**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEW HAMPSHIRE**

# LOCAL RULES

**JANUARY 1, 1996**

**As Amended Through December 1, 2023**

## TABLE OF CONTENTS

[INTENTIONALLY BLANK]

[INTENTIONALLY BLANK]

# I. SCOPE OF THE RULES

## 1.1 General Rules

**(a) Title and Citation.** The local rules shall be known as the "Local Rules of the United States District Court for the District of New Hampshire." They shall be cited as "LR __."

**(b) Effective Date.** Effective January 1, 1996, as amended December 1, 2023.

**(c) Relationship to Prior Rules.** The local rules supersede all previous rules promulgated by this court. They shall apply to all new actions and all actions pending at the time they take effect except to the extent that the court determines that application of the local rules would not be feasible or would work injustice in which event the former rules shall govern.

**(d) Construction.** United States Code, Title 1, Sections 1 to 5, shall govern the construction of the local rules.

**(e) Numbering.** The numbering of the local rules tracks the numbers of the Federal Rules of Civil Procedure.

**(f) Scope.** Local Rules 1.1 - 83.17 shall govern the procedure in all civil actions.

**(g) Definitions**

"Attorney" or "counsel" includes any party appearing pro se.

"Clerk" or "clerk's office" means the clerk of the United States District Court and deputy clerks unless the context dictates otherwise.

"Conventionally Filed/Served" means documents or other materials presented to the court or party in paper or other non-electronic format.

"Court" means the district or magistrate judge to whom a civil or criminal action, proceeding, case, or matter has been assigned.

"Electronically Filed/Served" means the transmission of a document in a portable document format ("PDF") for filing and service through the court's electronic case filing system.

"Filings" means pleadings, motions, or other documents; "initial filings" means the pleading or other document which initiates an action.

"Judge" means United States District Judge.

"Party" means the attorney as well as the person or entity being represented unless the context dictates otherwise.

(§§ (e), and (f) amended 1/1/97; § (b) amended 1/1/97, 1/1/98, 1/1/99, 1/1/00, 1/1/01, 1/1/02, 1/1/03, 1/1/04, 1/1/05, 6/1/05, 1/1/06, 1/1/07, 1/1/08, 12/1/09, 12/1/11, 12/1/13, 12/1/15, 12/1/17, 12/1/18, 12/1/19, 12/1/21,12/1/22, 12/1/23; § (g) definition for Court Information System deleted 1/1/00; §(f) amended 1/1/06; § (g) amended 1/1/08; § (f) amended 12/1/13, 12/1/23)

### 1.2 Availability; Amendments of Local Rules

**(a) Availability.** Copies of the local rules may be purchased at the clerk's office. They are also available via the court's web site (www.nhd.uscourts.gov).

**(b) Amendments.** Except as otherwise provided, the court shall give notice of proposed amendments to the local rules through a publication distributed by the New Hampshire Bar Association, posting in the clerk's office, and posting on the court's web site. The court shall allow at least thirty (30) days from the date of notice for public comment.

When the court determines that there is an immediate need for an amendment, it may proceed without providing public notice or public comment, provided that the court promptly thereafter gives public notice and opportunity for public comment.

(§§ (a) and (b) amended 1/1/00; 1/1/01; § (b) amended 12/1/15)

### 1.3 Sanctions; Relief From Failure to Comply

**(a) Sanctions.** Except as otherwise provided by law, the court may dismiss an action, enter a default, or impose other sanctions it deems appropriate, for any violation of, or failure to comply with, the local rules.

Violation of any local rule governing the form of filing may be sanctioned by imposing a fine against the attorney for the party that has violated the rule. A party wishing to contest the imposition of any fine shall file a motion to vacate prior to payment of any fine. The court shall not consider motions filed after payment of any fine.

**(b) Relief From Failure to Comply.** The court may excuse a failure to comply with any local rule whenever justice so requires.

## II. COMMENCEMENT OF ACTION, SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

### 3.1 Civil Cover Sheet

Except as otherwise provided, every initial filing shall be accompanied by a completed civil cover sheet. The clerk's office shall promptly notify any party of the omission of a civil cover sheet. Pro se parties are exempt from this requirement.

Matters appearing only on the civil cover sheet shall have no legal effect in that action. Civil cover sheets are available in the clerk's office.

### 4.1 Summons; Waiver of Service for Summons

A summons or notice of lawsuit and request for waiver of service for summons for each named defendant shall be delivered to the clerk's office contemporaneously with the filings to be served with the summons. If a summons or notice/request form is not used, the summons or notice/request shall conform with the requirements of Fed. R. Civ. P. 4(a) and (d)(1). Summons or notice of lawsuit and request for waiver of service for summons forms are available in the clerk's office and on the court's web site (www.nhd.uscourts.gov). For those cases subject to preliminary review pursuant to LR 4.3(d)(1), (2) and (4), the court shall not issue a summons for

service and a notice of lawsuit/request for waiver of service of summons shall not be sent to any party until the preliminary review has been completed and service has been ordered.

(Amended 1/1/97, 1/1/08, 12/1/15)

**4.2 In Forma Pauperis Applications**

**(a) Financial Information.**

**(1) All Applications.** All applications to proceed in forma pauperis shall be accompanied by a financial affidavit which shall disclose the applicant's income, assets, expenses, and liabilities. The court may require applicants who are not institutionalized to file an additional affidavit or produce additional information relevant to the applicant's financial ability to pay the full filing fee.

**(2) Applications by Institutionalized Persons.** Institutionalized persons shall also submit, for the prior six-month period and certified by the institution or appropriate governmental entity, (1) a copy of the applicant's trust account statement at the institution ("certified trust account statement") and (2) a statement showing the average monthly deposits to and average monthly balance in the applicant's account. Applicants institutionalized for less than six (6) months shall submit a certified trust account statement for the entire period of institutionalization and the deposit and balance statements average for the same period.

**(b) Eligibility for In Forma Pauperis Status.** An applicant shall be entitled to proceed in forma pauperis if the applicant's financial affidavit and/or certified trust account statement demonstrates that the applicant is unable to pay or prepay the fees and pay the costs of the action and the court determines that the applicant has not deliberately depleted his or her assets in order to become eligible for in forma pauperis status.

**(c) Filing Fee.**

**(1) Nonincarcerated Persons.** The court may require an applicant to pay a partial filing fee provided that the fee assessed does not exceed the greater of fifteen percent (15%) of the value of the applicant's liquid assets or fifteen percent (15%) of the applicant's net monthly income after deducting reasonable expenses. In no event shall a partial filing fee be less than $5.

**(2) Incarcerated Persons.** 28 U.S.C. § 1915, as amended, requires an inmate to pay the full filing fee when bringing a civil action. If insufficient funds exist in the inmate's account, the court will assess an initial partial filing fee.

**(A) Initial Partial Filing Fee.** Should in forma pauperis status be granted, the court will set an initial partial filing fee in the amount of twenty percent (20%) of the greater of (a) the average monthly deposits to the inmate's account for the prior six (6) months; or (b) the average monthly balance in the inmate's account for the prior six (6) months.

**(B) Balance.** Subsequent monthly payments of twenty percent (20%) of the preceding month's income shall be made until the filing fee is paid in full. Said payments shall be deducted whenever the inmate's account exceeds $10.

**(d) Objections.** Objections to any filing fee ordered by the court shall be filed with the clerk's office within fourteen (14) days of that order and shall demonstrate factors, such as lack of ability, which justify not paying the required fee.

**(e) Multiple Plaintiffs.** The court shall compute any partial filing fee for each person named as a plaintiff or petitioner in the underlying action, provided that the aggregate of the partial filing fees does not exceed the full filing fee for that type of action. If the aggregate of the partial filing fees exceeds the full filing fee, the court shall reduce proportionately the partial filing fees so that the total of the assessed fees does not exceed the full filing fee.

**(f) Rescission of Leave to Proceed In Forma Pauperis.** The court may, either on its own or on motion by any party made in accordance with this rule, review and rescind, wholly or in part, leave to proceed in forma pauperis if the party to whom leave was granted becomes capable of paying the full filing fee or is found to have willfully misstated information in the application or for any other lawful ground.

**(g) Litigation Expenses.** The granting of an application to proceed in forma pauperis does not waive the applicant's responsibility to pay the expenses of litigation which are not waived by 28 U.S.C. §§ 1825 and 1915.

(Amended 1/1/97; § (d) amended 12/1/09)

## 4.3 Filings by Pro Se or In Forma Pauperis Plaintiffs, Pro Se or In Forma Pauperis Removal Defendants and Incarcerated Plaintiffs

**(a) Scope.** This rule applies to all actions commenced by pro se parties, parties proceeding in forma pauperis or incarcerated parties.

**(b) Compliance with Other Rules.** All such parties shall comply with these local rules and the Federal Rules of Civil Procedure.

**(c) Filings.** Filings by pro se parties shall be on forms provided by the clerk's office or in a format substantially conforming to such forms and LR 5.1.

**(d) Responsibilities of Clerk's Office and Preliminary Review by Magistrate Judge.**

**(1) Incarcerated Plaintiffs Suing a Government Agency or Employee.**

The clerk's office shall forward to the magistrate judge for preliminary review the initial filings, and any subsequent amendments to those filings, by all incarcerated plaintiffs who have sued a government agency or employee. After the initial review, the magistrate judge may:

(A) report and recommend to the court that the filing be dismissed because the allegation of poverty is untrue where the plaintiff is proceeding in forma pauperis, the court lacks subject matter jurisdiction, or the action is frivolous or malicious,

fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief;

(B) grant the party leave to file an amended filing in accordance with the magistrate judge's directives; or

(C) appoint a person to effect service pursuant to Fed. R. Civ. P. 4(c)(3).

**(2) Incarcerated In Forma Pauperis Plaintiffs Not Suing Any Government Agency or Employee, and Filings by Nonincarcerated In Forma Pauperis Parties.**

The clerk's office shall forward to the magistrate judge for preliminary review the initial filings, and any subsequent amendments to those filings, by all nonincarcerated parties proceeding in forma pauperis including in forma pauperis removal defendants, and by any incarcerated plaintiff proceeding in forma pauperis who has not sued a government agency or employee. After preliminary review, the magistrate judge may:

(A) report and recommend to the court that the filing be dismissed because the allegation of poverty is untrue, the court lacks subject matter jurisdiction, or the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief;

(B) grant the party leave to file an amended filing in accordance with the magistrate judge's directives; or

(C) appoint a person to effect service pursuant to Fed. R. Civ. P. 4(c)(3).

**(3) Filings by Nonincarcerated Pro Se Parties Who Have Paid the Filing Fee and Incarcerated Pro Se Parties Who Have Paid the Filing Fee and Are Not Suing a Government Agency or Employee.**

The clerk's office shall forward initial filings, including actions removed by a pro se defendant, to the magistrate judge for preliminary review to determine whether the court has subject matter jurisdiction. If the magistrate judge determines that the court lacks subject matter jurisdiction, the magistrate judge shall either recommend that the filings be dismissed, recommend that a removed action be remanded, or grant the party leave to file amended filings in accordance with the magistrate judge's directives.

**(4) Petitions for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 or 2254.**

(A) The clerk's office shall forward a petition filed pursuant to either 28 U.S.C. § 2254 or 28 U.S.C. § 2241 to the magistrate judge, who must promptly examine it. After such examination, the magistrate judge may:

(i) report and recommend to the court that the petition be dismissed if, on its face, it fails to demonstrate exhaustion of state court remedies, fails to demonstrate that the petitioner is in custody, or otherwise fails to demonstrate entitlement to relief;

(ii) grant the petitioner leave to file an amended petition in accordance with the magistrate judge's directives; or

(iii) order the respondent to file an answer, motion, or other response within a fixed time.

(B) In every case, the clerk must serve a copy of the petition and any order on the respondent and on the attorney general or other appropriate officer of the state involved.

**(e) Pleadings Filed by Represented Parties.** Any litigant who is represented by an attorney may not file a pleading in a case unless:

(1) The court grants a motion for leave to file a pro se pleading;

(2) The litigant is filing a motion related to the status of counsel; or

(3) An attorney has been granted leave to provide limited representation to an otherwise unrepresented party and the filing is outside the scope of the limited representation.

Any pro se pleading that does not comply with this rule shall not be added to the court's docket or presented to a judicial officer for ruling and shall be returned to the filer.

(§ (d) amended 1/1/98; §§ (d)(1)(A), (d)(2), and (d)(2)(A)(i) amended 1/1/00; § (d)(1)(A) amended 1/1/03; §§ (d)(1)(B)(iii), (d)(2)(C) amended 1/1/08; §§ (d)(1)(A) and (B) amended, § (e) added 12/1/09; § (d) amended, § (e)(3) added 12/1/13)

### 4.4 Payment of Fees

Except as otherwise required by law or ordered by the court, the clerk's office shall not docket any filings, issue any process, or render any other service for which a fee is prescribed by statute or by the Judicial Conference of the United States unless the fee is prepaid or an in forma pauperis motion has been filed. The clerk's office shall docket any notice of appeal upon receipt. All fees must be paid in United States currency.

(Amended 1/1/00, 1/1/03, 1/1/06, 12/1/13)

### 5.1 Format and Service of Filings

**(a) Size and Format.** Filings shall be on 8 1/2 x 11 inch paper of good quality; be plainly typewritten, printed, or prepared by a clearly legible duplication process in a font size no smaller than ten (10) characters per inch or, if a proportionately spaced font is used, no less than twelve (12) point; have no less than one (1) inch margins; be consecutively numbered in the bottom center of each page; and be double spaced except for quoted material. Footnotes shall be used sparingly.

**(1) Unbound Conventional Paper Filings.** Complaints, motions, appendices, exhibits, attachments and supporting memoranda shall be stapled or otherwise attached but shall not be permanently bound.

**(2) Requirements for Appendices.** When a conventionally filed paper appendix or attachment includes more than one exhibit, it shall also include a table of contents or index, and each exhibit shall be separately numbered and marked with a separate tab page. All affidavits submitted to the court shall be included as exhibits in the appendix or attachment. All documents submitted to the court as exhibits, attachments, or appendices shall be complete, legible copies. As to each appendix or attachment submitted to the court, counsel are encouraged to include all relevant documents and should avoid incorporating prior submissions by reference.

**(b) Identification of Attorney.** The attorney's name, address, primary telephone number, email address and New Hampshire bar number, or its equivalent in cases where the attorney is not a member of the New Hampshire bar, shall appear on all filings. The bar number shall immediately follow the attorney's typed name in the signature section of all filings.

**(c) Identification of Filings.** All filings shall contain the caption of the case and a description of its contents and identify the party on whose behalf it is filed. All filings subsequent to the initial filing shall also show the proper docket number including the suffix which indicates the initials of the presiding judge.

When any filing includes a request for special process or relief or any other request that, if granted, would require the court to proceed other than in the ordinary course, the request shall noted on the first page, immediately to the right of, or immediately beneath, the caption.

**(d) Certificate of Service.** The certificate of service required by Fed. R. Civ. P. 5(d)(1) shall state the name and address of the attorney or party served, the manner of service, the date of service, and shall be personally signed by one counsel of record or by a party proceeding pro se. If a document that is filed electronically must be conventionally served on any attorney or party, the certificate of service shall also state the date the document was electronically filed with the court.

**(e) Facsimile and Email Filings.** The clerk's office shall not accept filings by facsimile or email without an oral or written court order authorizing such filings.

**(f) Affidavits.** All affidavits shall identify the filing they support or oppose by indicating the filing's title.

**(g) Removed Actions.** This rule shall not apply to exhibits or filings in removed actions filed prior to removal from state court.

**(h) Translations Required.** Absent an order of the court upon a showing of good cause, the court will reject documents not in the English language unless translations are furnished. Partial translations are acceptable if stipulated to by the parties or submitted by a party. When partial translations are submitted by a party, opposing parties may submit translations of such additional parts as they deem necessary for a proper understanding of the substance of the matter submitted.

**(i) Service on a Limited Representation Attorney**. When an attorney has been granted leave to provide limited representation under LR 83.7, copies of all filings by any party shall be served on the party who is receiving the limited representation and the limited representation attorney. After the limited representation attorney has given notice or withdrawn pursuant to LR 83.7(e), no further service need be made upon that attorney.

(§ (a), 2nd paragraph regarding binding requirements deleted 1/1/00; §§ (a)(1) and (2) added 1/1/00; retitled, new § (d) added, former § (d)-(f) relettered accordingly 1/1/04; §§ (a)(1)-(2) amended 1/1/06; § (a)(1) retitled, §§ (a)(2) and (b) amended, § (d) amended, § (h) added 1/1/08; § (i) added 12/1/13; §§ (b) and (e) amended 12/1/17; § (d) amended 12/1/21)

### 5.2 Nonconforming Filings

The clerk's office shall file nonconforming filings, subject to the court striking the filing on its own initiative or on motion by a party.

### 5.3 Citation Format for Opinions Issued by This Court

**(a) Reported Opinions.** Opinions that are reported in the Federal Supplement, the Federal Rules Service, the Federal Rules Decisions, Westlaw, or Lexis shall be cited either by citing to the reporter or service in which the opinion is published, or by using the citation format specified in subsection (b).

**(b) Opinions Published on the Court's Web Site and Issued After January 1, 2000**. Opinions that are published on the court's web site (www.nhd.uscourts.gov) and issued after January 1, 2000, which are accessible without charge, may be cited using the four-digit year in which the opinion is issued, the letters "DNH," the three-digit opinion number located below the docket number on the right side of the case caption and, where reference is made to specific material within the opinion, the page number that appears in the Portable Document Format (PDF) version of the opinion that is available on the court's web site, e.g., United States v. Smith, 2000 DNH 001, 6.

**(c) Unreported Opinions.** All other opinions shall be cited using the citation form for unreported decisions suggested in the Blue Book.

(Added 1/1/01; amended 12/1/18)

### 5.4 Filing and Service by Electronic Means

**(a) Filing.** Pursuant to Fed. R. Civ. P. 5(d)(3) and Fed. R. Crim. P. 49(d), the clerk's office will accept papers filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes, and that comply with procedures for electronic filing established by the court.

**(b) Service.** Service of court orders and service by the parties pursuant to Fed. R. Civ. P. 5(b) and Fed. R. Crim. P. 49(b) may be accomplished through the court's transmission facilities and the court may enact procedural orders governing such service.

(Added 1/1/04; § (a) amended 1/1/08, 12/1/18)

### 6.1 Computation of Time

Wherever in these rules reference is made to filing, time periods shall be determined in accordance with Fed. R. Civ. P. 6(a). All time periods running from the date of service shall be determined in accordance with Fed. R. Civ. P. 6(a) and (d). Rule 6(d) does not apply to time periods calculated from the date of filing. The last day for documents submitted using the 24-hour depository shall end at midnight local time unless a different time is established by court order.

(Added 1/1/03; amended 1/1/08, 12/1/09)

## III. PLEADINGS AND MOTIONS

### 7.1 Motions

**(a) Form.**

**(1) Title and Content.** All motions must contain the word "motion" in the title. Filers shall not combine multiple motions seeking separate and distinct relief into a single filing. Separate motions must be filed. Objections to pending motions and affirmative motions for relief shall not be combined in one filing.

**(2) Memorandum and Supporting Documents.** Every motion and objection shall be accompanied by a memorandum with citations to supporting authorities or a statement explaining why a memorandum is unnecessary. Every motion and objection which require consideration of facts not in the record shall be accompanied by affidavits or other documents showing those facts.

**(3) Length of Memorandum.** Except by prior leave of the court, no memorandum in support of, or in opposition to, a nondispositive motion shall exceed fifteen (15) pages and no memorandum in support of, or in opposition to, a dispositive motion shall exceed twenty-five (25) pages.

**(b) Time for Response.** Except as otherwise required by law or order of the court, every objection, except objections to summary judgment motions, shall be filed within fourteen (14) days from the date the motion is filed. Objections to summary judgment motions shall be filed within thirty (30) days from the date the motion is filed. The court shall deem waived any objection not filed in accordance with this rule.

**(c) Concurrence.** Any party filing a motion other than a dispositive motion shall certify to the court that a good faith attempt has been made to obtain concurrence in the relief sought. If the moving party has obtained concurrence, a statement of concurrence shall be included in the body of the motion so the court may consider it without delay. If concurrence has been obtained, the motion shall also contain the words "assented-to" in its title. The requirements of this subsection shall not apply to motions involving an incarcerated pro se litigant.

**(d) Oral Argument.** Except as otherwise provided, the court shall decide motions without oral argument. The court may allow oral argument after consideration of a written statement by a party outlining the reasons why oral argument may provide assistance to the court. Unless otherwise ordered, each side's argument shall be limited to fifteen (15) minutes.

**(e) Reply or Surreply Memorandum.**

**(1) Dispositive Motions.** Within seven (7) days of the filing of an objection or opposition to a dispositive motion, the party filing the dispositive motion may file a reply memorandum not to exceed ten (10) pages restricted to rebuttal of factual and legal arguments raised in the objection or opposition memorandum.

**(2) Nondispositive Motions.** A memorandum in reply to an objection or opposition to a nondispositive motion shall not be permitted without prior leave of court. Any motion for leave to file such a reply shall be filed within seven (7) days of the filing of the objection or opposition to which the reply would respond and shall attach the proposed reply, which will be limited to five (5) pages, as an exhibit.

**(3) Surreply Memorandum.** If a reply has been filed either as of right pursuant to LR 7.1(e)(1) or by court order under LR 7.1(e)(2), a surreply may be filed within five (5) days of the date the reply was filed. Surreplies shall be limited to five (5) pages. Parties should note that surreplies are not encouraged and should be filed only in exceptional circumstances.

**(4) Deadlines.** The deadlines set in subsections (1), (2) and (3) apply unless otherwise modified or set by court order.

**(f) Requests for Expedited Treatment.** For good cause shown in the motion, a party may request expedited consideration of a motion. Any request for expedited treatment shall be expressly noted in the motion caption.

**(g) Dispositive Motion Defined.** For the purposes of this rule, the term "dispositive motion" is limited to a motion for any form of injunctive relief, a motion filed pursuant to Fed. R. Civ. P. 12(b) or (c), a motion for summary judgment filed pursuant to Fed. R. Civ. P. 56, a motion to dismiss or to permit maintenance of a class action, and a motion to involuntarily dismiss an action. Motions for dismissal as a sanction pursuant to Fed. R. Civ. P. 16 or 37 shall be subject to the briefing schedule for nondispositive motions.

