The motion shall be brought before the bankruptcy judge on not less than two (2) days' written

notice to all parties. The bankruptcy judge's determination whether the matter is a related proceeding shall be in the form of an order to that effect. If there are circumstances that require the order to be approved by a district judge, the bankruptcy court shall so certify to the district court pursuant to Emergency Bankruptcy Rule I.

(f) Suggestion of Circumstances that Require Order or Judgment to be approved by a District Judge

Any party believing that circumstances require that any order or judgment (other than a dispositive order or judgment entered on consent in a related proceeding) be approved by the district court shall file written application with the bankruptcy court prior to the time of signing of any such order or judgment, or if a hearing is held, prior to the conclusion of the hearing, stating the circumstances believed to require such approval and requesting that the bankruptcy court so certify. The certification may be included in the proposed order; in the case of a judgment, the suggested certification shall be in a separate proposed order. The bankruptcy court need not hold a hearing on the question of certification.

(g) Presumed Consent to Jurisdiction of Bankruptcy Court

A failure to file written application authorized by Rule (f) of these rules shall be deemed a consent to the jurisdiction of the bankruptcy court to make such order or judgment without reference to the district court to the extent that such consent might lawfully have been given.

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RULES FOR THE DIVISION OF BUSINESS AMONG DISTRICT JUDGES SOUTHERN DISTRICT

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**RULES FOR THE DIVISION OF BUSINESS
AMONG DISTRICT JUDGES
SOUTHERN DISTRICT**

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, 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 the chief judge's administrative duties.

Rule 2. Assignment Committee

An assignment committee is established for the administration of this assignment system. The committee shall consist of the chief judge and two other active judges selected by the chief judge, 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 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 to 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 10:00 A.M. to 5:00 P.M. Monday through Friday except on holidays and a magistrate shall be available at the courthouse on Saturdays up to 12:00 P.M. 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 as 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 field action; (7) the category of the case; (8) the name of the sentencing judge, if brought under 28 U.S.C. Sec. 2255; and (9) the name, address, and telephone number of the attorney of record and of the attorney's 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 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 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 10:00 A.M. Naturalization proceedings shall be conducted on Wednesday, commencing at 10:30 A.M.

(a) 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 said judges is no longer sitting in Part I.

(b) 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 said judge is unavailable due to extraordinary circumstances. Depending on which procedures the Part I judge 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 or herself for all further proceedings.

(c) Subsequent Emergency Proceedings

If a civil emergency matter is brought before the Part I judge and the judge concludes that for lack of emergency or otherwise the proceeding should not be determined in Part I 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 the party 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

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

ment or information. The United States attorney 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

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 10:00 A.M.

The judge presiding in Part I shall:

(a) 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.

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

(c) 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 said judge is unavailable due to extraordinary circumstances.

(d) 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 said judge is no longer sitting in Part I.

Rule 8. Arraignments and Assignments by Part I.**(a) Calendaring of Pleas**

Criminal actions shall be placed upon the criminal calendar of Part I for arraignment and pleading on the last Thursday occurring within ten (10) 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 by lot, in open court, to a judge for all further proceedings, and the defendant and defendant's 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 provided in Rule 8(d) below, if a defendant pleads guilty before the judge presiding in Part I, the action shall be assigned 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

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, 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 advise the assignment committee whether said judge can accord the case the required priority. In the event the judge so assigned advises the assignment committee that he or she 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 shall be drawn by lot in the same manner as other civil and criminal actions are initially assigned.

Rule 10. Motions

(a) Civil Motions

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

Motions in criminal actions shall be made returnable before the assigned judge at such time as said judge directs. 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. Sec. 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. The petition shall be submitted 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.

If the judge concerned is deceased; is a visiting judge who declines 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 proper 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 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, said judge shall advise the assignment committee of the number and categories of new cases which said judge is willing and able to undertake. New cases in the requested number in each category shall then be assigned to said judge 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, said judge 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 said judge is willing to undertake. Such cases 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, said judge shall advise the assignment committee of the number and categories of pending cases which said judge is required or willing to accept. The assignment committee shall then transfer to said judge 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 said judge's 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, or later as the judge chooses, the judge may keep as much of his or her existing docket as said judge desires and furnish the assignment committee with a list of all cases which the judge desires to have transferred. The assignment committee will distribute these cases 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 request, if said judge 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, it shall be restored to the docket of the transferor judge if available, otherwise it shall be reassigned by lot.

RULES FOR THE DIVISION OF BUSINESS AMONG DISTRICT JUDGES

EASTERN DISTRICT

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RULES FOR THE DIVISION OF BUSINESS AMONG DISTRICT JUDGES

EASTERN DISTRICT

Rule 1. Categories of Cases—Information Sheet—Long Island Cases

(a) Categories of Cases.

Cases filed in the court shall be designated as falling within one of the following categories:

- (1) Bankruptcy
 - (i) Chapters X and XII
 - (ii) All others
- (2) Civil
- (3) Criminal

(b) Information sheet.

The party filing the initial papers in any case shall at the time of filing complete an information sheet.

(c) Long Island Cases

(1) Criminal Cases.

A criminal case shall be designated as "Long Island case" if the crime was allegedly committed in whole or substantial part in the counties of Nassau or Suffolk.

(2) Civil Cases.

A civil case shall be designated by the clerk a "Long Island case" if:

- (i) The cause arose in whole or substantial part in the counties of Nassau or Suffolk; or
- (ii) All or substantially all of the parties reside in these areas.

(3) A party may move to designate a case as a Long Island case, or to annul such a designation, on a showing that to do so will serve the convenience of the parties and witnesses, or is in the interest of justice.

Rule 2. Assignment of Cases

(a) Time of Assignment

The clerk shall assign a civil case upon the filing of the initial pleading. In a criminal case after an indictment is returned against any person or after an information (including a juvenile information filed under 18 U.S.C. Sec. 5032) or a motion to transfer (made under 18 U.S.C. Sec. 5032), has been filed, the United States attorney shall refer the case to the clerk who shall then assign the case. The United States attorney shall arrange with the judge to whom the case has been assigned, or, in the judge's absence or unavailability, under Rule 5(b) with the miscellaneous part judge, to have the person arraigned and required to plead as promptly as practicable.

(b) Random Selection Procedure

Cases except those assigned to the Long Island courthouse pursuant to Rule 2(c) shall be assigned pursuant to this Rule 2(b). The clerk shall assign cases by random selection in such a manner that each judge shall be assigned as nearly as possible the same number of cases, except as otherwise provided. The clerk shall have no discretion in determining the judge to whom any matter is assigned; the clerk's action shall be ministerial only. The judges shall, from time to time, determine and indicate by formal order to the clerk the method by which the random selection shall be made, making appropriate provision for the ratio of cases which the chief judge and the senior judges shall have elected to receive. The method of assignment shall be such that the judge to whom any particular case is to be assigned shall not be known by or disclosed to the clerk or any other person in advance of assignment. The chief judge shall determine by written order which deputy clerks may exercise the power of the clerk under these rules.

(c) Assignment of Long Island Cases

There shall be established two civil drums for the assignment of civil cases. One drum shall be called the general drum, and the other the Long Island drum.

Commencing July 1, 1979, and quarterly thereafter, the chief judge shall determine the number of cases to be assigned to the judges sitting at the Long Island courthouse with a view to distributing the civil caseload equally among all the active judges of the court.

(d) Special Cases

(1) Rehabilitation of Narcotics Addicts Act Commitments.

Upon a determination by the judge presiding in miscellaneous part that a defendant is an "eligible individual" as defined by 28 U.S.C. Sec. 2901(g), the clerk shall assign the case to a judge under the random selection procedures set forth in Rule 2(b) and 2(c). The report of the surgeon general shall be submitted to the assigned judge for his consideration.

(2) Pro Se Applications

Pro se applications or claims filed by persons in custody shall be filed by the clerk without prepayment of fee. Upon filing the case shall be assigned pursuant to Rule 2(b) and 2(c).

(3) Assignment on Reversal

Upon reversal of a judgment and a direction for a retrial, unless the mandate of the appellate court directs otherwise, the case shall be assigned pursuant to Rule 2(b).

(e) Bankruptcy

Except in the case of petitions under Chapter X and XII, immediately upon the filing of a petition initiating a case under the Bankruptcy Act, the case shall be referred to a bankruptcy judge by the clerk in the manner provided by Rule 2 of the bankruptcy rules of this court. Cases arising under Chapter X and XII, petitions to review orders of bankruptcy judges, and notifications for jury trials under Rule 6 of the bankruptcy rules of this court shall be assigned upon filing by the clerk in the same manner as provided by section (a) of this rule.