(§ (c) amended 1/1/97; § (a)(4) amended 1/1/00; (a)(4), Reply Memorandum, stricken and § (e) added 1/1/01; § (e)(1) amended 1/1/02; §§ (b) and (e)(1)-(3) amended 1/1/03; §§ (a)(1) and (e)(2)-(3) amended 1/1/06; §§ (e)(2)-(3) amended 1/1/08; §§ (b) and (e)(1)-(3) amended 12/1/09; § (f) added 12/1/11; § (e)(4) added 12/1/15; § (e) amended 12/1/17; § (b) and (e)(1)-(2) amended 12/1/21; § (g) added 12/1/23)

### 7.1.1 Disclosure Statements

**(a) Form of Filing.** The disclosure statement for nongovernmental corporate parties and intervenors required by Fed. R. Civ. P. 7.1(a)(1) and this rule shall substantially conform to Civil Form 4, Nongovernmental Corporate Disclosure Statement. In cases in which jurisdiction is based on diversity of citizenship, the disclosure statement for parties and intervenors required by Fed. R. Civ. P. 7.1(a)(2) and this rule shall substantially conform to Civil Form 4.1, Diversity Disclosure Statement. An unincorporated entity, including but not limited to a partnership, limited liability company ("LLC") or trust, must in the Diversity Disclosure Statement name and identify the citizenship of all individuals or entities whose

citizenship is attributed to that unincorporated entity under applicable law (such as, as may be the case depending on the unincorporated entity and applicable law, partners, members, trustees, and beneficiaries). Additionally, if any entity whose citizenship is attributed to the unincorporated entity is itself an unincorporated entity, the name and citizenship of the individuals or entities whose citizenship is attributed to that unincorporated entity must likewise be disclosed until all related parties whose citizenship is attributable to the filing party have been disclosed. These disclosure statements must be filed as separate documents and may not be combined into one document.

**(b) Additional Information.** The disclosure statement shall also identify any publicly held corporation with which a merger agreement exists.

**(c) Partnerships and Limited Liability Companies.** When a partnership or an LLC is a party or intervenor to an action or proceeding, the partnership/LLC shall file a disclosure statement providing the information required in Fed. R. Civ. P. 7.1 and § (b) of this rule or shall state that there is no such corporate entity that holds such an interest in the partnership/LLC.

**(d) Time for Filing in Removal Actions.** In removal actions, a nongovernmental plaintiff or intervenor that is a corporation, partnership or LLC, or a party or intervenor in a diversity case, must file a disclosure statement within twenty-one (21) days from the date the notice of removal is filed or with the first appearance, pleading, petition, motion, response, objection, or request, whichever is filed sooner.

(Formerly LR 83.6(a)(4), renumbered to 7.5 and amended 1/1/01; retitled, § (a) retitled and amended, § (b) retitled, relettered to (d) and amended, and new §§ (b) and (c) added 1/1/03; §§ (c) and (d) amended 12/1/09; § (d) amended 12/1/11; formerly LR 7.5 renumbered to 7.1.1, § (a) amended 12/1/13; §§ (a), (c) and (d) amended 12/1/22; §§ (a) and (c) amended 12/1/23)

## 7.2 Specified Motions

**(a) Motions to Extend Time.** Motions to extend time shall state whether the extension would result in the continuance of any hearing, conference, or trial, and state the proposed extended date. Motions to extend deadlines set in the discovery plan shall (i) state whether the extension would result in the need to extend any other deadline set forth in the discovery plan; (ii) state the proposed extended date for those deadlines; and (iii) be accompanied by a completed Civil Form 3.

Motions to extend time based upon a scheduling conflict shall be filed within seven (7) days of the date that counsel learned, or reasonably should have learned, of the scheduling conflict.

**(b) Motions to Strike.** Any motion to strike material offered in support of or in opposition to a motion must be filed within fourteen (14) days of the filing of the motion or objection to which the objected-to material is attached.

**(c) Motions for Continuance of Trials.** A motion to continue a trial shall contain a certification that the party on behalf of whom the motion was filed has been notified of the request by counsel.

**(d) Motions for Reconsideration.** A motion to reconsider an interlocutory order of the court, meaning a motion other than one governed by Fed. R. Civ. P. 59 or 60, shall demonstrate that the order was based on a manifest error of fact or law and shall be filed within fourteen (14) days from the date of the order unless the party seeking reconsideration shows cause for not filing within that time. Cause for not filing within fourteen (14) days from the date of the order includes newly available material evidence and an intervening change in the governing legal standard.

When a motion to reconsider a ruling by the magistrate judge is directed to the magistrate judge, an objection pursuant to Fed. R. Civ. P. 72 or 28 U.S.C. § 636(b)(1) shall be filed within fourteen (14) days after being served with a copy of the magistrate judge's ruling on the motion to reconsider.

(Prior (c), Motions for Continuance of Trials, and (d), Motions for Reconsideration, relettered to (d) and (e), and new § (c), Motions to Strike, added 1/1/01; § (e) amended 1/1/02; § (c) amended 1/1/03; § (e) amended 1/1/06; §§ (c) and (e) amended 12/1/09; § (a) amended, former § (b) Summary Judgment relocated to LR 56.1, former § (d) amended, former §§ (b) – (e) relettered 12/1/13; § (b) amended 12/1/21)

### 7.3 Hazardous Pleadings and Exhibits

No party may file any hazardous pleading or exhibit without prior leave of court. For purposes of this rule "hazardous pleading or exhibit" includes, but is not limited to, narcotics, controlled substances, firearms, ammunition, explosives, poisons, dangerous chemicals, blood, blood residue, body waste, urine, human or animal tissue or infectious material. Any hazardous exhibit filed without prior leave of court will not be handled by court personnel and will either be returned to the filer undocketed or destroyed without prior notice to the filer at the discretion of the clerk or judge.

(Former LR 7.3 Stipulations, stricken 1/1/01; Hazardous Pleadings & Exhibits, added 1/1/08)

### 7.4 Habeas Corpus Petitions Under 28 U.S.C. § 2254

The following procedures shall govern actions based upon 28 U.S.C. § 2254.

**(a) Respondent's Answer.**

(1) Unless otherwise ordered by the court, answers to petitions filed under 28 U.S.C. § 2254 shall be due 90 days from the date of the court's order requiring an answer be filed.

(2) In addition to the information and transcripts required by Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts ("§ 2254 Rules"), the answer must include:

(A) A chronological list or state court docket sheet(s) (also known as state court case summaries) identifying all state proceedings (including all pretrial, trial, sentencing, or post-conviction proceedings) that are either related to the conviction and sentence at issue, or related to any claim in the petition, and

(B) A notice stating whether, in addition to transcripts attached to the answer, there are any other transcripts that have not been filed, or state proceedings that have not been transcribed, which are either related to the conviction and sentence at issue, or related to any claim in the petition.

(3) In addition to the briefs and opinions to be filed with the answer under § 2254 Rule 5, the respondent must also file with the answer a copy of:

(A) Any notice of appeal, including any appendix to that notice of appeal, that the petitioner submitted in an appellate court contesting the relevant conviction or sentence, or contesting an adverse judgment or order in a post-conviction proceeding relating to that conviction or sentence; and

(B) Opinions and dispositive orders of any trial court or other tribunal, relating to the claims in the petition, along with any part of the record (including briefs, motions, or parts of transcripts) adopted or otherwise incorporated by reference in such opinions or orders.

(4) A complete copy of the answer, including all documents attached to, filed with, or referenced in the answer, shall be served on petitioner. A certificate of service conforming to LR 5.1(d) shall be included with the filing, listing the documents served upon the petitioner.

**(b) Reply.** The petitioner may file a reply within thirty (30) days after the respondent files an answer.

**(c) Respondent's Hearing Request or Dispositive Motion.** Within sixty (60) days of filing its answer to the petition for habeas corpus, the respondent shall file either:

(1) A written statement representing that an evidentiary hearing is necessary to resolve disputed issues of material fact; or

(2) If the respondent believes that there are no disputed issues of material fact, a dispositive motion (e.g., a motion for summary judgment), with specific references, where applicable, to the pertinent transcripts and state court orders. See also LR 56.1 governing memoranda filed in support of motions for summary judgment.

(Added 1/1/01; amended 1/1/03; amended 12/1/13; new §§ (a) and (b) added, § (c) title added 12/1/19; § (c) amended 12/1/21)

### 7.5 Habeas Corpus Petitions Under 28 U.S.C. § 2255; Petitioner's Right to Reply

The petitioner may file a reply within thirty (30) days after the respondent files an answer.

(Added 12/1/19)

### 8.1 [reserved]

(8.1, Redaction of Personal Identifiers in Filings, added 1/1/04; § (d) added 1/1/06; stricken 1/1/08)

## 9.1 Social Security Cases

The following procedures shall govern all actions challenging a final decision of the Commissioner of the Social Security Administration filed pursuant to § 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

(a) To allow the Social Security Administration to promptly identify and collect the administrative record relating to the claim, when the complaint is filed, the plaintiff shall separately provide the United States Attorney's Office with the claimant's full social security number. This information should not be filed with the court.

(b) The government shall serve and file a certified copy of the administrative record within sixty (60) days after service on the Commissioner, which shall be deemed an answer and general denial for the purposes of the Federal Rules of Civil Procedure. No separate answer need be filed. If a closed case is reopened, the government shall serve and file a certified copy of the administrative record within sixty (60) days after the order reopening the case is issued.

(c) Within thirty (30) days after the administrative record is filed, the plaintiff shall serve and file a Motion for Order Reversing Decision of the Commissioner. The motion shall be accompanied by a (1) statement of material facts not to exceed 15 pages; and (2) memorandum of law not to exceed 25 pages. Each fact identified in the statement of facts and memorandum shall be supported by citation to the page(s) in the administrative record where evidence supporting that fact is located.

(d) Within thirty (30) days after the plaintiff's Motion for Order Reversing Decision is filed, the government shall serve and file a Motion for Order Affirming Decision of the Commissioner or for Other Relief. The motion shall be accompanied by a memorandum of law not to exceed 25 pages, which shall respond to the specific issues raised in the plaintiff's motion. The government's motion may be accompanied by a statement of facts **only** to the extent the government determines material facts were omitted from the plaintiff's statement and it shall not exceed 15 pages. Each fact identified in the statement of facts and memorandum shall be supported by citation to the page(s) in the administrative record where evidence supporting that fact is located.

(e) Within fourteen (14) days of the filing of the government's Motion for Order Affirming Decision of Commissioner, the plaintiff may file a response not to exceed ten (10) pages. Further filings are not encouraged and should be submitted only in exceptional circumstances.

(f) "Material facts" shall be limited to only those facts that are material to one or more issues presented in the motions. All references to material facts shall be supported by specific and accurate citations to the page(s) in the administrative record where such facts are located.

(g) Motions to strike all or any portion of a statement of material facts are not permitted.

(§ (a) amended 1/1/05; § (c) amended 12/1/09; § (d) amended 12/1/11; § (b) amended, § (c) added, former §§ (c) and (d) relettered, 12/1/13; § (b) amended, former §§ (c) through (e) omitted, new §§ (c) through (f) added 5/7/18; § (d) amended 12/1/18; new §§ (a)(1) and (a)(2)

added, §§ (b), (d), and (e) amended, former §§ (a) through (f) relettered 12/1/19; § (e) amended 12/1/21; § (a)(1) omitted, § (a)(2) relettered, § (e) amended 12/1/22).

### 9.2 Requests for Three-Judge Court

**(a) Notification of Request.** To request a three-judge court, a party shall include "Three-Judge District Court Requested" or the equivalent immediately following the title of the initial filing and set forth the basis for the request in that filing or in a brief memorandum attached thereto.

**(b) Failure to Comply.** Failure to comply with this local rule is not a ground for failing to convene or for dissolving a three-judge court.

(Prior § (b), Copies Required, stricken, prior § (c) relettered to § (b) 1/1/08)

### 9.3 Individuals with Disabilities Education Act (IDEA) Cases

The following procedures shall govern all actions based upon 20 U.S.C. § 1415(i).

**(a) The Administrative Record.** The administrative record shall consist of any documents contained in the administrative file, any findings or decisions of the hearing officer, a transcript of those portions of the administrative hearing or hearings that either party or the court reasonably deems to be necessary to the resolution of the case, and any exhibits produced during the administrative hearing or hearings. The administrative record will be sealed upon filing with the court, unless otherwise ordered.

**(b) Filing of the Administrative Record.** The plaintiff shall obtain and file a copy of the administrative record within thirty (30) days after the complaint is filed. If a portion of the administrative hearing required to resolve the case has not been transcribed by the date that the administrative record is filed, the plaintiff shall order a transcript of that portion of the hearing within fourteen (14) days after the administrative record is filed, and file the transcript as soon as it becomes available. When the plaintiff determines that the administrative record is complete, the plaintiff shall serve on the defendant a proposed certificate of completion listing the documents and portions of the transcript comprising the administrative record. If the defendant agrees that the administrative record is complete, the defendant shall promptly file the certificate of completion. Alternatively, if the defendant determines that a transcript of additional portions of the administrative hearing or additional documents comprising the record will be required, the defendant shall notify the Court of its intent to supplement the administrative record within fourteen (14) days of the filing of the proposed certificate of completion. The defendant shall then order the supplemental transcript within fourteen (14) days after the notice of intent to supplement the administrative record is filed. The defendant shall file the supplemental transcript, any additional documents and a certificate of completion as soon as the supplemental transcript becomes available.

**(c) Evidentiary Hearings.** Within fourteen (14) days after the answer or the certificate of completion is filed, whichever is later, any party seeking an evidentiary hearing shall file a motion for evidentiary hearing and a supporting memorandum. The motion and the supporting memorandum shall identify with specificity any evidence that will be produced at

the evidentiary hearing and shall explain why such evidence is necessary to the resolution of the case. Any objection to a motion for evidentiary hearing shall be filed together with a supporting memorandum within fourteen (14) days after the motion is filed. An evidentiary hearing will not be held unless ordered by the court.

**(d) Joint Statement of Material Facts.** Within thirty (30) days after the answer or a certificate of completion is filed, whichever is later, the plaintiff shall serve on the defendant a proposed joint statement of material facts. This statement shall be in narrative form, contain record citations, summarize all procedural developments, and describe all facts pertinent to the resolution of the case. Within fourteen (14) days after the proposed joint statement of material facts is filed, the defendant shall inform the plaintiff of any proposed additions or deletions to the joint statement. Within fourteen (14) days of receipt of the defendant's proposed additions and deletions, the plaintiff shall file a joint statement of material facts containing all agreed-upon facts and record citations. If any material facts remain in dispute, the parties shall each file a list of disputed facts including record citations within fourteen (14) days after the joint statement of material facts is filed by the plaintiff.

**(e) Decision Memoranda.** Unless the court orders an evidentiary hearing, the parties shall file Decision Memoranda within thirty (30) days after the joint statement of material facts is filed. Each party shall then have fourteen (14) days to file a reply to the other party's Decision Memorandum. The reply shall not exceed ten (10) pages.

(Added 1/1/98; § (a) amended 1/1/00; §§ (b)-(e) amended 1/1/01; cite in introductory sentence amended 1/1/03; § (b) amended 1/1/08; §§ (b) through (e) amended 12/1/09; § (b) amended 12/1/21)

### 9.4 Cases under § 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1132(a)(1)(B)

Unless otherwise ordered by the court, the following procedures shall govern all actions that include one or more claims under § 502(a)(1)(B), including removed cases in which an ERISA claim is pled and removed or diversity cases in which the court subsequently determines that ERISA preempts the state law claims.

**(a) The Administrative Record.** The defendant shall serve and file a copy of the administrative record with its answer. In those cases in which the court determines ERISA preempts state law claims and orders the plaintiff to file an amended complaint setting forth an ERISA claim, the defendant shall serve and file the administrative record with its answer to the amended complaint. The administrative record shall consist of all relevant plan documents and any documents submitted, considered, or generated in the course of making the benefit determination. Any motion to modify the administrative record shall be served and filed within fourteen (14) days after the administrative record is filed.

**(b) Joint Statement of Material Facts.** Within thirty (30) days after the filing of the administrative record or the court's ruling on any motion to modify the administrative record, whichever is later, the plaintiff shall serve on the defendant a proposed joint statement of material facts. This statement shall be in narrative form, contain record citations, summarize all procedural developments, and describe all facts pertinent to the resolution of the case.

Within fourteen (14) days after the proposed joint statement of material facts is filed, the defendant shall inform the plaintiff of any proposed additions or deletions to the joint statement. Within fourteen (14) days after the filing of the defendant's proposed additions and deletions, the plaintiff shall serve and file a joint statement of material facts containing all agreed-upon facts and record citations. If any material facts remain in dispute, the parties shall each file a list of disputed facts, including record citations, within fourteen (14) days after the joint statement of material facts is filed by the plaintiff.

**(c) Decision Memoranda.** Within thirty (30) days after the joint statement of material facts is filed, plaintiff shall serve and file a motion for judgment on the administrative record and a supporting memorandum. Within thirty (30) days after plaintiff's motion for judgment on the administrative record is filed, defendant shall serve and file its motion for judgment on the administrative record and a supporting memorandum. The defendant's motion and memorandum shall respond to the specific issues raised in the plaintiff's motion and memorandum. Plaintiff may file a reply memorandum pursuant to LR 7.1(e)(1). Neither party shall file an objection to the other party's motion.

**(d) Discovery and Trial.** Initial disclosure under Fed. R. Civ. P. 26(a) shall not be made, discovery shall not be permitted except as stated herein, and a trial date shall not be set prior to the court's ruling on the motions for judgment on the administrative record. Any party may move the court to permit limited discovery as permitted by case authority.

(Added 6/1/05; §§ (a), (b) and (d) amended 12/1/09; § (d) amended 12/1/15; §§ (a) and (b) amended 12/1/21)

### 9.5 Electronic Case Filing Rules

Fed. R. Civ. P. 5 and 83 and Fed. R. Crim. P. 57 authorize the courts to establish practices and procedures for the filing, signing, service, maintenance, and verification of documents by electronic means. The procedures governing electronic case filing in this district shall be contained in the Supplemental Rules for Electronic Case Filing in the United States District Court for the District of New Hampshire.

(Added 12/1/11; amended 12/1/13)

### 9.6 Patent Cases

Unless otherwise ordered, the Supplemental Rules for Patent Cases shall govern all cases in which jurisdiction is based, in whole or in part, on 28 U.S.C. § 1338.

(Added 12/1/11)

### 10.1 Pseudonym Litigant

**(a) Notice.** If a party seeks to proceed under a pseudonym, at the time of filing the initial pleading, the party must file under seal a Notice of Intention to Proceed by Pseudonym ("Notice") and disclose the party's true name. The Notice shall not be filed electronically but

may be filed conventionally or via email pursuant to AP 3.5. This notice will be maintained under seal.

**(b) Motion.** Contemporaneously with the Notice, the party must file a motion to proceed under the pseudonym, setting forth the justification under applicable law. To the extent the motion requires disclosure of information that would reasonably identify the party seeking to proceed under a pseudonym, that identifying information may be redacted by following the procedure provided for in LR 83.12.

**(c) Service.** The party seeking to proceed under a pseudonym must serve the Notice and motion on each opposing party with the complaint.

**(d) Objection.** Any objection to the motion must be filed by the opposing party contemporaneously with its first appearance, pleading, petition, motion, response or other request addressed to the court. The objection shall not disclose in a public filing information that would reasonably identify the party seeking to proceed under a pseudonym. To the extent that disclosure of such identifying information is necessary for the opposing party to object, that identifying information may be redacted by following the procedure provided for in LR 83.12.

**(e) Denial of the Motion.** If the motion is denied, the party who sought to proceed under a pseudonym has fourteen (14) days to file an amended complaint naming the party.

(Added 12/1/23)

### 15.1 Motions to Amend

**(a) Motions.** A party who moves to amend a filing shall (i) attach the proposed amended filing to the motion to amend, (ii) identify in the motion or a supporting memorandum any new factual allegations, legal claims, or parties, and (iii) explain why any new allegations, claims, or parties were not included in the original filing.

**(b) Amended Pleadings.** Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, shall reproduce the entire filing as amended and may not incorporate any prior filing by reference, except by leave of court.

**(c) Effect of an Amended Complaint**. When a plaintiff files an amended complaint as of right or with leave of court after the filing of a motion to dismiss for failure to state a claim, the motion to dismiss shall be automatically denied without prejudice and the defendant(s) shall respond to the amended complaint as may be appropriate under Fed. R. Civ. P. 12, within the time allowed under Fed. R. Civ. P. 15(a).

(Amended and split into §§ (a) and (b) 1/1/98; § (c) added 12/1/13)

### 16.1 Preliminary Pretrial Conferences

**(a) Scheduling.** The court will hold a preliminary pretrial conference in all cases except those cases which have been designated as administrative track cases pursuant to LR 40.1 or those cases in which the discovery plan has been approved.

**(b) Subjects for Consideration.** The court may consider and take appropriate action on any matter referenced in the discovery plan filed by the parties pursuant to Fed. R. Civ. P. 26(f) and any other subject listed in Fed. R. Civ. P. 16(c). The parties shall be prepared to discuss a proposed trial date, any stipulated or proposed changes to the disclosures under Fed. R. Civ. P. 26 or the presumptive limits in Fed. R. Civ. P. 30(a), 30(b), 31(a), 33(a) or the number of requests in Fed. R. Civ. P. 36. See Civil Form 2.