(f) Chief Judge; Senior Judges

The chief judge and any senior judge shall, in his or her discretion, indicate from time to time to the judges of the court the ratio of cases which said judge elects to have assigned.

(g) Proceedings after assignment

All proceedings in a case after its assignment shall be conducted before the judge to whom it has been assigned, except as otherwise provided by these rules.

(h) Motion for consolidation of cases

If a motion for the consolidation of cases is not made in the case first filed, it shall be referred to the judge to whom the case first filed was assigned. If such a motion is granted, the procedure thereafter shall be the same as for related cases under Rule 3.

Rule 3. Related Cases

(a) Defined

One case is "related" to another for purposes of this rule when, because of similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of the time of the whole court is likely to result if the cases are assigned to the same judge. By way of illustration and not limitation the following are related:

(1) civil cases, when a case (i) relates to property included in an earlier numbered pending suit, or (ii) involves the same issue of facts or grows out of the same transaction as a pending suit, or (iii) involves the validity or infringement of a patent already in suit in any pending earlier numbered case;

(2) criminal cases, when (i) a superseding indictment or information has been filed, or (ii) more than one indictment or information is filed or pending against the same defendant or defendants; and

(3) bankruptcy cases, when (i) separate voluntary petitions are filed by husband and wife, or (ii) they involve property included in an earlier numbered bankruptcy suit.

(b) Designation of related cases

If the party filing the initial pleading believes that it is related to a case already assigned, whether or not the case is then pending, the party shall indicate the title and number of the related cases on the information sheet. If the party believes that the case is related to a case not yet assigned, the party shall indicate the title of such case on the information sheet.

(c) Assignment of related cases

Related cases shall be assigned by the clerk to the judge to whom was assigned the first case filed (i.e., the case bearing the lowest docket number) of any given series of cases. The clerk shall advise the judge when said clerk assigns a case as a "related case."

Applications filed by any person in custody shall be deemed related and assigned by the clerk pursuant to Rule 3(c).

(d) Cases erroneously assigned as related cases

Assignments of cases as related shall be subject to correction only by the judge to whom they have been assigned, who shall return cases

erroneously assigned to the clerk for reassignment. The clerk's failure to assign a "related case" shall be subject to correction only by the joint decision of the judge to whom it has been assigned and the judge to whom it should be assigned; the judges, if they agree, may transfer the case pursuant to section (c) of this rule, and shall notify the clerk of the reason for the transfer.

(e) Assignment credit

Each related case transferred or assigned to a judge shall be counted in the same manner as a newly filed case regularly assigned. A transferor judge shall be assigned an additional newly filed case for each case transferred from him pursuant to this rule.

(f) 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 said attorney believes are relevant to a determination that said attorney's 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 a relationship, said attorney shall notify the clerk in writing, who shall transmit that notification to the judges to whom the cases have been assigned.

Rule 4. Reassignment of Cases

(a) General

Except as described in Rule 4(b), no reassignment of a case shall be made except in the interest of justice and the efficient performance of the business of the court. Reassignment may be made at any time by the chief judge, acting with the consent of the judges, including senior judges, from whom and to whom the case is transferred. When reassignment is necessitated by the death, retirement, resignation or incapacity of any judge, by the appointment of a new judge or a visiting judge, or by any other circumstances, the judges of the court shall determine and indicate by formal order to the clerk the method by which such reassignment shall be made.

(b) Long Island Case Designations

Within twenty (20) days after the original assignment, any party may serve and file with the chief judge a written request to review the clerk's

designation of, or failure to designate, a "Long Island Case." After consultation with the judge to whom the case was assigned, the chief judge shall review and determine the propriety of the designation. If the designation is changed, then the clerk shall reassign the case in accordance with the determination of the chief judge.