(§ (a) amended 1/1/00; § (b) amended 1/1/01)

## 16.2 Final Pretrial Statements

**(a) Contents.** Final pretrial statements shall be filed in accordance with Fed. R. Civ. P. 26(a)(3) and, in addition to the requirements of that rule, shall contain:

(1) a brief statement of the case assented to by all parties, except assent shall not be required in cases in which one or more of the parties is an incarcerated pro se litigant;

(2) the name of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises, and the parties shall simultaneously exchange between themselves the address and telephone number for each listed witness;

(3) a written waiver of claims or defenses, if any;

(4) a list of all depositions which may be read into evidence, with page/line designations filed ten (10) days prior to trial, counter-designations filed five (5) days prior to trial, and objections filed two (2) days prior to trial;

(5) a list of all exhibits to be offered at trial separately identifying those which the party expects to offer and those which the party may offer if the need arises. Exhibits intended to be used solely for impeachment need not be listed;

(6) a statement confirming that the parties have met and conferred on whether they intend to have the jury use the Jury Evidence Recording System (JERS) to review evidence and their respective positions on the use of JERS;

(7) an itemized statement of special damages;

(8) except in actions tried without a jury, a statement of the latest demand and offer, and a statement describing the parties' participation in any alternative dispute resolution process;

(9) a statement of a claim for attorney's fees, if applicable, with citation to the statutory and/or regulatory authorities relied upon as the basis for the claim;

(10) any requests for a view pursuant to LR 39.3, and a designation as to who shall pay the cost of the view in the first instance; and

(11) an estimate of the length of trial.

**(b) Documents to Accompany Final Pretrial Statements.** The following documents shall be filed simultaneously as separate documents with each party's final pretrial statement:

**(1) Requests for Jury Instructions.** Requested jury instructions shall cover the elements of all claims and defenses raised in the case and any unusual issues that may arise in the case that will warrant a special instruction. Instructions such as the role of the jury, evaluating witness credibility, burden of proof, and other instructions routinely given by the court are not to be included. Parties may file supplemental requests at the close of the evidence or at such earlier time during trial as the court reasonably directs.

**(2) Trial Memoranda and Requests for Findings of Fact and Rulings of Law.** In all actions tried upon the facts without a jury or with an advisory jury, the parties shall file memoranda of law and requests for findings of fact and rulings of law with their final pretrial statements. The parties may file supplemental requests and/or further memoranda at such time as the court directs.

Requests for findings of fact shall concern only facts that are genuinely disputed and material to the outcome of the case. Such requests shall be set forth in chronological order in separately numbered paragraphs. Proposed rulings of law shall be set forth in separately numbered paragraphs and contain brief citations to supporting authority.

**(3) Motions in Limine.**

**(4) Voir Dire Requests.**

**(5) Proof of Special Damages.** The defendant shall notify the plaintiff if it requires testimonial proof of special damages.

**(6) Use of JERS**. To the extent at least one but not all parties would like to present evidence electronically to the jury during deliberations using the Jury Evidence Recording System (JERS), the party who desires to use JERS shall file a motion requesting leave to do so.

**(c) Duty to Update.** If a case is continued after the parties have filed final pretrial statements, the parties shall either update their final pretrial statements or file a stipulation that no change is necessary no later than ten (10) days prior to the new final pretrial conference.

**(d) Objections.** In addition to objections in Fed. R. Civ. P. 26(a)(3), objections to exhibits, motions in limine, proposed jury instructions, and proposed findings of fact and rulings of law shall be filed no later than fourteen (14) days after the filing of the final pretrial statements in accordance with this rule.

(§ (c)(1), Requests for Jury Instructions, amended 1/1/97; § (b)(1) amended 1/1/99; § (c) amended 1/1/00; § (a), Deadline, stricken, §§ (b)-(e) relettered accordingly, and §§ (a) and (d) amended 1/1/01; § (d) amended 1/1/03; §§ (a)(2)-(3) stricken, former §§ (a)(4)-(12) renumbered accordingly, 1/1/06; § (a)(4) amended 1/1/08; § (a)(2) amended, § (a)(6) added, former §§ (a)(6)-(10) renumbered accordingly, 12/1/11; § (a)(6) amended, § (b)(6) added 12/1/13; § (d) amended 12/1/21)

## 16.3 Final Pretrial Conferences

**(a) Scheduling.** The final pretrial conference will be held approximately ten (10) days prior to trial.

**(b) Attendance.** Counsel with settlement authority shall attend. Parties and insurance carrier representatives shall attend unless excused by a prior order of the court, in which case they shall be available by telephone. Unless otherwise ordered by the court, the United States may be represented solely by an attorney from either the United States Attorney's Office or the Department of Justice, and the State of New Hampshire may be represented solely by an attorney from the Office of the Attorney General, provided that said representatives have settlement authority.

**(c) Subjects for Consideration.** In addition to the subjects listed in Fed. R. Civ. P. 16(c)(2), the court may consider and take appropriate action on the following subjects:

(1) evidentiary problems, including admissibility of exhibits, motions in limine, expert witnesses, and elimination of cumulative evidence;

(2) order of presentation in multiparty cases;

(3) issues concerning jury selection, including proposed voir dire and the number of jurors;

(4) requests for a view pursuant to LR 39.3;

(5) order of witnesses;

(6) proposed jury instructions, requests for special verdicts, and other legal questions;

(7) stipulations of uncontested fact;

(8) possibility of settlement;

(9) length of trial and imposition of time limits; and

(10) any special needs of trial participants.

**(d) Objection to Videotape Testimony.** A party objecting to a question or an answer in videotaped testimony shall provide the court with a transcript of the question or answer at issue during the final pretrial conference.

(§ (c)(10) added 1/1/98)

## 16.4 Altering Deadlines

**(a) Deadlines Established by the Court.** Deadlines established by the court shall not be changed by agreement without court approval.

**(b) Discovery Deadlines.** A stipulation extending the time within which to respond or object to a discovery request or to take a deposition need not be approved by the court provided the extended date by which the response is due or on which the deposition is to be

taken is prior to the discovery completion date established for the case or at least thirty (30) days prior to the date set for the final pretrial conference, whichever is earlier.

## IV. PARTIES

### 17.1 Settlements on Behalf of Minors

No settlement of any suit brought on behalf of a minor by a parent, next friend, or guardian shall be valid unless approved by the court. To obtain approval of a settlement on behalf of a minor, the parties shall file a motion that is signed by the minor's parent, next friend, or guardian.

**(a)** If the minor is a New Hampshire resident, the motion shall comply with sections (c), (d), (e), (f), (g), (h), (i), and (k) of New Hampshire Superior Court Civil Rule 40 or provide an explanation as to why a specific section does not apply in the circumstances of that case. Court approval is required for all settlements on behalf of a minor, regardless of the net amount of the settlement. Section (b) of Rule 40 is not applicable in this court.

**(b)** If the minor is a resident of a state other than New Hampshire, the motion shall comply with sections (d), (e), (i), and (k) of New Hampshire Superior Court Civil Rule 40 or provide an explanation as to why a specific section does not apply in the circumstances of that case. The motion shall also provide a brief statement of the law relative to minor settlements in the state of residence with citations to relevant authority.

(Amended 12/1/15; generally amended 1/17/18)

### 23.1 Class Actions

**(a) Designation.** Any filing asserting a class action shall include the words "Class Action" in the title.

**(b) Settlements.**

**(1) Form and Filing of Proposed Settlement.** Any proposal to dismiss or compromise a class action shall be signed by a representative of each party and filed with the court. The proposal shall be entitled "Proposed Class Action Settlement."

**(2) Joint Motion for Preliminary Approval and Proposed Notice Order.** The parties shall file a motion entitled "Joint Motion for Preliminary Approval of Proposed Class Action Settlement" with the proposed settlement. A proposed notice order and samples of all proposed notices shall be submitted with the motion. The proposed notice order shall:

(A) state that the court has preliminarily approved the proposed settlement;

(B) describe the form, manner, and time by which the class shall be notified of the proposed settlement and the time by which any objections to the proposed settlement shall be filed with the court;

(C) stay the entry of final judgment until the time for class members to file objections to the proposed settlement has expired; and

(D) establish a date and time for a hearing to determine whether the proposed settlement should be approved.

**(3) Joint Motion for Final Approval and Proposed Order.** The parties shall file a motion entitled "Joint Motion for Final Approval of Proposed Settlement" and a proposed order directing the entry of judgment no later than thirty (30) days prior to the final approval hearing. The proposed order shall:

(A) identify the date of the court's preliminary approval of the consent decree;

(B) identify the date by which class members were required to file any objections to the proposed settlement;

(C) identify the date of the final approval hearing;

(D) state that the court has considered any objections that have been raised to the proposed settlement;

(E) state that the court has determined that the settlement is fair, reasonable, and in the best interests of the class; and

(F) state that the court has approved the proposed settlement.

**(4) Motion for Attorney's Fees.** Plaintiff's counsel shall file a motion for attorney's fees and costs seeking court approval of any fees or costs to be paid from settlement proceeds no later than thirty (30) days prior to the final approval hearing.

### 24.1 [reserved]

(24.1, Procedure for Notification of Any Claim of Unconstitutionality, stricken 1/1/08)

## V. DEPOSITIONS AND DISCOVERY

### 26.1 Discovery Plan

The discovery plan referenced in Fed. R. Civ. P. 26(f) shall substantially conform to Civil Form 2, Discovery Plan.

(§§ (f)(2) and (4) amended 1/1/97; rule retitled, §§ (a)-(h) stricken and replaced with text regarding discovery plan 1/1/01; amended 12/1/13)

### 26.2 Protective Orders.

A party may move the court for a protective order governing the confidentiality of material produced during discovery. Absent leave of court, the proposed protective order must conform to Civil Form 5. If the proposed protective order does not conform to Civil Form 5, the motion shall identify and explain the basis for any deviation(s) from that form.

(Added 12/1/13)

### 37.1 Motions to Compel

**(a) Form.** Any discovery motion filed pursuant to Fed. R. Civ. P. 26 or 30 - 37 shall include, in the motion itself or in an attached memorandum, a verbatim recitation of each interrogatory, request, answer, response, and objection, or a copy of the actual discovery document which is the subject of the motion, provided that the party shall file only that portion of the discovery document that is objected to or is the subject of the motion.

**(b) Procedure Following Resolution of Objections.** When the parties resolve a dispute over discovery, they shall agree upon a date by which responses must be served, unless the discovery request is withdrawn. When the court rules on a discovery motion, the discovery requested or relief sought shall be provided within fourteen (14) days of the court order, unless the order specifies a different time.

(§ (b) amended 12/1/09; title amended 12/1/13)

## VI. TRIALS

### 38.1 Notation of Jury Demand

If a party wishes to demand a jury trial by endorsing it on a filing as permitted by Fed. R. Civ. P. 38(b), the party shall place a notation on the front page of the filing, immediately following the title of the filing, stating "Demand for Jury Trial" or an equivalent statement. This notation will serve as a sufficient demand under Rule 38(b). Failure to make the notice in the manner specified in this rule will not result in a waiver under Rule 38(d) if the party has otherwise complied with Rule 38.

### 39.1 Courtroom Practice

**(a) Conduct of Counsel.**

(1) Counsel shall be punctual and prepared for all court appearances so that hearings and trials may commence on time. In the event of a delay, counsel shall notify the court and opposing counsel, if possible.

(2) Counsel shall stand when addressing the court and when examining and cross-examining witnesses unless the court expressly excuses counsel from so doing.

(3) When stating an objection, counsel shall state only the basis of the objection (e.g., "leading," or "nonresponsive," or "hearsay"). Under no circumstances shall counsel elaborate or present an argument or make reference to other evidence unless the court so requests.

(4) Counsel shall act and speak respectfully and civilly to the court, jurors, other counsel, parties, witnesses, and court personnel.

**(b) Pre-View Statements.** If a view will be conducted, each party shall be entitled to make a brief pre-view statement.

**(c) Opening Statements.** Opening statements shall be nonargumentative and no longer than thirty (30) minutes unless the court otherwise directs.

**(d) Examination of Witnesses.** Only one (1) attorney for each party shall examine any witness and offer objection relating to that examination unless the court otherwise directs.

**(e) Closing Arguments.** Closing arguments shall be limited to one (1) hour and only one (1) attorney shall argue for each party, except by leave of the court. The plaintiff in a civil action, the libelant in an admiralty action, and the claimant in a land condemnation action shall argue last. In a criminal case, the government shall be permitted to offer rebuttal argument that shall not exceed fifteen (15) minutes.

**(f) Length of Trial.**

**(1) Trial Day.** The court shall establish the limits of the trial day.

**(2) Limits on Length of Trial.** The court may, after consultation with counsel, establish the amount of time allotted to each side for its case, including cross-examination of witnesses. Counsel may exceed such allotted time only for good cause shown. The clerk will maintain a continuing record of time used by each party.

(§ (f)(2) amended 1/1/97)

### 39.2 Continuances

The court will not grant continuances except in extraordinary circumstances. The efficient use of court resources mandates that continuances be the exception rather than the rule. Unavailability of a witness ordinarily does not constitute good and sufficient reason for a continuance.

### 39.3 Views

If a view is desired, the party requesting the view shall include in the final pretrial statement a request for a view and a statement of who will pay for the costs of the view in the first instance. The court will determine at the final pretrial conference whether a view will be allowed.

It shall be the responsibility of the party requesting the view to notify the United States Marshal prior to trial that a view is to be taken.

### 40.1 Assignment of Cases to Tracks

**(a) Assignment.** All cases shall be assigned to one of the following tracks:

**(1) Administrative.** This track is for cases in which discovery is not permitted unless prior approval is obtained from the court. Such cases include habeas corpus cases, Social Security disability cases, government collections of student loans and Veterans Affairs benefits, special education appeals, bankruptcy appeals, and cases that can be resolved on the filings or by motion. The court will ordinarily resolve these cases within six (6) months after they are ripe for decision.

**(2) Expedited.** This track is for cases in which the parties have agreed to try the case within six (6) months of the preliminary pretrial conference. Cases are assigned to this track subject to the approval of the court. In determining whether a case should be assigned to the expedited track, the court will consider such factors as the complexity of the legal issues, the number of witnesses, the estimated length of the trial, and the

suitability of the case for alternative dispute resolution. Ordinarily, the court will not assign a case to this track unless it can be tried in fewer than five (5) days. In the event that the assigned judge is unable to try the case as scheduled, the case will be reassigned to any other available judge.

**(3) Standard.** This track is for cases that do not fall within any of the other three tracks. These cases will be tried within twelve (12) months of the preliminary pretrial conference.

**(4) Complex.** This track is for cases that require special management by the court due to one or more of the following factors: complex factual issues, complex legal issues, large number of parties, large volume of evidence, extensive discovery, substantial time needed to prepare for trial or other disposition, numerous or complex preliminary issues that must be decided before trial or disposition, length of trial, and other comparable factors. Cases on this track will be scheduled for trial within two (2) years of the preliminary pretrial conference.

**(b) Time of Assignment.** The clerk's office will assign cases on the administrative track at time of filing. The court will assign all other cases to a track at the preliminary pretrial conference or in the order approving the discovery plan.

(§ (a)(3) amended 1/1/97; § (b) amended 1/1/00)

### 40.2 Assignment of Remanded Cases

Cases remanded from the First Circuit shall be assigned as follows, unless the appellate mandate directs otherwise, or unless the judge originally assigned finds that the interests of justice or the appearance of justice warrant reassignment of the case to another judge, after giving due consideration to the rights and convenience of the parties, the conservation of litigant and judicial resources, and the fair and expeditious administration of justice:

**(a) Further Proceedings.** A case remanded for further proceedings following the vacation of any pretrial order or judgment shall be assigned to the judge who acted in the matter.

**(b) Nonjury Trial.** A case remanded for a new nonjury trial shall be assigned to a judge other than the judge who conducted the earlier nonjury trial unless remand was predicated solely on errors of law.

**(c) Jury Trial.** A case remanded for a new jury trial shall be assigned to the judge who conducted the earlier jury trial.

**(d) Resentencing.** A case remanded for resentencing shall be assigned to the judge who imposed the vacated sentence.

### 41.1 Settlements

The parties shall promptly inform the clerk when a case settles and within thirty (30) days thereafter file either a signed agreement for entry of judgment or a stipulation for dismissal. If neither an agreement for judgment nor a stipulation for dismissal is timely filed, the court will dismiss the case with prejudice.

## 42.1 Related Cases

**(a) Defined.** Related cases are cases which: (1) arise from substantially the same transaction or event; (2) involve substantially the same parties or property; (3) involve the same patent, trademark, or copyright; (4) call for the resolution of substantially the same questions of law; or (5) would entail substantial duplication of labor if heard by different judges.

**(b) Notice.** Whenever a civil action filed in or removed to this court involves a related case pending before another court or an administrative agency, counsel for the filing party shall identify the related case or proceeding on the civil cover sheet filed in this court. The duty to notify the court of any related proceeding continues throughout the time an action is before this court.

**(c) Consolidation by Court.** When it appears that two (2) or more cases may be related cases, the court may enter an initial consolidation order on its own initiative directing that, unless an objection is filed within a specified time, the cases will be consolidated.

**(d) Consolidation by Parties.** If related cases are pending before a single judge or different judges, any party may move to consolidate the actions. The motion shall list each case in the caption, beginning with the oldest case, and shall be heard by the judge to whom that case is assigned.

**(e) Order of Consolidation.** Upon motion of the parties or in the absence of an objection to the initial consolidation order, the court may issue an order of consolidation.

The court will transfer any motions pending in the former related cases to the main case. Such motions will be treated as if they were refiled as of the date of the consolidation order.

## 45.1 Bench Warrants

When a person who has been summoned to appear as a witness does not appear as directed, the party on whose behalf the subpoena was issued shall promptly apply for a bench warrant unless that party prefers to proceed without the witness.

## 45.2 Witnesses in Cases Proceeding In Forma Pauperis

**(a) In General.** If a party who has been authorized to proceed in forma pauperis desires the attendance of any witness or the production of any documents or evidence by subpoena or writ, that party shall file a motion containing the name, address, and, if applicable, the inmate number, and brief statement of the expected testimony, or of the documents or other evidence to be produced from each witness not later than twenty-one (21) days before the trial, hearing, or deposition where the witness is expected to testify or produce the requested evidence. If a witness's stated testimony, or the requested evidence, is not material to the claims or defenses at issue in the case, is repetitive, or unduly burdensome, the court may, in its discretion, decline to order, or otherwise limit the production of the witness or of the requested evidence.

**(b) Subpoena Costs.**

**(i) IFP 28 U.S.C. §§ 2254 and 2255 and Indigent Criminal Cases.**

In in forma pauperis cases brought pursuant to 28 U.S.C. §§ 2254 and 2255, and in indigent criminal cases, witness fees, service fees, and expenses for the subpoena of all witnesses shall be paid for by the Marshal.

**(ii) All Other IFP Cases**.

In all other in forma pauperis cases, if requested by the party by motion, the service fees for the subpoena shall be paid for by the Marshal. All other witness fees and expenses shall not be paid by the United States and are the responsibility of the party. Witnesses shall be subpoenaed as provided by Fed. R. Civ. P. 45(b) and fees tendered accordingly. If no tender is made as required by Rule 45(b) when the subpoena is served, the witness shall not be penalized for failure to attend. However, if the witness honors the subpoena and the subpoenaing party recovers its costs, the witness shall be entitled to payment of fees from the recovered costs on application to the court.

(§ (a) amended 1/1/02, 12/1/09; §§ (a) and (b) amended 12/1/17)

**45.3 Writs of Habeas Corpus**

A witness produced pursuant to a writ of habeas corpus shall not be paid any witness fee.

**45.4 [reserved]**

(removed 12/1/17)

**45.5 Attorneys as Witnesses**

An attorney must obtain permission from the court in order to participate in the trial of a jury action in which the attorney is a witness.

If counsel wishes to call opposing counsel as a witness, counsel shall file and serve a notice on opposing counsel, including a brief statement explaining why the testimony of counsel may be necessary, at least thirty (30) days prior to the start of the trial.

**47.1 Dissemination of Juror Questionnaires**

No later than five (5) business days prior to the date of the first trial period in the current one-month term of service, the clerk's office shall maintain and make available copies of any completed juror questionnaire forms optionally provided to the court, to attorneys, their agents and to pro se parties actually involved in cases scheduled for trial.

Any individual given access to the questionnaires shall not disclose the questionnaires, or information contained therein, to anyone other than the attorneys, their agents, or the parties involved in the trial. Absent leave of court, at the conclusion of the trial or an appeal if one is taken, all information derived from the questionnaires, with the exception of petit juror names, as well as the questionnaires themselves if distribution is permitted by the court, shall be destroyed

in a manner consistent with the destruction of sensitive documents or electronic information. The court may further limit access to, or the distribution of, juror information for good cause. Violation of this rule may be treated as contempt of court.

(Amended 1/1/03, 12/1/13, 12/1/18)

### 47.2 Jury Selection

**(a) Examination of Jurors and Challenges for Cause.** The court will question the entire array of jurors to determine whether any jurors should be eliminated for cause. When the court completes its questions of the entire array, the clerk will draw by lot the total number of jurors necessary to select the trial panel. As each prospective juror is called, the court will determine whether the prospective juror should be questioned individually. The court will question jurors individually at the bench in the presence of counsel. Counsel shall make any challenge to a prospective juror for cause at the bench after the court has completed its examination of the prospective juror. The court may modify this practice in any case where the court determines that such modification is warranted.

**(b) Jury Panel.** The jury panel shall consist of the total number of jurors needed for the jury as determined by the court plus as many additional prospective jurors as are needed to allow both sides to exercise their peremptory challenges.

**(c) Peremptory Challenges.** Parties shall exercise peremptory challenges at the clerk's bench out of the hearing of prospective jurors. The parties shall alternate in exercising peremptory challenges beginning with the plaintiff or prosecutor.

**(d) Foreperson.** The jury shall select its own foreperson before beginning its deliberations.

### 47.3 Communications with Jurors

No attorney, party, or witness, acting directly or through the use of an agent, shall attempt to communicate with any juror, prospective juror, or former juror concerning the person's service as a juror without obtaining prior approval from the court. The court will not approve a request to communicate with a juror except in extraordinary circumstances and for good cause shown.

### 48.1 Number of Jurors

The court shall designate at the final pretrial conference the number of jurors who will sit in any civil case.

### 53.1 Alternative Dispute Resolution (ADR)

**(a) ADR Considered.** ADR will be discussed at the preliminary pretrial conference, and the court will promote settlement efforts at every stage of the proceedings.

**(b) Summary Jury Trial.**

**(1) How Set.** The court may order a summary jury trial upon written request of all counsel involved or upon the court's own initiative. The only condition precedent to a

request for a summary jury trial is that counsel shall have their case in a state of trial readiness.

**(2) Procedure.** The court will determine the procedure to be followed with respect to summary jury trials.

**(c) Mediation.**

**(1) Discovery Plan.** The parties shall confer regarding the suitability of their case for mediation and, if applicable, include in their discovery plan (see Civil Form 2, Discovery Plan) the date by which mediation shall occur.

**(2) Joint Mediation Statement.** At any time following the submission of the discovery plan, the parties may request the court refer a case for mediation with a mediator from the court's approved panel of mediators or any district or magistrate judge by filing a Joint Mediation Statement, setting forth the date by which they request mediation occur.

**(3) Court Ordered Mediation.** The court at any time may refer a case to mediation.

**(4) Designation of Mediator.** If the parties agree that a case should be mediated by a district or magistrate judge, such request should be made in the Discovery Plan or the Joint Mediation Statement. If the parties intend that a mediator be selected from the court's mediation panel, within forty-eight (48) hours of requesting a case be referred for mediation, the parties shall provide the court with a joint list of five (5) possible mediators from the panel in descending order of preference from which the court will designate the mediator.

**(5) Mediation Process.** Unless otherwise ordered by the court, mediation requested through the court shall be conducted in accordance with the court's Guidelines for Mediation Program.

**(6) Private Mediation.** Nothing in this rule precludes parties from engaging a mediator or other neutral outside the court's Mediation Program to facilitate resolution of a case.

(§ (c) added 1/1/99; §§ (b)(2) and (c) amended 1/1/00; § (c) narrative split into §§ (1) and (2) and amended 1/1/02; § (c)(2) amended 1/1/06; § (c)(1) amended 12/1/13; §§ (c)(1) and (2) amended and (c)(3)-(6) added 12/1/15)

## VII. JUDGMENT

### 54.1 Bill of Costs

**(a) In General.** Unless otherwise ordered by the court, the prevailing party shall be entitled to costs other than attorney's fees. The party in whose favor a judgment or decree for costs is awarded or allowed by law, and who claims costs, shall within twenty-one (21) days after the time for appeal has expired or within twenty-one (21) days after the issuance of the mandate of the appellate court serve on the attorney for the adverse party and file with the clerk a bill of costs. Failure to comply with these time limitations shall constitute a waiver of

costs, unless the court otherwise orders or counsel are able to agree on the payment of costs. In the latter case, no bill of costs need be filed.

**(b) Form and Content.** A bill of costs, prepared on forms available from the clerk's office or on a filing substantially similar, shall comply with the provisions of 28 U.S.C. § 1924 and shall set forth distinctively each item of cost so that the nature of the charge can be readily understood.

The bill of costs shall be supported by a memorandum of law and shall be verified by oath stating that the items are correct, that the costs claimed are allowable by law, that the services have been actually and necessarily performed, and that the disbursements have been necessarily incurred in the action or proceeding. An itemization of all costs shall be attached to the bill of costs.

**(c) Objections.** Within fourteen (14) days after the filing of a bill of costs, any other party may serve and file specific objections in writing to any item(s), setting forth the specific grounds therefore.

If no objections are filed, the clerk shall tax the costs which appear properly claimed. The clerk may hold an ex parte hearing to resolve issues regarding an unopposed bill of costs.

Not less than twenty-one (21) days after the filing of a party's bill of costs and after consideration of any objections thereto, the clerk shall tax costs and serve copies of the bill of costs as allowed, or an order thereon, on all parties.

**(d) Hearing.** No hearing on a bill of costs will be conducted unless granted by the clerk. If the clerk grants such a hearing, the clerk shall give notice of the time of hearing to respective counsel at least three (3) days prior to such hearing. At the option of the clerk, the hearing may be held by telephone.

If the clerk conducts a hearing, counsel may make specific objections, supported by affidavits or other evidence, to any item(s) of costs. The clerk shall thereupon tax the costs and cause the amount to be entered on the docket.

**(e) Concurrence.** Prior to any hearing on a bill of costs, counsel for the party seeking costs shall file a written statement that counsel have made a reasonable effort to resolve any objections to the bill of costs.

**(f) Review.** The taxation of costs by the clerk shall be final unless modified on review by the court on motion filed within seven (7) days thereafter pursuant to Fed. R. Civ. P. 54(d)(1). The court shall conduct its review based upon the same filings and evidence submitted to the clerk.

(§§ (c) and (f) amended 1/1/03; §§ (a), (c) and (f) amended 12/1/09; §§ (c) and (f) amended 12/1/21)

### 54.2 Assessment of Juror Costs

All counsel in civil cases are expected to discuss seriously the possibility of settlement within a reasonable time prior to trial. The court may assess against any party or attorney the costs of

jury attendance if a case is settled after the jury has been summoned. A jury is considered summoned for trial as of 12:00 p.m. on the business day (exclusive of weekends and holidays) preceding the designated date of trial. Juror costs shall include mileage, fees, and other expenses.

The court may impose a specific deadline for settlement upon the parties. If settlement is reached after the deadline, and if, after notice and hearing, the court finds that one (1) or more of the parties or attorneys acted in bad faith, abused judicial process, or failed to exercise reasonable diligence, the court may impose costs and attorney's fees incurred due to the late settlement or impose other appropriate sanctions.

(Amended 1/1/05)

### 55.1 Default

**(a) Entry by Clerk.** The clerk shall enter a default against any party who fails to respond to a complaint, crossclaim, or counterclaim within the time and in the manner provided by Fed. R. Civ. P. 12. The serving party shall give notice of the entry of default to the defaulting party by regular mail sent to the last known address of the defaulted party and shall certify to the court that notice has been sent.

**(b) Damages.** Any motion for a default judgment pursuant to Fed. R. Civ. P. 55(b) shall contain a statement that a copy of the motion has been mailed to the last known address of the party from whom such damages are sought. If the moving party knows, or reasonably should know, the identity of any attorney thought to represent the defaulted party, the motion shall also state that a copy has been mailed to that attorney.

(§ (a) amended 1/1/97; §§ (a) and (b) amended 1/1/01)

### 56.1 Summary Judgment

**(a) Memorandum in Support.** A memorandum in support of a summary judgment motion shall incorporate a short and concise statement of material facts, supported by appropriate record citations, as to which the moving party contends there is no genuine issue to be tried.

**(b) Memorandum in Opposition.** A memorandum in opposition to a summary judgment motion shall incorporate a short and concise statement of material facts, supported by appropriate record citations, as to which the adverse party contends a genuine dispute exists so as to require a trial. All properly supported material facts set forth in the moving party's factual statement may be deemed admitted unless properly opposed by the adverse party.

(Formerly L.R. 7.2(b), renumbered to 56.1; § (b) amended 12/1/13)

### 62.1 Bonds or Other Security Staying Execution of Money Judgment

A bond or other security staying execution of a money judgment shall be in the amount of the judgment, plus interest at a rate consistent with 28 U.S.C. § 1961(a), plus an amount to be set by

the court to cover costs and any award of damages for delay. The parties may waive the bond or other security by stipulation without order of the court.

(Retitled, amended 12/1/18)

## VIII. PROVISIONAL AND FINAL REMEDIES

### 65.1 Draft of Temporary Restraining Order or Preliminary Injunction

Any motion for a temporary restraining order or preliminary injunction shall be accompanied by a proposed order, consistent with the requirements of Fed. R. Civ. P. 65, for the court to consider.

### 65.1.1 Sureties

**(a) Members of Bar; Court Officers.** No member of the bar, clerk, marshal, or other officer or employee of the court may act as surety or guarantor of any bond or undertaking in any proceeding in this court. An attorney who wishes to act as surety in an individual capacity as a relative or close friend of a party to a proceeding in this court must first obtain permission from the court.

**(b) Form of Bond.** Surety bonds shall be signed and acknowledged by the party and surety or sureties. They shall refer to the statute, rule, or court order under which they are given, state the conditions of the obligation, and contain a provision expressly subjecting them to all applicable federal statutes and rules.

**(c) Security.** Except as otherwise provided by law or by order of the court, a bond or similar undertaking must be secured by the:

(1) deposit of cash or obligations of the United States of a type acceptable as collateral to the Treasury Department of the United States under 31 C.F.R. § 225 in the amount of the bond; or

(2) guaranty of a company or corporation holding a certificate of authority from the Secretary of the Treasury Department of the United States pursuant to 31 U.S.C. § 9304, et. seq.; or

(3) guaranty of an individual resident of this district who owns unencumbered real or personal property within the district worth the amount of the bond in excess of legal obligations and exemptions. Property held jointly is acceptable provided all joint tenants execute the bond.

**(d) Deposits of Cash or Obligations of the United States**. Such deposits shall be accompanied by a written statement, duly acknowledged, that the signer is owner thereof, that the same is subject to the conditions of the bond, and that the clerk may collect or sell the obligations and apply the proceeds or the cash deposited in case of default as provided in the bond.

**(e) Corporate Surety.** Before any corporate surety bond or undertaking is accepted by the clerk's office, the corporate surety must have on file with the clerk's office a duly

authenticated copy of a power of attorney appointing the agent executing the bond or undertaking.

**(f) Personal Surety Secured by Real Estate.**

**(1) Procedure for Posting Real Estate Bond.** An individual posting a real estate bond shall execute an affidavit of surety that shall provide the following information:

(A) the individual's name, occupation, and residential and business addresses; and

(B) a statement that the affiant will not encumber or dispose of the property while the bond remains in effect.

The individual shall attach to the affidavit:

(A) a statement as to assessed value from the town or city clerk's office wherein the property is located or, if not available, an appraisal by a licensed appraiser; and

(B) a title report from a member of the New Hampshire bar listing all liens and mortgages on the property, including all but the current year's real estate taxes, or evidence that the title has been insured by a title insurance company licensed by the State of New Hampshire.

**(2) Execution of Bond and Deposit of Deed.** All parties to the deed and the real estate bond shall execute the bond and take the oath. A certified copy of the deed for each tract subject to the bond shall be deposited with the clerk.

When real estate is pledged as a condition of bail in criminal cases, the United States Attorney shall review all papers submitted and shall file a position statement with the court regarding the proposed attachment.

**(3) Attachment.** The party on whose behalf the deed is pledged shall:

(A) promptly file a writ of attachment, signed by the court, against the property in the Office of the Registrar of Deeds of the county in which the property is located; and

(B) file with the court the original paid receipt from the Registrar's Office indicating the book and page number where the attachment was recorded.

**(g) Approval of Bond.** Except as otherwise provided by law, the clerk may accept a bond in the amount fixed by the court or by statute or rule and secured in the manner provided by subsection (c)(1) or (2) of this rule. All other bonds must be approved by the court.

A bond or undertaking presented to the clerk for acceptance shall be accompanied by a certificate by the attorney for the presenting party in substantially the following form:

This bond (or undertaking) has been examined pursuant to Local Rule 65.1.1 and is recommended for approval. It (is) (is not) required by law to be approved by a judge.

_____ _____

Date Attorney

**(h) Service.** The party on whose behalf a bond is given shall promptly, after approval or filing of the bond, serve a copy of it on all other parties to the proceeding, but such service need not be made on the United States in a criminal case.

**(i) Modification of Bond.** The court, on its own initiative or on motion of a party, may alter the amount or terms of a bond or similar undertaking at any time as justice requires.

**(j) Further Security.** The court, on its own initiative or on motion of a party, may order a party to furnish further or different security or require personal sureties to furnish further justification.

**(k) Discharge.** Upon satisfaction of the conditions of the bond or similar undertaking, the monies or obligations shall be returned to the owner only on an order of the court.

(§ (c)(2) amended 1/1/99)

## 67.1 Security for Costs

**(a) In General.** Except as otherwise provided by statute or court rule, parties, resident and nonresident, shall not be required as a matter of course to give security for costs in this court. In any civil proceeding, the court, either on its own initiative or on the motion of a party, may order any party except the United States to file an original bond for costs or additional security for costs in such an amount and so conditioned as it may designate. The motion of a party shall state in sufficient detail the circumstances warranting the requested security for costs. The court may at any time modify or rescind such an order or direct that additional or other security be furnished.

**(b) Failure to Furnish Security.** If a party fails to comply with an order to furnish security, the court may impose sanctions or take any other action as it deems just and necessary.

**(c) Exemptions.** This rule shall not apply to any party proceeding in forma pauperis or as a seaman under 28 U.S.C. § 1916.

## 67.2 Deposit of Registry Funds Into Interest-Bearing Account

**(a) Receipt of Funds.**

(1) Unless an applicable statute requires the deposit of funds without leave of court, no funds governed by Fed. R. Civ. P. 67 shall be tendered to the court or the clerk's office for deposit into the court's registry absent a court order signed by a judge. Any party filing a motion to deposit funds into the court's registry shall also submit a proposed order.

(2) Unless otherwise provided for elsewhere herein, all funds received by the court or the clerk's office for any case pending or in the process of adjudication shall be deposited with the Treasurer of the United States, in the name and to the credit of this court, pursuant to 28 U.S.C. § 2041. Such deposits shall be made through depositories designated by the Treasury to accept such deposits on its behalf.

(3) Except as provided in subsection (b)(2) below, the party making the deposit or transferring funds to the court's registry shall electronically serve the order permitting the deposit or transfer on the clerk of court or, in the clerk's absence, upon the chief deputy clerk or financial administrator.

**(b) Investment of Registry Funds.**

**(1) Court Registry Investment System**.

(A) Unless otherwise ordered, the Court Registry Investment System (CRIS), administered through the Administrative Office of the United States Courts, shall be the investment mechanism authorized.

(B) Internal Revenue Service (IRS) regulations require special handling for "Disputed Ownership Funds" (DOF), as defined in 26 CFR § 1.468B-9 Unless otherwise ordered by the court, interpleader funds shall be deposited in the DOF established within the CRIS and administered by the Administrative Office of the United States Courts, which shall be responsible for meeting all DOF tax administration requirements.

(C) The Director of Administrative Office of the United States Courts is designated as custodian for all CRIS funds. The Director or the Director's designee shall perform the duties of custodian. Funds held in the CRIS remain subject to the control and jurisdiction of the Court.

(D) Under CRIS, monies deposited in each case will be "pooled" together with those on deposit with the Treasury to the credit of other courts in CRIS and used to purchase Government Account Series securities through the Bureau of the Fiscal Service, which will be held at the Treasury in an account in the name and to the credit of the Director of Administrative Office of the United States Courts, hereby designated custodian for CRIS. The pooled funds will be invested in accordance with the principles of the CRIS Investment Policy as approved by the Registry Monitoring Group.

(i) For non-DOF case funds, an account will be established in the CRIS Liquidity Fund titled in the name of the case giving rise to the deposit invested in the fund. Income generated from fund investments will be distributed to each case based on the ratio each account's principal and earnings has to the aggregate principal and income total in the fund after the CRIS fee has been applied.

(ii) For DOF case funds, an account shall be established in the CRIS Disputed Ownership Fund, titled in the name of the case giving rise to the

deposit invested in the fund. Income generated from fund investments will be distributed to each case based on the ratio each account's principal and earnings has to the aggregate principal and income after the DOF fee has been applied and tax withholdings have been deducted from the fund. On appointment of an administrator authorized to incur expenses on behalf of the DOF in a case, the case DOF funds should be transferred to the CRIS Liquidity Fund or another investment account as directed by court order.

(E) Reports showing the interest earned and the principal amounts contributed in each case will be available through the FedInvest/CMS application and will be made available to litigants and/or their counsel.

**(2) Other Investments and Instruments.** Upon motion, the court in its discretion may approve an investment mechanism other than CRIS. Prior to filing the motion, the party requesting approval of an alternate investment mechanism shall first personally deliver the proposed order to the clerk, chief deputy or financial administrator, who shall review the proposed order to confirm it fulfills investment requirements.

A motion to approve an alternate investment mechanism must, at a minimum, address the following:

(A) the amount to be invested;

(B) a designation of the type of account or instrument in which the funds shall be invested;

(C) the name of the depository, which must be approved by the Treasurer of the United States as a depository in which funds may be held;

(D) the form of additional collateral to cover the entire amount of invested funds without regard to FDIC insurance;

(E) a direction to the clerk to deduct from the income earned on the investment a fee not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office of the United States Courts as published in the Federal Register; and

(F) such other appropriate information that may be deemed applicable under the facts and circumstances of the particular case.

Upon court order to deposit and invest registry funds locally, the clerk shall serve as custodian of the account or financial instrument and shall keep such account, certificate of deposit, or financial instrument in a secure and safe place subject to further order of the court.

**(c) Investment Fees and Taxes.**

(1) The custodian is authorized and directed to deduct the CRIS fee of an annualized 10 basis points on assets on deposit for all CRIS funds, excluding the case funds held in the DOF, for the management of investments in the CRIS. According to the Court's Miscellaneous Fee Schedule, the CRIS fee is assessed from interest earnings to the pool before a pro rata distribution of earnings is made to court cases.

(2) The custodian is authorized and directed to deduct the DOF fee of an annualized 20 basis points on assets on deposit in the DOF for management of investments and tax administration. According to the Court's Miscellaneous Fee Schedule, the DOF fee is assessed from interest earnings to the pool before a pro rata distribution of earnings is made to court cases. The custodian is further authorized and directed by this rule to withhold and pay federal taxes due on behalf of the DOF.

(3) In cases in which funds are ultimately disbursed to the United States or to agencies or officials thereof, the clerk shall provide to those agencies or officials any relief from the CRIS fees approved by the Director of the Administrative Office on application filed by the United States Attorney or any other government counsel.

**(d) Cash Bail.** If cash bail in an amount in excess of $10,000 is deposited with the court, it may be placed in an interest-bearing account upon motion of the submitting party. The deposit shall comply in all respects with the requirements of this rule except that there shall be no administration fee assessed.

(§§ (a)(2)-(4), (b)(1)-(2) and (c)(1)-(3) amended 12/1/11; § (c) amended 11/17/16; amended generally 4/1/2017; § (b)(1)(D) amended 12/1/19; §§ (b)(1)(B) and (c)(3) amended 12/1/21; § (a)(1) amended 12/1/23)

## 67.3 Disbursal of Registry Funds

No funds may be paid out of the court's registry except by order of the court. If a judgment has been issued or is to be issued, no funds may be disbursed until thirty (30) days after the entry of judgment, except as provided in Fed. R. Civ. P. 62 or by agreement of the parties. The authorized custodian shall disburse all registry principal and income, if applicable, less the registry fee assessment and/or taxes, pursuant to the court's order. Any such order shall distinctly set forth the funds in question and name the payee. Should the named payee be other than the depositor of the funds, that fact shall be reflected in the order. If the funds have been deposited in an interest-bearing account or an interest-bearing instrument, the party shall provide, on a separate filing attached to the motion seeking withdrawal of the funds, the social security number or employer identification number of the ultimate recipient of the funds. The clerk shall forward this separate filing directly to the institution holding the money. Registry fund disbursements greater than $500,000 must be made by electronic funds transfer.

(Amended 12/1/09, 12/1/15, 12/1/17, 12/1/21, 12/1/23)

### 67.4 Form of Payment Accepted

Fees, fines, assessments, money deposited into court pursuant to Fed. R. Civ. P. 67, or any other charge payable to the clerk shall be in cash, cashier's check, or money order. Payment by credit card or debit card is also accepted for all payments except criminal debt with one exception: criminal debt can be paid using a debit or credit card through Pay.gov with prior authorization from the U.S. Attorney's Office or the U.S. Probation Office. After consulting with the clerk's financial administrator, and in accordance with the clerk's internal policies, payment may also be made by electronic funds transfer received through the Department of Treasury's Fedwire Deposit System.

The clerk in his or her discretion may allow payment by other means in the following situations: (1) corporation or partnership checks may be accepted as payment for filing fees, or deposits pursuant to Fed. R. Civ. P. 67, garnishments, or criminal debt paid by a third party identified by the government as having related funds; and (2) personal checks may be accepted as payment for fees for admission to the bar, from attorneys who are sole practitioners for any purpose, or for fines personally assessed against parties in civil cases.

(Amended 1/1/00, 1/1/03, 6/1/05, 12/1/21; amended and reformatted 12/1/23)

### 67.5 Qualified Settlement Funds

**(a) Definition.** A registry account may be a designated or qualified settlement fund only if:

(1) there has been a settlement agreement in the case;

(2) the court has entered an order establishing or approving a deposit into the registry as a settlement fund; and

(3) the liability resolved by the settlement agreement is of a kind described in 26 U.S.C. § 468B or 26 C.F.R. § 1.468B-1(c).

The depositing party shall identify whether the funds should be treated as a designated or qualified settlement fund and must identify any such deposit made with the court.

**(b) Procedure for Establishment of Fund.** When the court establishes or approves a designated or qualified settlement fund that will be held in the registry, the court will also designate or approve a person outside the court as the administrator responsible for obtaining the tax identification number for the fund, filing all fiduciary tax returns, paying any tax, and satisfying any reporting or withholding requirements on fund disbursement. The court will either approve the person that the settlement agreement names as administrator or designate the party that deposited the funds into court. Any person whose liability will be terminated by rule or statute may not serve as the administrator.

**(c) Interest Income.** The depository institution shall report all interest income on a designated or qualified settlement fund for the current year, using the fund's own employer identification number. This includes any interest income assessed by the court as a registry fund fee. The tax identification numbers of the parties and the court shall not be used with respect to a designated or qualified settlement fund.

**(d) Withdrawal.** As with any disbursement from a registry account, a court order is required for any withdrawal of funds from a registry account to pay or withhold tax pursuant to 28 U.S.C. § 2042. Registry fund disbursements greater than $500,000 must be made by electronic funds transfer.

**(e) Assistance to Administrator.** The court will make available to the administrator any pertinent information needed for fulfillment of fiduciary duties.

(§§ (a), (b) and (d) amended 12/1/21)

### 69.1 Writs of Execution; Related Proceedings

Every officer to whom a writ of execution is delivered shall make return thereon to the clerk's office unless the court otherwise directs. When a sale is made under any execution and no particular time for return is prescribed by order of the court or provision of law, the return shall be made within thirty (30) days after said sale. If no particular time is prescribed by order or law and no sale is made under the execution, return shall be made immediately after such execution occurs or, if not executed, within sixty (60) days after the writ of execution is issued.