Rule 5. Miscellaneous Part Judge

(a) Matters and proceedings heard by Miscellaneous Part Judge

There shall be designated for each session of the court a miscellaneous part judge to:

(1) hear and determine matters requiring immediate action in cases already assigned to any judge of the court, if that judge is unavailable or otherwise unable to hear the matter;

(2) hear and determine special proceedings the nature of which precludes their assignment in the ordinary course, including motions under Rule 41 of the Federal Rules of Criminal Procedure made before indictment;

(3) hear and determine any other proceeding, including admissions to the bar and naturalization proceedings, not part of or related to a case that should be assigned in the ordinary course;

(4) hear and determine requests to be excused from service on the grand and petit juries;

(5) impanel the grand jury, and hear and determine all matters relating to proceedings before the grand jury;

(6) receive indictments from the grand jury;

(7) refer criminal cases to the clerk for assignment pursuant to Rule 2(b);

(8) Appoint receivers in bankruptcy in accordance with Rule 8 of the local bankruptcy rules.

In Chapter XI proceedings, upon the filing of the petition and prior to the assignment of the proceeding to a bankruptcy judge, to issue preliminary orders for stays, continuance in business and other similar orders.

(b) Disposition of emergency matters

The miscellaneous part judge shall dispose of matters pursuant to section (a)(1) of this rule only to the extent necessary to meet an emergency

or to comply with the requirements of speedy arraignment. So far as practicable consistent with justice and the efficient performance of the business of the court, the matter in other respects shall be continued for disposition by the judge to whom the case is assigned.

(c) Subsequent emergency proceedings

If a proceeding is brought before the miscellaneous part judge under section (a)(1) of this rule, and said judge concludes that, for lack of emergency or otherwise, the proceeding should not be determined under this rule, the party who brought the proceeding shall not thereafter present the same matter to any other miscellaneous part judge, unless relevant circumstances change in the interim, in which case said judge shall bring to the attention of the judge the prior proceeding and the changed circumstances which said judge believes warrant resubmission of the matter under this rule.

Rule 6. Calendars

(a) Order of cases

The calendar number of each case shall be the same as the docket number except that a jury case shall have the letter "J" appended; no note of issue shall be required. Each judge shall dispose of cases assigned to him or her as required by law and effective administration of justice.

(b) Preferences

The following shall be entitled to a preference:

(1) among criminal cases, those in which a defendant is in federal custody awaiting trial;

(2) jury issues in bankruptcy framed by an answer to any bankruptcy petition;

(3) cases entitled to a preference under any statute of the United States;

(4) cases requiring a new trial because of the setting aside of a former verdict, the reversal of a former judgment, or a mistrial;

(5) cases in which a receiver appointed by any court, or a trustee in bankruptcy or debtor-in-possession, or a trustee under other Chapters of the Bankruptcy Act, is a party when the application is made by the receiver, trustee or debtor-in-possession;

(6) cases in which a judge grants a preference as a condition of granting or denying relief; and

(7) cases which the assigned judge finds are entitled to a preference for exceptional and meritorious reasons.

(c) Motions returnable

Motions shall be made returnable before the judge to whom the case has been assigned or as provided in Rule 5(a).

(d) Impleader

An impleader motion shall be made within six months of commencement of the action unless good cause for delay is shown.

(e) Status of cases

The clerk shall post on bulletin boards in the clerk's office information indicating the status of each case on trial. The deputy clerks shall report the progress of trials to the clerk. The clerk shall answer all inquiries by telephone or otherwise as to the disposition or status of cases.

(f) Preparation for trial

At least one day before a case is actually scheduled to go to trial, there shall be submitted to the assigned judge, unless trial counsel are notified to the contrary, marked pleadings and a trial brief by each party. The briefs shall contain a clear and concise statement of the facts and law relied upon. Briefs must be typewritten, and shall be double-spaced, except for quotations. Copies of all foreign statutes involved shall be supplied, together with references to their sources.

Rule 7. Conference

After a case has been assigned, the judge may direct the attorneys for each party to meet with said judge to discuss the case informally, to entertain oral motions and, to the extent possible and desirable, to discuss settlement or to set a schedule for the case, including for discovery, pre-trial and trial.

Rule 8. Sanctions

(a) Dismissal or default.

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

(b) Imposition of costs on attorneys

If counsel fails to comply with Rules 3(f), 6(g) or 7 or a judge finds that the sanctions on subdivision (a) are either inadequate or unjust to the parties, said judge may assess reasonable costs directly against counsel whose action has obstructed the effective administration of the court's business.