An affidavit containing the following information shall be submitted with all requests for writs of execution:

1. a statement outlining any efforts made to recover judgment;

2. a statement certifying that a demand has been made;

3. a statement of what has been paid and what is owing;

4. an explanation of how the principal amount has been calculated if it differs from the amount awarded in the judgment; and

5. a statement that the amount on the writ is the amount due.

(Amended 1/1/00, 12/1/09)

## IX. SPECIAL PROCEEDINGS

### 72.1 Duties of Magistrate Judge

Any magistrate judge is authorized to exercise all the powers and perform all duties conferred upon magistrate judges by United States Code, Title 28, Sections 636(a), (b), and (g), to conduct extradition proceedings in accordance with Title 18, Section 3184, and to exercise the powers enumerated in Rule 4 of the Rules Governing Section 2254 Proceedings, and Rules 8 and 10 of the Rules Governing Section 2254 and 2255 Proceedings.

Any magistrate judge is designated to (a) hear and determine all pretrial matters authorized by 28 U.S.C. § 636(b)(1)(A) and all post-judgment collection proceedings under the authority of 28 U.S.C. § 636(b)(3), (b) to review all matters relating to persons failing to appear on a summons for jury service under the authority of 28 U.S.C. § 636(b)(3) and, if necessary, to conduct any hearing in accordance with 28 U.S.C. § 1866(g), and (c) to hear and submit proposed findings of

fact and recommendations for the disposition of motions to dismiss and/or for summary judgment in pro se plaintiff civil cases.

(Second paragraph added 1/1/00; amended 12/1/09, 12/1/11, 12/1/21)

### 72.2 Response to Objection to Magistrate Judge Order on Nondispositive Matter

A party may respond to another party's objection to the order of a magistrate judge on a nondispositive matter within fourteen (14) days after the filing of the objection.

(Added 1/1/05; amended 12/1/09, 12/1/21)

### 73.1 Assignment of Cases to Magistrate Judge

**(a) Designated Jurisdiction.** The judges of this district designate a magistrate judge to conduct all proceedings in any civil matter upon the consent of the parties.

**(b) Methods of Assignment.**

**(1) Reassignment Following Request of Parties.** Parties may consent to the reassignment of a case to a magistrate judge by filing a Notice, Consent, and Order of Reference form stating that the parties consent to the reassignment. This form should not be returned to the clerk of court unless all parties consent to the reassignment. The clerk shall notify the parties in all cases that they may consent to have a magistrate judge conduct all proceedings in any civil matter.

**(2) Initial Assignment by the Clerk.** The chief judge may authorize the clerk to randomly assign cases to a magistrate judge for all purposes, including trial, entry of final judgment, and all post-judgment proceedings.

**(A) Notification of Initial Assignment.** The clerk shall inform the parties of the initial assignment by issuing a notice of assignment and consent form.

**(B) Consent.** A case initially assigned to a magistrate judge pursuant to this subsection shall be reassigned to a district judge unless all parties consent to the assignment. A designated party shall file either a consent or declination of consent on a form provided by the clerk in the manner and within the time frame specified in the clerk's notice. Any party is free to withhold consent without adverse substantive consequences.

**(c) Construction With Other Laws.** Pursuant to 28 U.S.C. § 636(c), the right to have certain civil proceedings conducted by a judge, appointed pursuant to Article III of the United States Constitution, shall be preserved to the parties inviolate.

(§§ (b)(2)(A) and (B) amended 1/1/99; § (b)(1) amended 1/1/00; §§ (b)(1) and (2) amended 1/1/05; § (b)(2)(B) amended 12/1/09; §§ (b)(2)(A)-(B) amended 12/1/11; §§ (a) and (b) amended 12/1/23)

## X. DISTRICT COURTS AND CLERKS

### 77.1 Clerk's Office

**(a) Office Hours.** The clerk's office will be open from 8:30 a.m. until 4:30 p.m. each day except Saturday, Sunday, and legal holidays. A representative from the clerk's office will be available to consult with parties in trial from 8 a.m. to 5 p.m. each day except Saturday, Sunday, and legal holidays. As used in this rule, "legal holiday" is defined in Fed. R. Civ. P. 6(a).

**(b) Telephone Hours.** The main telephone switchboard will be open between 8:30 a.m. and 4:30 p.m. on the days that the clerk's office is open.

**(c) Computer Access.** Access to the court's civil and criminal electronic docket, opinions, rules, and notices is available via the court's web site (www.nhd.uscourts.gov).

(§ (c) amended 1/1/97, 1/1/00, 1/1/01; § (a) amended 12/1/09; § (b) amended 12/1/17)

### 77.2 Orders by Clerk of Court

The clerk may issue orders where authorized by the Federal Rules of Civil Procedure. In addition, the clerk may issue the following without further direction of the court:

1. orders granting an application by an attorney to proceed pro hac vice to which no objection has been filed;

2. orders allowing substitution of counsel; and

3. orders granting assented-to, nondispositive motions that do not alter any previously established deadline.

### 77.3 Filings

**(a) General.** All documents shall be filed in accordance with these local rules and the Administrative Procedures for Electronic Filing.

**(b) Confirmation of Filings.** The clerk's office will not date stamp and return copies of filings. Parties may confirm the filing of documents by referencing the date on the Notice of Electronic Filing or by using the court's computer access systems.

**(c) 24-Hour Depository.** A 24-hour depository box for filings is located at the south entrance to the Cleveland Building. The depository has a built-in time and date stamp.

**(d) Removal of Papers.** Absent express permission of the court, papers filed in the clerk's office may not be removed by anyone other than an authorized court official or employee.

**(e) Filings in Chambers**. Original documents may not be filed in chambers. If the Administrative Procedures for Electronic Filing require a pleading be conventionally filed and the party cannot file a necessary document or pleading forty-eight (48) hours before the scheduled proceeding, the party shall file an original and one (1) copy of the filing with the clerk's office. The clerk's office will mark the copy "Court Information Copy" and give that copy to the court. The clerk's office will retain and docket the original.

(§ (a) added, former §§ (a)-(d) relettered accordingly, new §§ (b) and (e) amended 1/1/08)

**77.4 Bankruptcy**

**(a) Delegated Jurisdiction.** Pursuant to 28 U.S.C. § 157(a), any or all cases under title 11, and any or all proceedings arising under title 11 or arising in or related to a case under title 11, shall be referred to the bankruptcy judges for the district.

**(b) Local Rules of Bankruptcy Practice.** Pursuant to B.R. 9029, the bankruptcy judges of this district are authorized to make such rules of practice and procedure as they may deem appropriate, subject to the requirements of Fed. R. Civ. P. 83, provided that in promulgating the rules governing the admission or eligibility to practice in the bankruptcy court, the bankruptcy judges shall require district court admission except for pro se appearances or for appearances pursuant to the student practice rule of this court.

The bankruptcy judges, as officers of the court, are empowered to grant pro hac vice admission to the court for bankruptcy matters in the manner provided by these rules.

**(c) Final Order or Judgment**. If a bankruptcy judge determines that entry of a final order or judgment would not be consistent with Article III of the United States Constitution in a particular referred proceeding that is determined to be a core matter under 28 U.S.C. § 157, the bankruptcy judge shall hear the proceeding and submit proposed findings of fact and conclusions of law to the district court in compliance with Fed. Civ. R. 52(a)(1).

The district judge shall make a de novo review of any portion of the bankruptcy judge's findings of fact or conclusions of law to which specific written objection has been made in accordance with the federal and local rules of bankruptcy procedure. The district judge may accept, reject, or modify the proposed findings of fact or conclusions of law, receive further evidence, or recommit the matter to the bankruptcy judge with instructions. The district court may treat any order or judgment of the bankruptcy court as proposed findings of fact and conclusions of law in the event the district court concludes that the bankruptcy judge could not have entered a final order or judgment consistent with Article III of the United States Constitution.

**(d) Appeals.**

**(1) Bankruptcy Court Authorization.** The bankruptcy court is authorized and directed under B.R. 8002(d) and 9006(d) to hear motions to extend the time for filing a notice of appeal. Bankruptcy court orders entered under this subsection may be reviewed by the district court on motion filed within fourteen (14) days after entry of the order sought to be reviewed. Further, the district court may dismiss an appeal in which the appellant has failed to file a designation of items as required by B.R. 8006.

**(2) Notice of Docketing and Briefing Schedule.** Upon receiving the record or notice of its availability electronically, the clerk's office shall issue a notice confirming receipt of record. Parties shall file briefs in accordance with the deadlines established in B.R. 8018. Unless leave is granted to extend the deadlines, the case is submitted to the assigned judge after the time for filing a reply brief has expired.

**(3) Failure to Comply with Briefing Deadlines.** If the appellant's brief is not received within the time specified by B.R. 8018, the court may impose an appropriate sanction, which may include dismissal of the appeal for lack of prosecution.

**(4) Judgment.** Upon receipt of the court's opinion, the clerk shall enter judgment in accordance with B.R. 8024(a) and provide notice of the judgment in accordance with B.R. 8024(b).

**(5) Statement Regarding Interested Parties.** Any party filing a brief, other than governmental parties, shall file a statement, attached to the last page of its brief and substantially in the form of Civil Form 7, indicating whether the party knows of any interested party who is not listed in the notice of appeal. The filing is excluded from the brief length limitations.

An "interested party" includes all persons, associations, firms, partnerships, corporations, guarantors, insurers, affiliates, or other legal entities that are financially interested in the outcome of the appeal. When a corporation is a party to an appeal, the Statement of Interested Parties shall identify any parent corporation and any publicly held corporation that owns 10% or more of its stock or state that there is no such corporation. An individual listing is not necessary if a large group of persons or firms can be specified by a generic description. The Statement of Interested Parties shall include the names of attorneys who have previously appeared for a party in the case or proceeding below but who have not entered an appearance with the court on appeal.

**(e) Cases and Proceedings Withdrawn by District Judge.** A reference under this rule may be withdrawn in whole, or in part, by a district court judge sua sponte or on timely motion of a party. The district court refers motions for withdrawal of reference to the bankruptcy court for a report and recommendation as to disposition.

Motions for withdrawal of reference shall be filed with the clerk of the bankruptcy court. The bankruptcy judge shall issue and file a report and recommendation and file it with the clerk of the bankruptcy court. Copies of the report and recommendation shall be sent to the parties. The parties shall have fourteen (14) days from the date of the report and recommendation to file any objections thereto with the bankruptcy court. Upon expiration of the period for objection, the bankruptcy court shall forward the necessary documents along with the recommendations and any objections thereto to the district court. The district judge may accept, reject, or modify, in whole or in part, the recommendation of the bankruptcy judge and determine the disposition of the motion.

Upon filing of the report and recommendation of the bankruptcy court with the clerk of the district court, the motion and report and recommendation shall be assigned to a district court judge. A motion for withdrawal of reference shall not stay any bankruptcy matter pending before a bankruptcy judge, unless a specific stay is issued by a district court judge or a bankruptcy judge.

**(f) Jury Trials.** Provided all parties expressly consent, the bankruptcy judges of this district are authorized to conduct jury trials in those instances where a right to a jury trial attaches in a proceeding that may be heard by a bankruptcy judge under 28 U.S.C. § 157.

**(g) Statistical Closing.** The clerk's office shall statistically close any action stayed by court order because a party has filed a bankruptcy case.

(§§ (c)(1), (2) and (3) and § (d) amended 12/1/09; § (a) amended 12/1/11; added § (c), relettered (c) – (f) 12/1/13; § (d)(1)-(4) amended 12/1/15; § (d)(5) added 12/1/17)

## 77.5 Agreement with Districts of Rhode Island and Maine

When, due to recusal of the judges of this district, a complaint is referred to a judge in either the District of Rhode Island or the District of Maine or when a judge of this district is designated to preside over a case filed in either of those districts due to recusal of the judges in those districts, the following procedures apply.

(1) The originating court shall retain jurisdiction over the case and enter final judgment. Local rules of the originating court shall govern the case unless otherwise ordered by the judge who is presiding by designation.

(2) Conferences, hearings, and pretrials may be held in either district. Jury trials must be held in the district of the originating court.

(3) Parties must make original filings with the clerk's office in the originating court.

(Title, first paragraph, §§ (a)(3) and (b) amended 1/1/02; § (a) heading deleted; former § (a)(3) amended, § (b) omitted 1/1/08)

## 77.6 Communications With Judicial Officers

Unless the court orders otherwise, parties and their counsel shall not correspond or otherwise communicate with a judge or magistrate judge regarding a pending matter unless all other parties are present or have expressly consented. Communications with the court shall be by appropriate application or by motion filed with the clerk's office in compliance with the rules.

(Amended 1/1/00)

## 80.1 Record of Proceedings

**(a) Attendance at Hearings.** The clerk's office will arrange for records to be made of trials, hearings on temporary restraining orders, hearings on preliminary injunctions, criminal proceedings, and pro se hearings. Parties may request the clerk's office to make a record of any other proceeding no later than two (2) days prior to the proceeding.

**(b) Requests for Transcripts.** Any person may purchase a written transcript of court proceedings from the court reporter or, for proceedings held in courtroom B, a copy of the tape from the clerk's office. The court reporter or clerk's office shall notify all named parties to the action of such a request.

**(c) Fees.** A current schedule of fees, as established by the Judicial Conference, is posted in the clerk's office and is available from the official court reporters.

(§ (b) amended 1/1/00, 12/1/15)

## XI. GENERAL PROVISIONS

### 81.1 Removal Actions

**(a) Answer.** Defendant(s) shall file an answer or present other defenses or objections available under the Federal Rules of Civil Procedure within the time frame established by Rule 81(c) of the Federal Rules of Civil Procedure. If such answer has previously been filed in State Court, it shall be refiled separately from other State Court pleadings and captioned "Answer."

**(b) Refiling Motions.** If a motion is pending and undecided in the state court at the time of removal, it will not be considered unless and until the moving party refiles the motion with this court. Each motion must be filed separately on this court's docket. Any objection or other response must be filed by the nonmoving party separate from other pleadings and in accordance with Rule 7.1.

**(c) Certified Copy of State Court Record.** The removing party shall file with the clerk's office a certified or attested copy of the state court record within fourteen (14) days of the filing of the notice of removal.

**(d) Remand.** Whenever the court remands an action to state court, the clerk's office shall send a certified copy of the remand order and docket entries to the state court clerk's office. Unless otherwise ordered by the court, the clerk's office shall delay the transmittal of a certified remand order to state court for thirty (30) days. Any motion to stay the order of remand must be filed prior to or at the same time as a notice of appeal. The parties may file an assented to motion if they agree to the immediate transmittal of the certified remand order to state court.

(§§ (a), (b), and (c) amended 1/1/97; § (b) amended 1/1/98; § (a) amended 1/1/06; §§ (a) and (c) amended 12/1/09; § (a) amended 12/1/15; § (b) amended 12/1/17; § (d) amended 12/1/23)

### 83.1 Bar of District Court

**(a) Eligibility.** Any active member in good standing of the bar of the Supreme Court of New Hampshire, who this court finds to have good moral character and fitness to practice in this court, is eligible for admission to the bar of this court. For the purposes of this rule, an attorney in good standing is one who is not currently 1) subject to pending reciprocal disciplinary proceedings in the State of New Hampshire, 2) suspended or disbarred, 3) subject to a stayed suspension or disbarment, or 4) subject to a probationary or monitoring period at the direction of the attorney admission or discipline system for the State of New Hampshire. This definition of good standing shall also apply to LR 83.2. The bar of this court shall consist of those attorneys who have previously been admitted to the bar of this court and those who have been admitted pursuant to subsection (b).

**(b) Procedure for Admission.** Each applicant for admission to the bar of this court shall complete the attorney admission application electronically, using the PACER system at www.pacer.gov. The required fee is published on the court's website. Submission of a completed application to the bar of this court constitutes the applicant's consent to have the clerk's office obtain the applicant's public and non-public disciplinary history from the New

Hampshire Attorney Discipline Office. During the process of reviewing an application for admission, the court, or clerk's office personnel, may formally or informally request the applicant provide additional information.

Upon the court's approval of the application, the applicant shall be admitted to the bar of this court upon taking the prescribed oath or affirmation. Applicants must be sworn in as members of the district's bar within one year of the date their application is approved or their application will be deemed inactive and a new application will be required.

Upon payment of the admission fee as published on the court's website, which includes a fee for deposit to the United States District Court Library Fund, the applicant shall then be a member of the bar of this court.

**(c) Applicant Character and Fitness.** Should the court have a question regarding an applicant's character or fitness to practice in this district, the applicant shall have the burden of proving good moral character and fitness to the court by clear and convincing evidence. In resolving the issue, the court may consider the Character and Fitness Standards set forth in New Hampshire Supreme Court Rule 42B. The chief judge, or a designated judicial officer, shall decide any question regarding an applicant's character and fitness to practice in this district. The court may also appoint a member of its bar to investigate or prosecute an applicant's character and fitness to practice.

If the court is considering the possibility of finding that an applicant lacks the character or fitness to practice in this district, the applicant shall (1) be given written notice of the reasons for that potential finding, (2) be given an opportunity and deadline to respond in writing, and (3) be notified of the right to request a hearing. The applicant may also request the complete record of the application from the court. If the applicant does not timely respond to the written notice, the application will be deemed withdrawn. If the applicant provides a response and/or requests a hearing, a hearing shall be scheduled and the matter shall be resolved by written decision. The applicant may voluntarily withdraw an application for admission at any time prior to the issuance of a final written decision.

**(d) Special Admissions.** Upon motion and by order of the court, in special circumstances, a person may be admitted to the bar of this court at any time, whether or not the person has complied with all of the admissions requirements provided under the rules. However, the requirements that the person to be admitted take an oath or affirmation and pay the prescribed fee shall be satisfied and shall not be waived.

**(e) Reinstatement After Taking Inactive Status or Resigning.** Any attorney who takes inactive status or resigns must reapply for admission as set forth in subsections (a) and (b) before resuming practice in this court.

**(f) Continued Membership.** Active membership in good standing in any of the following is a precondition to continued membership in the bar of this court: The bar of the highest court of a state, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States.

(§ (b) amended 1/1/97, 1/1/98; §§ (b) and (c) amended 1/1/04; § (b) amended 6/1/04; § (a) amended and § (d) added 1/1/05; § (b) amended 1/1/06; § (a) amended and § (e) added 12/1/09; § (b) amended 12/1/11; § (b) amended 12/1/13; § (b) amended 12/1/15; § (b) amended, § (c) added, former §§ (c) through (e) relettered 12/1/19; § (a) amended 12/1/21; § (a) amended 12/1/23)

**83.2 Practice by Persons Not Members of the Bar of This Court**

**(a) Attorneys for the United States and for the Office of the Federal Public Defender.** Federal government attorneys and federal public defenders who are in good standing as a member of the bar in every jurisdiction in which admitted to practice, and who are not subject to pending disciplinary proceedings as a member of the bar in any jurisdiction, may appear and practice in this court. The court may at any time revoke such permission for good cause without a hearing and any attorney appearing pursuant to this rule is subject to the disciplinary rules and jurisdiction of this court.

**(b) Pro Hac Vice Admissions.** Any attorney who is a member in good standing of the bar of any court of the United States or of the highest court of any state may appear and practice before this court in that action at the court's discretion and on motion by a member of the bar of this court who is actively associated with him or her in a particular action. The court may at any time revoke such permission for good cause without a hearing. An attorney so permitted to practice before this court in a particular action shall at all times remain associated in the action with a member of the bar of this court upon whom all process, notices, and other papers shall be served, who shall sign all filings submitted to the court and whose attendance is required at all proceedings, unless excused by the court.

An attorney for the United States who is not eligible for admission under subsection (a) of this rule may apply for admission under this subsection.

**(1) Supporting Affidavit.** An affidavit from the attorney seeking admission pro hac vice shall be attached to the motion for admission. The affidavit must include:

(A) the attorney's office address, email address and telephone number;

(B) a listing of court(s) to which the attorney has been admitted to practice and the year(s) of admission;

(C) a statement that the attorney is in good standing and eligible to practice in the court(s);

(D) a statement that the attorney is not currently suspended or disbarred in any jurisdiction;

(E) a statement describing the nature and status of any (1) denials of admission to practice before any court, (2) previously imposed or pending disciplinary matters involving the attorney, and (3) prior felony or misdemeanor criminal convictions; and

(F) a statement disclosing and explaining any prior denials or revocations of pro hac vice status in any court.

**(2) Fee for Admission.** A motion for admission pro hac vice must be accompanied by a fee as published on the court's website. The court will not refund the fee if the motion is denied.

**(c) Appearance in Court by Law Students and Graduates.** A second or third year student at, or a graduate of, an accredited United States law school, who is certified under N.H. Supreme Court Rule 36 and whose supervising attorney under said rule is a member of the bar of this court, may appear before the court on behalf of any indigent person(s), the State of New Hampshire, a State agency, or a State subdivision, or the United States government under the general supervision of such supervising attorney. The presence of the supervising attorney in court shall be required in all cases, and the supervising attorney shall be required to review, sign and file pleadings in all cases.

**(d) Other Persons.** Persons who are not members of the bar of this court and to whom subsections (a), (b), and (c) are not applicable will be allowed to appear before this court only on their own behalf.

(§ (b)(2) amended 1/1/97, 1/1/03, 1/1/07; § (a) amended 12/1/09; § (b)(1)(F) added, §§ (b)(1)(E) and (b)(2) amended 12/1/11, § (c) amended 6/6/16; § (b)(1)(B) amended 12/1/17; § (b)(1)(E) amended 12/1/19; §§ (a) and (b)(1)(A) amended 12/1/21)

## 83.3 Conferred Disciplinary Jurisdiction

Any attorney admitted or permitted to practice before this court shall be deemed to have conferred disciplinary jurisdiction upon this court for any alleged attorney misconduct arising during the course of a case pending before this court in which that attorney has participated in any way.

## 83.4 Promulgation of Disciplinary Rules

The court, in furtherance of its inherent authority and responsibility to supervise the conduct of attorneys who are admitted or permitted to practice before it, promulgates the Disciplinary Rules as outlined in LR 83.5.

## 83.5 Disciplinary Rules

### DR-1 Standards for Professional Conduct.

The Standards for Professional Conduct adopted by this court are the Rules of Professional Conduct as adopted by the New Hampshire Supreme Court, as the same may from time to time be amended by that court, and any standards of conduct set forth in these rules. Attorneys who are admitted or permitted to practice before this court shall comply with the Standards for Professional Conduct, and the court expects attorneys to be thoroughly familiar with such standards before appearing in any matter. Attorneys prosecuting criminal cases are also held to the standards of conduct established by law for prosecutors.

### DR-2 Attorneys Convicted of Crimes or Arrested for Crimes Involving a Deadly Weapon.

(a) Any attorney permitted to practice before this court who is convicted of a felony or misdemeanor in any court of the United States, the District of Columbia, or any state,

territory, commonwealth or possession of the United States, shall inform the clerk of such conviction by filing a certified copy of the judgment of conviction within twenty-one (21) days from the date of conviction. Any attorney permitted to practice before this court who is arrested for any offense involving the use of a firearm or other deadly weapon shall inform the clerk of such arrest by filing a copy of the complaint(s), indictment(s) or other charging document(s) related to the arrest within twenty-one (21) days of the date of the arrest.

(b) If a reported conviction involves a "serious crime" as hereafter defined, the court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty or nolo contendere, or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of any disciplinary proceeding that may be commenced upon such conviction. A copy of the suspension order shall immediately be served upon the attorney as provided in DR-9 of these rules. Upon good cause shown, the court may set aside such order when it appears in the interest of justice to do so.

(c) The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves a firearm or other deadly weapon, criminal threatening, false swearing, misrepresentation, fraud, willful failure to file or filing false income tax returns, deceit, bribery, extortion, misappropriation, theft or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

(d) A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.

(e) Upon the filing of a copy of the complaint(s), indictment(s) or other charging document(s) related to an arrest involving the use of a firearm or other deadly weapon, the Court shall inform the office of the United States Marshal and the Marshal's Office may immediately suspend or revoke any "Bar card" permitting the attorney to access the Courthouse without inspection.

(f) Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the court may, in addition to suspending that attorney in accordance with the provisions of this rule, (i) refer the matter to special counsel for the institution of a disciplinary proceeding before one or more judges of the court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded; or (ii) stay the imposition of final discipline pending the outcome of a disciplinary proceeding in another court and pending the issuance of an order to show cause pursuant to DR-3(b)(2).

(g) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime," the court may refer the matter to special

counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the court provided, however, that the court may in its discretion make no reference with respect to convictions for minor offenses.

(h) An attorney suspended under the provisions of this rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

(§ (d) amended 1/1/99; § (a) added, former §§ (a)-(f) relettered accordingly, and new §§ (b), (c) and (e) amended 12/1/11; title and §§ (a) and (b) amended, new § (e) added, former § (e) amended and relettered, former §§ (g) and (h) relettered 12/1/13)

**DR-3 Discipline Imposed By Other Courts.**

(a) Any attorney admitted to practice before this court shall, upon being subjected to public discipline by any other court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, promptly inform the clerk of this court of such action.

(b) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that any attorney admitted to practice before this court has been disciplined by another court, this court may forthwith issue a notice directed to the attorney containing:

(1) a copy of the judgment or order from the other court; and

(2) an order to show cause directing that the attorney inform this court within thirty (30) days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in subsection (d) hereof that the imposition of the identical discipline by the court would be unwarranted and the reasons therefor.

(c) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this court shall be deferred until such stay expires.

(d) Upon the expiration of thirty (30) days from service of the notice issued pursuant to the provisions of DR-3(b)(2) above, this court shall impose the identical discipline unless the respondent-attorney demonstrates, or this court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

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

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

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

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

Where this court determines that any of said elements exist, it shall enter such other order as it deems appropriate.

(e) In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this court.

(f) This court may at any stage appoint special counsel to prosecute the disciplinary proceedings.

(§ (b) amended 1/1/03)

**DR-4 Disbarment on Consent or Resignation in Other Courts.**

(a) Any attorney admitted to practice before this court who shall be disbarred on consent or resign from the bar of any other court of the United States or the District of Columbia or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, shall, upon the filing with this court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this court and be stricken from the roll of attorneys admitted to practice before this court.

(b) Any attorney admitted to practice before this court shall, upon being disbarred on consent or resigning from the bar of any other court of the United States or the District of Columbia or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, promptly inform the clerk of this court of such disbarment on consent or resignation.

**DR-5 Misconduct.**

(a) For misconduct defined in these rules, and for good cause shown, and after notice and opportunity to be heard, any lawyer admitted or permitted to practice before this court may be disbarred, suspended from practice before this court, or subjected to such other public or private disciplinary action as the circumstances may warrant.

(b) Acts or omissions by a lawyer admitted or permitted to practice before this court, individually or in concert with any other person or persons, which violate the Standards for Professional Conduct adopted by this court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

**DR-6 Disciplinary Proceedings.**

(a) When misconduct or allegations of misconduct which, if substantiated, would warrant discipline of an attorney admitted or permitted to practice before this court shall come to the attention of this court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these rules, the judge may follow either or both of the following procedures:

(1) refer the matter to any appropriate disciplinary agency with jurisdiction over said attorney with a request that the agency report its actions to the court provided, however, that in addressing any misconduct matter the court may consider such agency's actions but shall not be bound thereby;

(2) appoint one or more members of the bar of this court to act as special counsel to investigate the matter, to prosecute the matter in a formal disciplinary proceeding under these rules, to make such other recommendation as may be appropriate, or to perform any other functions required by the court in its order of appointment.

(b) Should special counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent-attorney because sufficient evidence is not present, or because there is another proceeding pending against the respondent-attorney, the disposition of which in the judgment of the counsel should be awaited before further action by this court is considered, or for any other valid reason, counsel shall file with the court a recommendation for disposition of the matter, setting forth the reasons therefore.

(c) To initiate formal disciplinary proceedings, special counsel shall, upon a showing of probable cause, obtain leave of this court to institute a disciplinary proceeding by filing a complaint against the respondent-attorney setting forth the allegations of misconduct. If leave of the court is obtained, the complaint and summons shall be promptly served as provided in DR-9.

(d) The respondent-attorney shall file an answer to the complaint within thirty (30) days after service. If any issue of fact is raised in the answer or if the respondent-attorney wishes to be heard in mitigation, this court shall set the matter for prompt hearing before one or more judges of this court provided, however, that if the disciplinary proceeding is predicated upon the complaint of a judge of this court, the hearing shall be conducted before a panel of three judges of this court appointed by the Chief Judge or, if there are less than three judges of this court eligible to serve or if the Chief Judge is the complainant, by the Chief Judge of the Court of Appeals.

**DR-7 Disbarment on Consent While Under Disciplinary Investigation or Prosecution.**

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

(1) the attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;

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

(3) the attorney acknowledges that the material facts so alleged are true; and

(4) the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation or if the proceedings were prosecuted, the attorney could not successfully defend himself.

(b) Upon receipt of the required affidavit, this court shall enter an order disbarring the attorney.

(c) The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this court.

**DR-8 Reinstatement.**

(a) After disbarment or suspension. An attorney suspended for three (3) months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the court of an affidavit of compliance with the provisions of the order of suspension. An attorney suspended for more than three (3) months or disbarred may not resume practice until reinstated by order of this court.

(b) Time of application following disbarment. A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five (5) years from the effective date of the disbarment. A lawyer who has been suspended for more than six (6) months may not apply for reinstatement until six (6) months before the period of suspension has expired.

(c) Hearing on application. Petitions for reinstatement by a disbarred or suspended attorney under this rule shall be filed with the Chief Judge of the court. Upon receipt of the petition, the Chief Judge may (i) reinstate the petitioner on the basis of the petition itself, (ii) refer the petition to special counsel, and/or (iii) assign the matter for hearing before one or more judges of this court provided, however, that if the disciplinary proceeding was predicated upon the complaint of a judge of this court, the hearing shall be conducted before one or more other judges of this court or, if there are not judges of this court eligible to serve, before a district judge of this Circuit appointed by the Chief Judge of the Court of Appeals. If the assigned judge orders a hearing, the hearing shall be scheduled within thirty (30) days of the filing of the petition for reinstatement.

(d) Standard for reinstatement. An attorney petitioning for reinstatement must demonstrate by clear and convincing evidence that he or she has the moral

qualifications, competency, and learning in the law required for admission to practice law before this court and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice or subversive of the public interest.

(e) Duty of special counsel. In all proceedings upon a petition for reinstatement, cross-examination of the witnesses of the respondent-attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel.

(f) Deposit for costs of proceeding. Petitions for reinstatement under this rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the court to cover anticipated costs of the reinstatement proceeding.

(g) Conditions of reinstatement. If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him or her, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further, that if the petitioner has been suspended or disbarred for five (5) years or more, reinstatement may be conditioned, in the discretion of the judge or judges before whom the matter is heard, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

(h) Successive petitions. No petition for reinstatement under this rule shall be filed within one (1) year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

(§ (a) amended 1/1/03; § (c) amended, § (d) added, former §§ (d)-(g) relettered 12/1/13; § (c) amended 12/1/21)

**DR-9 Service of Complaint, Papers and Other Notices.**

Upon the filing of a complaint instituting a disciplinary proceeding, the clerk shall forthwith issue a summons and deliver the summons and a copy of the complaint to the United States Marshal for service in the manner provided in Fed. R. Civ. P. 4(e)(2) or, if such service cannot be made, by registered or certified mail addressed to the respondent-attorney at the attorney's last known address. The summons shall direct the respondent-attorney to serve an answer within thirty (30) days after service. An order of suspension shall be served in the same manner as a summons and complaint instituting a disciplinary proceeding. Service of any other papers or notices required by these rules shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at the attorney's last known address or to counsel or the respondent's attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding.

**DR-10 Duties of the Clerk.**

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

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

(c) Whenever it appears that any person convicted of any crime or disbarred or suspended or censured or disbarred on consent by this court is admitted to practice law in any other jurisdiction or before any other court, the clerk of this court shall, within fourteen (14) days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the other court a certificate of the conviction or a certified exemplified copy of the judgment or order of disbarment suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.

(d) The clerk of this court shall, likewise, promptly notify the National Lawyer Regulatory Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this court.

(§ (d) amended 1/1/97; § (c) amended 12/1/09)

**DR-11 Public Access and Confidentiality.**

**(a) Publicly Available Records.** All filings, orders, and proceedings involving allegations of misconduct by an attorney shall be public, except:

(1) When the court, on its own initiative or in response to a motion for protective order, orders that such matters shall not be made public. While a motion for protective order is pending, the motion and any objection to the motion will be filed under seal at Level I in accordance with LR 83.12, and

(2) Any filing, proceeding, or order issued pursuant to DR–6 prior to the initiation of formal disciplinary proceedings under DR-6(c).

**(b) Respondent's Request.** The respondent attorney may request that the court make any matter public that would not otherwise be public under this rule.

(Retitled, text of rule stricken and replaced with §§ (a) and (b) 1/1/01; § (a) amended 12/1/13)

**DR-12 Jurisdiction.**

Nothing contained in these rules shall be construed to deny to this court such powers as are necessary for the court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18, United States Code or under Rule 42 of the Federal Rules of Criminal Procedure.

## 83.6 Appearances

**(a) By Counsel.** The filing of an appearance or any signed filing, except a motion under LR 83.2, constitutes an appearance by the attorney who signs it. Multiple attorneys from the same firm may file appearances in the case and their names shall be entered on the docket.

**(b) By Individuals.** Pro se parties must appear personally, declaring their pro se status in their initial filing or in a notice of appearance. The words "pro se" shall follow a party's signature on all filings in the same case. A pro se party may not authorize another person who is not a member of the bar of this court to appear on his or her behalf. This includes a spouse or relative and any other party on the same side who is not represented by an attorney.

**(c) By Corporations.** A corporation, unincorporated association, or trust may not appear in any action or proceeding pro se, except that a trustee who is the sole beneficiary of a trust may represent the trust pro se.

**(d) Withdrawals.** An attorney may only withdraw from a case by leave of court after the filing of a motion with the clerk's office if (1) there are any motions pending before the court, (2) the case has been pre-tried, or (3) a trial date has been set. If these circumstances do not exist or, if another attorney from the same law firm, government agency or in-house legal counsel will be continuing to represent the client, an attorney may withdraw by serving a notice of withdrawal on the client and on all other parties and by filing the notice with the clerk's office. When an attorney withdraws from a case and no other appearance is entered, the clerk's office shall notify the party by mail of such withdrawal, and unless the party appears pro se or through counsel by a date set by the court, the court will terminate the case by a dismissal or default judgment. As a condition of withdrawal, the attorney shall notify the clerk's office, in writing, of the client's last known address.

**(e) Change of Address.** All persons with permission to file documents electronically shall immediately update any change in telephone number or postage/email address as outlined in AP 6.2(d). All persons who do not have permission to file electronically shall immediately notify the clerk's office in writing of any change of address and telephone number. Counsel or pro se parties who fail to provide the clerk's office with their current contact information in accordance with this rule are not entitled to notice.

(§ (d) amended 1/1/97; § (a)(4) added 1/1/98; prior § (a)(4) stricken 1/1/01; § (a)(4) added 1/1/05; § (a)(1)(A) amended and renamed § (a), §§ (a)(2)-(4) omitted 1/1/08; § (c) amended 12/1/09; § (c) amended 12/1/11; § (d) amended 12/1/13; § (e) amended 12/1/21)

## 83.7 Limited Representation by Counsel

**(a) Limited Representation Within Court Discretion**. To the extent permitted by Rule 1.2 of the New Hampshire Rules of Professional Conduct, an attorney may provide limited

representation to an otherwise unrepresented litigant in a non-criminal case at the discretion of the presiding judge upon motion filed by the attorney seeking to provide the limited representation.

**(b) Motion for Limited Appearance**. The motion shall state precisely the scope of the limited representation to be provided.

**(c) Scope of Limited Appearance**. The attorney's involvement in the matter shall be limited to the scope of the representation described in the motion. An attorney who is providing limited representation pursuant to this rule and files any pleading or motion outside the stated scope of limited representation, shall be deemed to have amended the scope of the limited representation to include such filing.

**(d) Documents Prepared with Counsel**. An attorney may draft or assist in drafting pleadings, motions, or other documents to be filed in this court only if the court has granted the attorney leave to provide limited representation pursuant to this rule. The attorney shall be subject to, and must sign and serve the filings pursuant to, the local rules and the Federal Rules of Civil Procedure.

**(e) Notice of Completion**. Any limited representation by an attorney under this rule shall automatically terminate upon completion of the specified scope of representation provided that the attorney files and serves on all parties or their counsel a "Notice of Completion of Limited Representation," that conforms to Civil Form 6. An attorney who seeks to withdraw prior to the completion of the specified scope of limited representation must comply with LR 83.6(d).

**(f) Change of Address/Telephone Number**. The requirements of LR 83.6(e) apply to any party and attorney appearing in any case in which this limited representation rule is invoked.

(Added 12/1/13)

## 83.8 Photographing; Broadcasting; Televising

**(a) Prohibition.** Except authorized personnel in the discharge of their official governmental duties, all persons are prohibited from photographing, recording (audio or video), broadcasting, transmitting, or televising within the Warren B. Rudman U.S. Courthouse (including the garage, basement, and ramp area, as well as other areas designated on specific occasions by the United States Marshal when necessary for security reasons). This prohibition extends to persons participating in a court proceeding remotely by video or teleconference.

Except authorized personnel in the discharge of their official governmental duties, all persons are prohibited from possessing within the Rudman courthouse any form of equipment or means of photographing, recording (audio or video), broadcasting, transmitting, or televising.

**(b) Persons Visiting Agencies in the James C. Cleveland Federal Building.** All persons seeking to visit offices of agencies other than court agencies which have permanent offices located within the Cleveland building for the purpose of photographing or recording within those offices shall be escorted from and to the lobby area of the building by a representative

of that agency. The head of that agency shall be responsible for ensuring compliance by the agency and visitors to that agency with the requirements of this rule.

**(c) Exceptions.**

(1) The court may permit the photographing, recording (audio or video), broadcasting, transmitting, or televising of naturalization, investiture, swearing-in, or similar ceremonies or special proceedings.

(2) Unless otherwise prohibited by a judge or the clerk, members of the bar of this court or any other bar and their agents may possess and use cell phones, smart watches, computers, pagers, and similar electronic devices within the Rudman Courthouse. However, such devices shall be set on silence mode, and no telephone calls made or received, while in any courtroom or judge's chambers without specific advance authorization by the presiding judge. Additionally, the use of cell phones for telephone calls shall be restricted to conference rooms within the Rudman Courthouse.

In no event shall any such device be employed by counsel or anyone else in any manner designed to photograph, record (audio or video), broadcast, transmit, or televise any proceeding, scene, discussion, or event. It is the intent of this rule to preserve the prohibitions set out in subsection (a), while allowing some reasonable flexibility to members of the bar (who are subject to professional sanction) to effectively perform their professional obligations.

Pro se litigants and others may be extended similar privileges upon application to the clerk of court and showing of good cause for or particular need for an exception.

(§ (a) amended, prior § (b), Exception, relettered to § (c) and amended, and § (b) added 1/1/00; § (c)(2) amended 1/1/04; § (c)(2) amended 12/1/11; formerly LR 83.7 renumbered to 83.8 12/1/13; § (c)(2) amended 12/1/15; §§ (a) and (c)(2) amended 12/1/19)

## 83.9 Provisions for Special Orders in Widely Publicized and Sensational Cases

In a widely publicized or sensational case, the court, sua sponte or on motion of either party, may issue a special order governing matters such as extrajudicial statements by parties and witnesses likely to interfere with the conduct of 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 deems appropriate.

(Formerly LR 83.8 renumbered to 83.9 12/1/13)

## 83.10 Courthouse Security

All persons entering a federal courthouse in this district and all items carried by them shall be subject to appropriate screening and checking by a United States Marshal, a security officer, or any law enforcement officer on duty. Visitors are required to present identification prior to being allowed to enter the courthouse. The United States Marshal shall determine the forms of identification that are acceptable for admission. Bar Cards may substitute for this identification requirement. The United States Marshal, or a designee, may for good cause shown approve access to any visitor who does not have an acceptable form of identification and may require that

individual to record his or her name in a log maintained by Court Security Officers. Any person who refuses to cooperate with these security measures may be denied entrance to the courthouse.

(Formerly LR 83.9 renumbered to 83.10 12/1/13; amended 12/1/23)

### 83.11 Pending Matters in Stayed Cases

When the court grants a stay, it may administratively terminate any pending motions without prejudice.

(Formerly LR 83.10 renumbered to 83.11 12/1/13)

### 83.12 Sealed Documents

**(a) Filings, Orders, and Docket Text Entries.** All filings, orders, and docket text entries shall be public unless:

(1) sealed by order of this court, another court or agency;

(2) sealed pursuant to state law, federal law, the Federal Rules of Criminal or Civil Procedure, or these rules; or

(3) related to a departure or sentence reduction motion based solely on substantial assistance, which will be sealed at Level I until further order of the court.

The caption for filings sealed pursuant to subsections (2)-(3) shall (i) clearly indicate that the document is filed under seal, and (ii) include a citation to the applicable statute or rule authorizing the seal.

**(b) Levels of Sealed Filings, Orders, and Docket Text Entries.**

(1) **Level I.** Filings, orders, and docket text entries sealed at Level I may be reviewed by any attorney or pro se party appearing in the action without prior leave of court.

(2) **Level II.** Filings, orders, and docket text entries sealed at Level II may be reviewed only by the filer or, in the case of an order, the person to whom the order is directed without prior leave of court.

**(c) Motions to Seal.** Except for matters automatically sealed pursuant to subsection (a)(2)-(3), all requests to seal must be made by motion. A motion to seal must address the following:

(1) identify the filing(s), or portions thereof, to be sealed;

(2) provide the factual and legal basis to justify sealing the filing(s);

(3) propose a duration of seal;

(4) indicate whether the movant also seeks to seal the motion to seal and/or all related docket text entries; and

(5) indicate whether the filing(s) should be sealed at Level I or Level II.

**(d) Filing Procedures.** A motion to seal, and the related document(s) to be sealed, must be filed conventionally and submitted in compliance with Administrative Procedure for Electronic Case Filing 3.3. The motion to seal, related document(s), and data storage device shall be submitted in an envelope with a notation on the outside of the envelope such as "DOCUMENTS SUBMITTED UNDER SEAL."

If a party is requesting to seal only a portion of a document, the party must provide both (1) a redacted copy, and (2) an unredacted copy of the document highlighting in a translucent color the portion(s) of the document sought to be sealed.

The filings will be accepted provisionally under seal, subject to the court's subsequent ruling on the motion. If the court denies the motion to seal, any materials submitted under provisional seal will be stricken from the court's docket and returned to the movant.

(Prior rule stricken and replaced with §§ (a)-(d) 1/1/01; § (d) amended 1/1/08; § (c) amended 12/1/09; formerly LR 83.11 renumbered to 83.12, and § (c) amended 12/1/13; §§ (b)(1), (c), and (d) amended 12/1/15; §§ (a) through (d) amended 12/1/19)

## 83.13 Judicial Misconduct

Complaints alleging judicial misconduct or disability are governed by the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c), and by the Rules of the Judicial Council of the First Circuit Governing Complaints of Judicial Misconduct or Disability. Copies of these rules and required complaint forms are available from the Office of the Circuit Executive, United States Courthouse, Suite 3700, 1 Courthouse Way, Boston, Massachusetts 02210 (617-748-9330) and are also available on the court's web site. Any complaint of judicial misconduct must be filed with the Clerk of the United States Court of Appeals for the First Circuit.

(Amended 1/1/99, 1/1/04; formerly LR 83.12 renumbered to 83.13 12/1/13)

## 83.14 Exhibits and Witness List

**(a) Premarking.** No later than one week before a case is set for trial or hearing, counsel shall furnish to the clerk:

(1) an original of a typed descriptive list of all exhibits to be offered. Each listing shall indicate whether the exhibit shall be admitted into evidence by agreement of parties or marked for identification;

(2) the original exhibits, marked, that will be used in the proceeding; and

(3) no hazardous exhibit as defined in LR 7.3 shall be presented for premarking, premarked, introduced into evidence or maintained in the custody of the court without prior leave of court.

At the commencement of the proceeding, all exhibits agreed to will be offered and received into evidence. Those marked for identification will remain so until ruled upon during the proceeding or in the court's opinion or otherwise.

**(b) Custody.** All exhibits received or offered in evidence at any proceeding shall be delivered to the clerk, who shall keep them in custody except that any sensitive exhibits or other exhibits which, because of their size or nature, require special handling shall remain in the possession of the party introducing same during the pendency of the proceedings and any appeal.

**(c) Disposition.** At the conclusion of the proceeding, all exhibits shall be retained by the clerk until the expiration of any appeal period or the conclusion of any appeal, whichever occurs later. The court may, however, order that some or all exhibits be maintained by an attorney or party or otherwise stored at an off-site facility at the parties' expense during the pendency of any appeal.

After the conclusion of any appeal or, if no appeal is taken, after the expiration of the appeal period, the clerk may notify the parties that the exhibits should be removed within a specified period of time. If the exhibits are not removed or another arrangement made with the clerk within the time allowed, the exhibits may be destroyed or otherwise disposed of without further notice.

**(d) Appeals.** It shall be the duty of the clerk, or any attorney or party having possession of an exhibit pursuant to these rules or a court order, to promptly send such exhibit(s) to the office of the clerk of the court of appeals to which the appeal has been taken. If the exhibits are unusually voluminous, the court in its discretion may require the parties to arrange for transmission of the same to the clerk of the court of appeals.

Pursuant to Fed. R. App. P. 11(b)(2), documentary exhibits of unusual bulk or weight and physical exhibits other than documents need not be transmitted to the clerk of the court of appeals unless directed to do so by the clerk of the court of appeals. Pending transmission of such exhibits to the court of appeals and/or final disposition of any appeal, if any exhibits are in the custody of a party or attorney pursuant to subsection (b) of this rule, they shall remain in the custody such attorney or party unless otherwise ordered by the court and available for inspection by any other party upon request. If the clerk of the court of appeals requests such exhibits be transmitted, the attorney or party in possession of the exhibits shall promptly make arrangements for the immediate transmission of them to the court of appeals. If such exhibits are in the custody of the court, the court in its discretion may require the parties to arrange transmission to the court of appeals.

**(e) Photographs of Chalks.** In order to make a record of a chalk, the court may permit a party to photograph or otherwise copy it, on such terms as are just.

**(f) Witness List.** No later than one week before a case is set for trial or hearing, counsel or a pro se party shall submit to the clerk a final witness list that shall include the name and town/city of residence/place of business (as appropriate) for each witness the party expects to present as well as for those witnesses the party may call if the need arises.

(New § (d) added, prior § (d) relettered to § (e) 1/1/04; § (a)(3) added, § (d) amended 1/1/08; §§ (c) and (d) amended 12/1/09; § (f) added 12/1/11; formerly LR 83.13 renumbered to 83.14 and § (d) amended 12/1/13)

## 83.15 Courtroom Technology

Persons using courtroom audio or visual equipment, including but not limited to videoconferencing and evidence presentation systems, shall be prepared to operate such systems without the assistance of the clerk's office staff. At a minimum, persons using courtroom audio or visual equipment shall (a) review materials on the court's website related to the use of such technologies; (b) make arrangements with the clerk's office no later than five (5) days prior to the hearing/trial if they would like to train on or otherwise become familiar with the court's systems; (c) supply the necessary cables to connect personal laptops to the court's evidence presentation system; and (d) perform a virus check on any media they intend to access on court provided computers.

(Added 1/1/06; § (e) omitted 12/1/11; formerly LR 83.14 renumbered to 83.15 12/1/13; amended 12/1/21)

## 83.16 Presentation of Electronic Evidence to a Deliberating Jury, Jury Evidence Recording System (JERS)

**(a) Use of Jury Evidence Recording System ("JERS").** JERS is a court technology system that allows a deliberating jury to review trial exhibits, such as documentary, photographic or video exhibits, on a plasma screen using a touch screen kiosk. Unless otherwise ordered by the court, JERS shall be the exclusive medium used to present electronic evidence to a deliberating jury. Parties using JERS shall comply with the procedures set forth below in this rule and on the court's website.

**(b) Production of Exhibits in Electronic Format.** In addition to submitting their exhibits in paper as required by LR 83.14 and LCrR 16.1(h), the parties shall simultaneously exchange and submit their exhibits in an electronic format that strictly conforms with naming and submission instructions on the JERS section of the court's website. Exhibits shall be described using neutral and non-adversarial terms. To the extent practicable, the parties should endeavor to have available at trial an electronic copy of any unlisted exhibit that is used to impeach a witness and is admitted into evidence. Exhibits that cannot practically be reduced to electronic format, such as large physical exhibits, or exhibits that the parties have agreed should not be submitted to the deliberating jury in electronic format need not be submitted electronically for entry into JERS.

**(c) Confirmation of Exhibits Released to Jury for Deliberations.** Before the jury begins to deliberate, the parties will confer with the courtroom deputy and will (1) agree on the exhibits that will be released to the jury through JERS, (2) confirm that the exhibits in JER are identical to the exhibits admitted into evidence, and (3) agree what restrictions, if any, may apply to each exhibit (e.g. audio only, video only). Any disagreements will be resolved by the presiding judge.

**(d) Integrity of Deliberation Process.** No court personnel will enter the jury room once deliberations have commenced without the court's permission. Any request by the jury for technical assistance will have to be made in writing, and presented to the parties for their consideration and to the court for approval, before any court staff member will be permitted to

provide assistance. In the event court staff must assist with a technical problem, jurors will be escorted to another room while court staff resolves the problem.

(Added 12/1/11; formerly LR 83.15 renumbered to 83.16, introduction deleted, § (a) added, §§ (a) – (c) relettered, 12/1/13; § (b) amended 12/1/15)

### 83.17 Videoconference and Telephonic Hearings

**(a)** For any scheduled videoconference or teleconference criminal hearing in which the defendant is entitled to appear other than felony changes of plea or sentencings under Fed. R. Crim. P. 11 or 32, the court will presume that the defendant consents to participate by video or telephone. If a defendant elects not to consent, a pre-hearing objection should be filed (a) as soon as possible in magistrate judge hearings, and (b) at least 24 hours prior to a scheduled hearing before a district judge. If a felony change of plea or sentencing under Fed. R. Crim. P. 11 or 32 is otherwise authorized to be held by videoconference or teleconference, the defendant's consent to a remote appearance must be in writing, submitted prior to the proceeding and after consulting with counsel.

**(b)** The presiding judge in a criminal hearing will confirm the defendant's consent to appear by videoconference or teleconference at the commencement of the hearing.

**(c)** The court will make arrangements to assure that defense counsel and any interpreter can effectively communicate with a defendant in a criminal hearing during the course of a videoconference or telephonic hearing.

**(d)** The U.S. Probation and Pretrial Services Office may schedule and conduct pre-hearing interviews by telephone conference, with interpreters and counsel participating as necessary.

**(e)** Counsel shall: (a) notify any necessary witnesses that they will be participating by videoconference or teleconference; (b) provide the witness(es) with instructions for joining the videoconference/teleconference; (c) notify the presiding judge's case manager and opposing counsel as to any witness(es) that will be participating in the hearing; and (d) notify the presiding judge's case manager of any witness(es) who should be sequestered with the exception of their testimony.

**(f)** Exhibits shall be pre-marked and submitted to the presiding judge's case manager by email with a copy provided to opposing counsel at least 30 minutes prior to the scheduled hearing for a criminal hearing before a magistrate judge, and at least 24 hours prior to the scheduled hearing for all other hearings.

**(g)** To the extent the public has a right to attend a scheduled hearing or conference, any member of the public wishing to access the hearing may contact the Clerk's Office in advance of the hearing or conference to obtain the access information.

**(h)** To address unique circumstances and other logistical or case management issues, counsel may request a pre-hearing telephonic status conference with the court. Unless prior

approval is obtained from the presiding judge, such status conferences shall be limited to counsel.

(Added 12/1/23)

[INTENTIONALLY BLANK]

## APPENDIX OF FORMS, CIVIL

### Civil Form 1, Civil Case Management Deadlines

This chart is meant merely as a summary. Local and Federal Rules and orders in individual cases are controlling. Certain cases are exempt from certain provisions of the Local Rules, e.g., 16.1 exempts administrative track cases. **NOT INCLUDED**: SSA cases, IDEA cases, class action settlements, bankruptcy proceedings, cases referred from Rhode Island, removal actions.

**Civil Case Management Deadlines**
**Amended Through December 1, 2023**

| PROCEEDING, DOCUMENT, OR ACTION | RULE | DUE DATE |
|---|---|---|
| Conference of parties to develop discovery plan. | Fed. R. Civ. P. 26(f) | At least 21 days before the preliminary pretrial conference held or scheduling order due per Fed. R. Civ. P. 16(b) |
| Discovery commences except in cases specified in Fed. R. Civ. P. 26(a)(1)(B). | Fed. R. Civ. P. 26(d) and (f) | |
| Discovery plan filed. | Fed. R. Civ. P. 26(f) | 14 days after Fed. R. Civ. P. 26(f) conference |
| Court ADR/Mediation - notice to the court of the date by which mediation will occur. | LR 53.1(c)(1) | Included in scheduling order |
| Preliminary pretrial conference. | LR 16.1 | Set by clerk's notice |
| Scheduling order issued. | Fed. R. Civ. P. 16(b) | |
| Amended pleadings filed. | Fed. R. Civ. P. 16(b)(3)(A) | Set by scheduling order |
| Additional parties joined. | Fed. R. Civ. P. 16(b)(3)(A) | Set by scheduling order |
| Expert materials disclosed. | Fed. R. Civ. P. 16(b)(3)(B) | Set by scheduling order (if no order then 30 days prior to trial as required by Fed. R. Civ. P. 26(a)(3)(B)) |
| Dispositive motions filed. | Fed. R. Civ. P. 16(b)(3)(A) | Set by scheduling order |
| Discovery completed. | Fed. R. Civ. P. 16(b)(3)(A) | Set by scheduling order |
| Motion for attendance of witness by pro se and in forma pauperis parties. | LR 45.2 | 21 days before trial (or hearing or deposition) |
| Pretrial statements, requests for jury instructions, trial memoranda, requests for findings of fact and rulings of law, motions in limine, and voir dire requests filed. | Fed. R. Civ. P. 26(a)(3) and LR 16.2 | Set by clerk's notice of trial assignment (30 days before trial) |
| Challenges to expert testimony. | Fed. R. Civ. P. 16(b)(3)(B) | Set by scheduling order |

| PROCEEDING, DOCUMENT, OR ACTION | RULE | DUE DATE |
|---|---|---|
| Objections to pretrial disclosures and to exhibits, motions in limine, jury instructions, findings of fact, and rulings of law filed. | Fed. R. Civ. P. 26(a)(3)(B) and LR 16.2(d) | Set by clerk's notice of trial assignment (14 days after filing of pretrial statements) |
| Final pretrial conference held. | LR 16.3(a) | Set by clerk's notice of trial assignment (approximately 10 days prior to trial) |
| Deposition page/line designations. | LR 16.2(a)(4) | Due 10 days prior to trial; counter-designations due 5 days prior to trial; objections 2 days prior to trial |
| Exhibits and exhibit/final witness lists filed. | LR 83.14 | Set by final pretrial order or 7 days before trial |
| Trial. | LR 40.1 | Set by clerk's notice of trial assignment (in accordance with track assigned per LR 40.1) |

**Other Civil Deadlines**

| PROCEEDING, DOCUMENT, OR ACTION | RULE | DUE DATE |
|---|---|---|
| Filing fee paid or motion to proceed in forma pauperis filed. | LR 4.4 | Simultaneous with filing of complaint |
| Objections to motions other than motions in limine filed with final pretrial statements and motions for summary judgment. | LR 7.1(b) | 14 days after motion is filed |
| Objections to summary judgment motions. | LR 7.1(b) | 30 days after motion is filed |
| Reply memorandum. | LR 7.1(e)(1) | Dispositive motion: within 7 days of the filing of an objection or opposition. |
| Motion to file reply memorandum. | LR 7.1(e)(2) | Nondispositive motion: motion for leave no later than 7 days after the filing of an objection or opposition |
| Surreply. | LR 7.1(e)(3) | Within 5 days of filing of reply |
| Motion to strike. | LR 7.2(b) | Within 14 days of the filing of motion or objection |
| Motion to continue based on scheduling conflict filed. | LR 7.2(a) | 7 days after learning of scheduling conflict |
| Motion to reconsider other than a motion under Fed. R. Civ. P. 59 or 60. | LR 7.2(d) | 14 days after order issued |
| Respondent's answer in § 2254 habeas corpus case. | LR 7.4 | Within 90 days of court order requiring an answer |
| Petitioner's reply in § 2254 and § 2255 habeas corpus cases. | LR 7.4<br>LR 7.5 | Within 30 days after respondent files an answer |

| PROCEEDING, DOCUMENT, OR ACTION | RULE | DUE DATE |
|---|---|---|
| Written statement or dispositive motion in § 2254 habeas corpus case. | LR 7.4 | Within 60 days of filing answer to petition to habeas corpus |
| Disclosure statement (Nongovernmental corporate and diversity statements). | LR 7.1.1 | If corporation, partnership, or LLC, or in a diversity case, with first appearance or filing |
| Production of discovery required by court ruling on motion to compel. | LR 37.1(b) | 14 days after order issued |
| Signed agreement for entry of judgment or stipulation of dismissal filed. | LR 41.1 | 30 days after court notified of settlement |
| Notice to opposing counsel that counsel will be called as a witness at trial. | LR 45.5 | 30 days before trial |
| Jury costs may be assessed if case settles later than 3 p.m. on the last business day prior to the scheduled trial date. | LR 54.2 | 1 day before trial |
| Bill of costs filed. | LR 54.1 | 21 days after expiration of appeal period or issuance of appellate court mandate. Objections due 14 days after filing. |
| Response to objection to nondispositive order of Magistrate Judge. | LR 72.2 | 14 days after filing of objection |
| Objection to initial case assignment to magistrate judge. | LR 73.1(b) | 21 days after receipt of notice of initial assignment |
| Parties request court reporter if proceeding is not covered by LR 80.1. | LR 80.1 | 2 days prior to hearing |
| Transmission of exhibits for appeal. | LR 83.14(d) | Promptly after filing of appeal |
| Operation of courtroom technology. | LR 83.15 | 5 days before hearing/trial make arrangements to train on court's systems if desired |

(Added 1/1/97; amended 1/1/00, 1/1/01, 1/1/02, 1/1/03, 1/1/04, 1/1/05, 1/1/06, 1/1/08; 12/1/09, 12/1/11, 12/1/13, 12/1/17, 12/1/18, 12/1/19, 12/1/21, 12/1/22)

**Civil Form 2, Discovery Plan**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

*Plaintiff(s)*

v. Civil No. *Case #/Judge Initials*

*Defendant(s)*

**DISCOVERY PLAN**
**Fed. R. Civ. P. 26(f)**

**DATE/PLACE OF CONFERENCE:**

**COUNSEL PRESENT/REPRESENTING**:

**CASE SUMMARY**

**THEORY OF LIABILITY**:

**THEORY OF DEFENSE**:

**DAMAGES**:

**DEMAND**: *due date [NOTE: need not be filed with the court.]*

**OFFER**: *due date [NOTE: need not be filed with the court.]*

**JURISDICTIONAL QUESTIONS**:

**QUESTIONS OF LAW:**

**TYPE OF TRIAL**: *jury or bench*

**SCHEDULE**

**TRACK ASSIGNMENT:** *EXPEDITED – 6 MONTHS*
*STANDARD – 12 MONTHS*
*COMPLEX – 24 MONTHS*

**TRIAL DATE:** *The parties shall set out an agreed trial date — adhering to time periods as mandated by the chosen track assignment –- using a preset jury selection day as provided on the court's web site (www.nhd.uscourts.gov). If the parties cannot agree on a date, they shall set out their respective proposed dates.*

**DISCLOSURE OF CLAIMS AGAINST UNNAMED PARTIES:** *If defendant(s) claim that unnamed parties are at fault on a state law claim (see DeBenedetto v. CLD Consulting Engineers, Inc., 153 N.H. 793 (2006)), defendant(s) shall disclose the identity of every such party and the basis of the allegation of fault [no later than 30 days before the Joinder of Additional Parties deadline and 45 days before the Plaintiff's Expert Disclosure deadline].*

*Plaintiff shall then have 30 days from the date of disclosure to amend the complaint.*

**AMENDMENT OF PLEADINGS:**

Plaintiff: *due date* Defendant: *due date*

**JOINDER OF ADDITIONAL PARTIES:**

Plaintiff: *due date* Defendant: *due date*

**THIRD-PARTY ACTIONS**: *due date*

**MOTIONS TO DISMISS:** *due date [NOTE: no later than 90 days after preliminary pretrial conference.]*

**DATES OF DISCLOSURE OF EXPERTS AND EXPERTS' WRITTEN REPORTS AND SUPPLEMENTATIONS:**

Plaintiff: *due date* Defendant: *due date*

Supplementations under Rule 26(e) due: *time(s) or interval(s)*.

*[Advise the court whether the parties have stipulated to a different form of expert report than that specified in Fed. R. Civ. P. 26(a)(2).]*

**COMPLETION OF DISCOVERY:**

(1) *Date all discovery complete [NOTE: no later than 60 days prior to trial date.]*
(2) *Date for completion of discovery on issues for early discovery, if any.*

**MOTIONS FOR SUMMARY JUDGMENT***: due date [NOTE: no later than 120 days prior to trial date. The fact that the discovery deadline may postdate the summary judgment deadline is not a sufficient basis to request a continuance of the summary judgment deadline.]*

**CHALLENGES TO EXPERT TESTIMONY:** *due date [NOTE: no later than 45 days prior to trial date.*

## DISCOVERY

**DISCOVERY NEEDED:**

*Give a brief description of subjects on which discovery will be needed.*

**MANDATORY DISCLOSURES (Fed. R. Civ. P. 26(a)(1)):**

*Advise the court whether the parties have stipulated to a different method of disclosure from that required by Fed. R. Civ. P. 26(a)(1) or have agreed not to require any Rule 26(a)(1)*

*disclosures, and if so, in cases where ESI discovery is anticipated, advise how the parties will exchange information regarding the custodian(s) and location(s) of ESI in the absence of mandatory disclosures.*

**INTERROGATORIES**: *A maximum of (number) [PRESUMPTIVE LIMIT 25] interrogatories by each party to any other party. Responses due 30 days after service unless otherwise agreed to pursuant to Fed. R. Civ. P. 29.*

**REQUESTS FOR ADMISSION:**

*A maximum of (number) requests for admission by each party to any other party. Responses due 30 days after service unless otherwise agreed to pursuant to Fed. R. Civ. P. 29.*

**DEPOSITIONS:**

*A maximum of (number) [PRESUMPTIVE LIMIT 10] depositions by plaintiff(s) and (number) [PRESUMPTIVE LIMIT 10] by defendant(s). Each deposition (other than of /name\) limited to a maximum of (number) [PRESUMPTIVE LIMIT 7] hours unless extended by agreement of the parties.*

**ELECTRONIC INFORMATION DISCLOSURES (Fed. R. Civ. P. 26(f)):**

*If the parties do not anticipate discovery of electronically stored information ("ESI"), they should provide an explanation here. Otherwise, the parties must provide (a) a brief description of the parties' proposals regarding the disclosure or discovery of electronically stored information ("ESI") and/or attach a proposed order and/or (b) identify any disputes regarding the same. For further guidance, parties should refer to the ESI checklist provided on the court's website.*

*The potential issues the parties should consider include,* ***but are not limited to****:*

*(1) Preservation. Counsel should attempt to agree on steps the parties will take to segregate and preserve ESI in order to avoid accusations of spoliation;*

*(2) Location and Systems. Counsel should attempt to identify systems from which discovery will be prioritized (e.g. email, finance, HR systems, backup/archival systems), including the description, location and media of those systems;*

*(3) Scope of Search, Proportionality and Costs. Counsel should attempt to identify and agree on the scope of ESI discovery, the search method(s), including specific words or phrases or other methodology that will be used to identify discoverable ESI, the amount and nature of the claims being made and who will bear the cost of obtaining the data;*

*(4) Format and Mode of Transmittal. Counsel should attempt to agree on the format and mode of transmittal to be used in the production of ESI, and whether production of some or all ESI in paper form is agreeable in lieu of production in electronic format;*

*(5) Phasing. Whether it is appropriate to conduct discovery of ESI in phases;*

*(6) Privileged or Trial Preparation Materials. Counsel also should attempt to reach agreement regarding what will happen in the event privileged or trial preparation materials are inadvertently disclosed. See Fed. R. Evid. 502.*

**STIPULATION REGARDING CLAIMS OF PRIVILEGE/PROTECTION OF TRIAL PREPARATION MATERIALS (Fed. R. Civ. P. 26(f)):**

*Provide a brief description of the provisions of any proposed order governing claims of privilege or of protection as trial preparation material after production (and/or attach a proposed order).*

## OTHER ITEMS

**SETTLEMENT POSSIBILITIES:**

*(1) is likely*
*(2) is unlikely*
*(3) cannot be evaluated prior to (date)*
*(4) may be enhanced by ADR: (a) request to the court*
*(b) outside source*

**JOINT STATEMENT RE: MEDIATION:** *The parties shall meet and confer regarding mediation, and shall include a statement in the proposed discovery plan addressing the following issues: 1) whether the parties plan to pursue mediation; 2) if so, whether they anticipate mediating before or after pursuing discovery and/or filing summary judgment motions; and 3) whether the parties will request mediation with a Magistrate Judge/District Judge or with a private mediator. The parties shall also propose a date by which they will update the court on the status of mediation; the clerk's office shall schedule a mediation status conference following that deadline. The obligation to meet and confer, and to file a joint mediation statement, shall not apply when one of the parties is incarcerated and unrepresented.*

**TRIAL ESTIMATE:** *number of days*

**WITNESSES AND EXHIBITS:** *[NOTE: no dates necessary. Due dates are as follows, and will be set by the clerk's notice of trial assignment.]*

- *Witness and exhibit lists, included in final pretrial statements, are due 10 days before final pretrial conference but not less than 30 days before trial.*
- *Objections are due 14 days after filing of final pretrial statements.*

**PRELIMINARY PRETRIAL CONFERENCE:** The parties *(request) (do not request)* a preliminary pretrial conference with the court before entry of the scheduling order.
*[NOTE: THE PARTIES SHOULD PLAN TO ATTEND THE PRELIMINARY PRETRIAL CONFERENCE AS SCHEDULED UNLESS OTHERWISE NOTIFIED BY THE COURT.]*

**OTHER MATTERS:** *The parties should list here their positions on any other matters which should be brought to the court's attention including other orders that should be entered under Fed. R. Civ. P. 26(c) or 16(b) and (c).*

(Added 1/1/97; amended 1/1/00, 1/1/01, 1/1/02, 1/1/03, 1/1/04, 1/1/07, 12/1/09, 12/1/11, 12/1/13, 12/1/17, 12/1/19, 12/1/21)

**Civil Form 3, Extending Deadlines Set In Discovery Plan**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

*Plaintiff(s)*

v. Civil No. *Case #*/Judge Initials

*Defendant(s)*

**ATTACHMENT TO MOTION EXTEND DEADLINES ESTABLISHED IN THE COURT'S *[DATE]* SCHEDULING ORDER**

*[List the scheduling designations that are applicable to your case. This draft is merely an exemplar and includes deadlines listed in Civil Form 2, Discovery Plan.*]

| Scheduling Designation | Current Deadline | Proposed Deadline |
|---|---|---|
| Completion of Discovery | | |
| Discovery Status Report | | |
| Disclosure of Experts and Experts' Written Reports and Supplementations (Plaintiff) | | |
| Disclosure of Experts and Experts' Written Reports and Supplementations (Defendant) | | |
| Challenges to Expert Testimony | | |
| Disclosure of Claims Against Unnamed Parties | | |
| Joinder of Additional Parties (Plaintiff) | | |
| Joinder of Additional Parties (Defendant) | | |
| Third-Party Actions | | |
| Amendment to Pleadings (Plaintiff) | | |
| Amendment to Pleadings (Defendant) | | |
| Motions to Dismiss | | |
| Motions for Summary Judgment | | |
| Trial | | |

(Added 12/1/13; amended 12/1/17, 12/1/21)

**Civil Form 4, Nongovernmental Corporate Disclosure Statement**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

*Plaintiff(s)*

v. Civil No. Case #/Judge Initials

*Defendant(s)*

**NONGOVERNMENTAL CORPORATE PARTY/INTERVENOR DISCLOSURE STATEMENT**
**LOCAL RULE 7.1.1**

[This form is to be completed and filed only by parties and intervenors that are nongovernmental corporations, partnerships, or limited liability companies. Check the appropriate box(es).]

❒ The filing party, a nongovernmental corporation, identifies the following parent corporation and any publicly held corporation that owns 10% or more of its stock:

- O R -

❒ The filing party, a partnership, identifies the following parent corporation and any publicly held corporation that owns 10% or more of the corporate partner's stock:

- O R -

❒ The filing party, a limited liability company (LLC), identifies the following parent corporation and any publicly held corporation that owns a 10% or more membership or stock interest in the LLC:

- AND/O R -

❒ The filing party identifies the following publicly held corporations with which a merger agreement exists:

- O R -

❒ The filing party has none of the above.

(Added 1/1/01; amended 1/1/03, 12/1/09, 12/1/13, 12/1/22)

**Civil Form 4.1, Diversity Disclosure Statement**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

*Plaintiff(s)*

v. Civil No. Case #/Judge Initials

*Defendant(s)*

**DIVERSITY DISCLOSURE STATEMENT**
**LOCAL RULE 7.1.1**

[This form is to be completed and filed only by parties and intervenors in actions in which jurisdiction is based on diversity of citizenship under 28 U.S.C.§ 1332(a)]

| PARTY OR INTERVENOR NAME | CITIZENSHIP |
|---|---|

[Complete Below Only if Applicable. An unincorporated entity, including but not limited to a partnership, limited liability company or trust, must name and identify the citizenship of all individuals or entities whose citizenship is attributed to that unincorporated entity under applicable law (such as, as may be the case depending on the unincorporated entity and applicable law, partners, members, trustees, and beneficiaries) here. Additionally, if any entity whose citizenship is attributed to the unincorporated entity is itself an unincorporated entity, the name and citizenship of the individuals or entities whose citizenship is attributed to that unincorporated entity must likewise be disclosed until all related parties whose citizenship is attributable to the filing party have been disclosed.]

| NAME OF ALL INDIVIDUALS OR ENTITIES ATTRIBUTED TO TO PARTY OR INTERVENOR | RELATIONSHIP TO PARTY OR INTERVENOR | CITIZENSHIP |
|---|---|---|

(Added 12/1/22; amended 12/1/23)

**Civil Form 5, Protective Order Form**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

*Plaintiff(s*)

v. Civil No. *Case* #/Judge Initials

*Defendant(s)*

**PROTECTIVE ORDER**

*[If by consent]* The parties have agreed to the terms of this Protective Order; accordingly, it is ORDERED:

*[If not fully by consent]* A party to this action has moved that the Court to enter a protective order. The court has determined that the terms set forth herein are appropriate to protect the respective interests of the parties, the public, and the Court. Accordingly, it is ORDERED:

1. Scope. All documents produced in the course of discovery, including initial disclosures, all responses to discovery requests, all deposition testimony and exhibits, other materials which may be subject to restrictions on disclosure for good cause and information derived directly therefrom (hereinafter collectively "document(s)"), shall be subject to this Order concerning confidential information as set forth below. This Order is subject to the Local Rules of this District and of the Federal Rules of Civil Procedure on matters of procedure and calculation of time periods.

2. Form and Timing of Designation. A party may designate documents as confidential and restricted in disclosure under this Order by placing or affixing the words "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" on the document in a manner that will not interfere with the legibility of the document and that will permit complete removal of the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation. Documents shall be designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER prior to or at the time of the production or disclosure of the documents *[OPTIONAL: except for documents produced for inspection under the "Reading Room" provisions set forth in paragraph 4 below.]* The designation "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" does not mean that the

document has any status or protection by statute or otherwise except to the extent and for the purposes of this Order.

3. Documents Which May be Designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER. Any party may designate documents as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER but only after review of the documents by an attorney or a party appearing pro se who has in good faith determined that the documents contain information protected from disclosure by statute or that should be protected from disclosure as confidential personal information, trade secrets, personnel records, or commercial information. The designation shall be made subject to the standards of Rule 11 and the sanctions of Rule 37 of the Federal Rules of Civil Procedure. Information or documents that are available in the public sector may not be designated as CONFIDENTIAL -SUBJECT TO PROTECTIVE ORDER.

4. *[This Reading Room paragraph may be appropriate only in cases involving extensive documents]* Reading Room. In order to facilitate timely disclosure of a large number of documents that may contain confidential documents, but that have not yet been reviewed and designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER, the following "Reading Room" procedure may be used at the election of the producing party.

a. Reading Room Review. Documents may be produced for review at a party's facility or other physical or electronic location ("Reading Room") prior to designation as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER. After review of the documents, the party seeking discovery may specify those for which copies are requested. If the producing party elects to designate any documents CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER, the copies shall be so marked prior to further production.

b. No Waiver of Confidentiality. The production of documents for review within the Reading Room shall not be deemed a waiver of any claim of confidentiality, so long as the reviewing parties are advised that pursuant to this Order the Reading Room may contain confidential documents that have not yet been designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.

c. Treatment of Produced Documents as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER. The reviewing party shall treat all documents reviewed in the Reading Room as designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER at the time reviewed. Documents copied and produced from the Reading Room that are not

designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER are not subject to this Order.

d. Production of Documents. Unless otherwise agreed or ordered, copies of Reading Room documents shall be produced within thirty days after the request for copies is made. Production may be made by providing electronic copies of the documents so long as copies are reasonably as legible as the originals from which they are produced.

5. Depositions. Deposition testimony shall be deemed CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER only if designated as such. Such designation shall be specific as to the portions to be designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER. Depositions, in whole or in part, shall be designated on the record as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER at the time of the deposition. Deposition testimony so designated shall remain CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER until _____ (___) days, after delivery of the transcript by the court reporter. Within _____ (___) days after delivery of the transcript, a designating party may serve a Notice of Designation to all parties of record as to specific portions of the transcript to be designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER. Thereafter, those portions so designated shall be protected as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER pending objection under the terms of this Order. The failure to serve a Notice of Designation shall waive the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation made on the record of the deposition.

6. Protection of Confidential Material.

a. General Protections. Documents designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER under this Order shall not be used or disclosed by the parties, counsel for the parties or any other persons identified in ¶ 6.b. for any purpose whatsoever other than to prepare for and to conduct discovery, hearings and trial in this action, including any appeal thereof.

b. Limited Third-Party Disclosures. The parties and counsel for the parties shall not disclose or permit the disclosure of any CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents to any third person or entity except as set forth in subparagraphs 1-6. Subject to these requirements, the following categories of persons may be allowed to review

documents that have been designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER:

1. Counsel. Counsel for the parties and employees of counsel who have responsibility for the preparation and trial of the action;

2. Parties. Parties and employees of a party to this Order. [*OPTIONAL: If the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents contain trade secrets or other competitive, personnel or confidential information and disclosure to another party could be harmful to the disclosing party, then add language: but only to the extent counsel determines that the specifically named individual party or employee's assistance is reasonably necessary to the conduct of the litigation in which the information is disclosed]*.

3. Court Reporters and Recorders. Court reporters and recorders engaged for depositions;

4. Contractors. Those persons specifically engaged for the limited purpose of making copies of documents or organizing or processing documents but only after each such person has completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.

5. Consultants and Experts. Consultants, investigators, or experts (hereinafter referred to collectively as "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of this action but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound; and

6. Others by Consent. Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered. All such persons shall execute the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.

c. Control of Documents. Counsel for the parties shall make reasonable efforts to prevent unauthorized disclosure of documents designated as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER pursuant to the terms of this Order. Counsel shall maintain the originals of the forms signed by persons acknowledging their obligations under this Order for a period of six years from the date of signing.

d. Copies. Prior to production to another party, all copies, electronic images, duplicates, extracts, summaries or descriptions (hereinafter referred to collectively as "copies") of documents designated as CONFIDENTIAL -SUBJECT TO PROTECTIVE ORDER under this Order, or any individual portion of such a document, shall be affixed with the designation "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" if the word does not already appear on the copy. All such copies shall thereafter be entitled to the protection of this Order. The term "copies" shall not include indices, electronic databases or lists of documents provided these indices, electronic databases or lists do not contain substantial portions or images of the text of confidential documents or otherwise disclose the substance of the confidential information contained in those documents.

7. Filing CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER Documents With the Court.

a. Filing Party's Confidential Documents. In the event that a party seeks to file, or reference in any filing, a document that the filing party designated as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER under this Protective order and the filing party seeks to maintain the confidentiality of such document, the filing party must comply with LR 83.12 and AP 3.3 for filing the confidential document under seal.

b. Non-Filing Party's Confidential Documents. In the event that the filing party seeks to file, or reference in any filing, a document that the non-filing party designated as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER under this Protective order, the filing party shall first consult with the non-filing party to determine whether the non-filing party consents to filing the document in whole or in part on the public docket. If the parties are unable to reach an agreement, the filing party shall prepare two versions of the filings, a public and a confidential version. The public version shall contain a redaction of references to CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents and shall be filed with the court. The confidential version shall be a full and complete version of the filing, including any exhibits, and shall be filed with the court provisionally under seal pursuant to LR 83.12 and AP 3.3 indicating that the non-filing party seeks to maintain the confidentiality of the redacted material. The party seeking to maintain the confidential status shall file a motion to seal in accordance with Local Rule 83.12(c) and AP 3.3 within three (3) business

days of the filing. Failure to file a timely motion to seal could result in the pleading/exhibit being unsealed by the court without further notice or hearing.

8. No Greater Protection of Specific Documents. No party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order unless the party moves for an order providing such special protection.

9. Challenges by a Party to Designation as Confidential. Any CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation is subject to challenge by any party or non-party (hereafter "party"). The following procedure shall apply to any such challenge.

a. Objection to Confidentiality. Within thirty (30) days of the receipt of any document designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER or of the refusal to produce a document on the ground of such designation, a party may serve upon the designating party an objection to the designation. The objection shall specify the documents to which the objection is directed and shall set forth the reasons for the objection as to each document or category of documents. CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents to which an objection has been made shall remain CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER until designated otherwise by waiver, agreement or order of the Court.

b. Obligation to Meet and Confer. The objecting party and the party who designated the documents to which objection has been made shall have fifteen (15) days from service of the objection to meet and confer in a good faith effort to resolve the objection by agreement. If agreement is reached confirming or waiving the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation as to any documents subject to the objection, the designating party shall serve on all parties a notice specifying the documents and the nature of the agreement.

c. Obligation to File Motion. If the parties cannot reach agreement as to any documents designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER, for the purpose of discovery, the designating party shall file with the court within thirty (30) days of the service of the objection a motion to retain the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation. The moving party has the burden to show good cause for the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation. The failure to file

the motion waives the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation of documents to which an objection was made.

10. Court Not Bound By Parties' Designation. Nothing in this Order or any action or agreement of a party under this Order limits the court's power to make orders concerning the disclosure of documents produced in discovery, filed with the court, or used during any hearing or at trial.

11. Use of Confidential Documents or Information at Hearing or Trial. A party who intends to present or anticipates that another party may present at any hearing or at trial CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents or information derived therefrom shall identify the issue, not the information, in a pre-hearing or pretrial memorandum. The court may thereafter make such orders as are necessary to govern the use of such documents or information at a hearing or trial.

12. Obligations on Conclusion of Litigation.

a. Order Remains in Effect. Unless otherwise agreed or ordered, the terms of this Order shall remain in force as an agreement between the parties after dismissal or entry of final judgment not subject to further appeal. Actions to enforce the terms of the Order after dismissal or entry of final judgment shall be by separate legal action and not by motion for contempt or other relief filed in this action.

b. Return of CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER Documents. Within thirty days after dismissal or entry of final judgment not subject to further appeal, the receiving party shall return to the producing party all documents treated as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER under this Order, including copies as defined in ¶ 6.d., unless: (1) the document has been offered into evidence or filed without restriction as to disclosure; (2) the parties agree to destruction in lieu of return; or (3) as to documents bearing the notations, summations, or other mental impressions of the receiving party, that party elects to destroy the documents and certifies to the producing party that it has done so. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product, including an index which refers or relates to information designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER, so long as that work product does not duplicate verbatim substantial portions of the text or images of confidential documents. This work product shall continue to be CONFIDENTIAL -

SUBJECT TO PROTECTIVE ORDER under this Order. An attorney may use his or her work product in a subsequent litigation provided that its use does not disclose or use CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents.

c. Deletion of Documents Filed under Seal from ECF System. Filings with the court under seal shall remain in the ECF system and not be deleted except by order of the court.

13. Order Subject to Modification. This Order shall be subject to modification by the court on its own motion or on motion of a party or any other person with standing concerning the subject matter. Motions to modify this Order shall be served and filed in accordance with the Federal Rules of Civil Procedure and the Local Rules.

14. No Prior Judicial Determination. This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any documents or information designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER by counsel or the parties is subject to protection under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise until such time as the court may rule on a specific document or issue.

15. Persons Bound. This Order shall take effect when entered and shall be binding upon all counsel and their law firms, the parties, and persons made subject to this Order by its terms.

So Ordered,

_____

**Attachment A**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

*Plaintiff(s)*

v. Civil No. *Case* #/Judge Initials

*Defendant(s)*

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

The undersigned hereby acknowledges that he/she has read the Protective Order dated _____ in the above-captioned case and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the United States District Court for the District of New Hampshire in matters relating to the Protective Order and understands that the terms of the Protective Order obligate him/her to use documents designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER in accordance with the Order solely for the purposes of the above-captioned case, and not to disclose any such documents or information derived directly therefrom to any other person, firm or concern. The undersigned acknowledges that violation of the Protective Order may result in penalties for contempt of court or for other relief under the Protective Order agreement.

(Added 12/1/13; amended 12/1/15, 12/1/17)

**Civil Form 6, Notice of Completion of Limited Scope of Representation**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

*Plaintiff(s)*

v. Civil No. Case #/Judge Initials

*Defendant(s)*

**NOTICE OF COMPLETION OF LIMITED SCOPE REPRESENTATION**

Undersigned counsel hereby notifies the court that the limited scope of representation authorized by the court has been completed. Notice to undersigned counsel pursuant to LR 5.1(i) is no longer required. All notices in the case shall continue to be provided to [Name of Party] at the following last known address and telephone number: [address/telephone number].

(Added 12/1/13)

**Civil Form 7, Statement Regarding Interested Parties LR 77.4(d)(5)**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

*In re: Debtor(s)*

Chap. _____
BK Case #

_____

*Appellant(s)*

v.

Civil No. Case #/Judge Initials

*Appellee(s)*

**STATEMENT REGARDING INTERESTED PARTIES**
**L.R. 77.4(d)(5)**

□ The undersigned certifies that the following parties have an interest in the outcome of this appeal. These representations are made to enable the court to evaluate possible disqualification or recusal.

[List interested parties.]

□ The undersigned certifies that the undersigned knows of no interested party as that term is defined in L.R. 77.4(d)(5).

Dated: _____

_____
Attorney or Pro Se Party
Bar #
Address
Telephone Number
Email/Fax

(Added 12/1/17)

[INTENTIONALLY BLANK]

## XII. CRIMINAL RULES

With the 1997 revision, all existing criminal rules were renumbered to delete the "100" series designation. For example, 106.1 became 6.1; 110.2 became 10.2.

### 1.1 General Rules

**(a) Title and Citation.** The "Local Criminal Rules of the United States District Court for the District of New Hampshire" shall be cited as "LCrR __."

**(b) Effective Date.** Effective January 1, 1996, as amended December 1, 2023.

**(c) Numbering.** The numbering of the local rules tracks the numbers of the Federal Rules of Criminal Procedure.

**(d) Scope.** LCrR 1.1 - 58.1 shall govern the procedure in all criminal actions. Civil local rules shall apply insofar as they do not conflict with any statute, federal or local criminal rule, or individual order. The following civil/general local rules shall apply in criminal actions: Rules 1.1(c),(d) and (g), 1.2 - 1.3, 4.3(e), 4.4 - 5.4, 7.1(a),(c)-(f), 7.2(a),(c) and (e), 7.3, 9.5, 39.1, 39.3, 40.2, 45.1 - 47.3, 54.1, 65.1.1, 67.2 - 67.4, 72.1, 72.2, 77.1, 77.3,77.5, 77.6, 80.1, 83.1, 83.2(a),(b) and (d), 83.3 - 83.5, 83.6(a)-(c), and (e), 83.7 -83.13, 83.14(b)-(e), 83.15, 83.16, 83.17.

(Added 1/1/97; § (b) amended 1/1/98, 1/1/99, 1/1/00, 1/1/01, 1/1/02, 1/1/03, 1/1/04, 1/1/05, 1/1/06, 1/1/08, 12/1/09, 12/1/11, 12/1/13, 12/1/15, 12/1/17, 12/1/18, 12/1/19, 12/1/21, 12/1/23 (N.B. 1/1/99 and 1/1/02 changes were to applicable civil rules only); § (d) amended 1/1/01, 1/1/04, 1/1/05, 1/1/06, 1/1/08, 12/1/09, 12/1/11, 12/1/13, 12/1/23)

### 5.1 Documents Signed by Criminal Defendants at Videoconference Initial Appearance or Arraignment.

The following applies to initial appearances or arraignments conducted by videoconference pursuant to Fed. R. Crim. P. 5(g) or 10(c):

**(a)** Defense counsel may sign a document on behalf of a criminal defendant after personally reviewing the substance and meaning of the document with the client and obtaining the client's consent to sign it. The magistrate judge will conduct a colloquy to confirm the defendant's consent during the hearing.

**(b)** Any documents signed by defense counsel on behalf of a client shall include a statement indicating that the document is signed by counsel with the permission of the defendant after review.

**(c)** This signature authority shall extend to the following:
(1) Requests to Appoint Counsel;
(2) Financial Affidavits; and
(3) Waivers, Consents and Stipulations to Detention and Other Stipulations.

(Added 12/1/23)

### 6.1 Grand Jury Security

When the grand jury is in session, the area surrounding the grand jury room shall be secured, and no one shall be permitted to wander about, sit in the corridors, or otherwise attempt to ascertain the identity of witnesses or members of the grand jury.

(Amended 1/1/98)

### 10.1 Trial Date

The court shall establish a trial date at the arraignment.

### 10.2 Complex Cases

If the court determines at the arraignment that the case is likely to be unusually complex, the court shall schedule a status conference within fourteen (14) days after the arraignment. LCrR 12.1(a), 12.1(b), 16.1(b), and 16.1(c) shall not apply in such cases, and the court shall instead establish the dates for the filing of discovery, dispositive, and evidentiary motions at the status conference.

(Amended 1/1/97; amended 12/1/19)

### 10.3 Post-Arraignment Meeting

Counsel shall confer in order to discuss discovery matters within seven (7) days after the arraignment.

(Amended 12/1/09)

### 11.1 Entry of Guilty Plea Without Plea Agreement

In all cases in which the defendant intends to enter a plea of guilty without having reached a written plea agreement with the government, the defendant shall submit on or before the date of the change of plea hearing an executed Acknowledgment and Waiver of Rights on a form approved by the court.

(Added 1/1/04)

## 11.2 Request for Expedited Plea and Sentencing Hearing In Certain Reentry After Deportation Cases

**(a)** When the parties desire that a reentry after deportation case be expedited for a plea and sentencing hearing, a completed Notice for Expedited Plea and Sentencing Hearing (the "Notice") shall be filed with either a final executed Plea Agreement or an executed Acknowledgement and Waiver of Rights form. The form of the Notice shall substantially conform to Criminal Form 4.

**(b)** The plea and sentencing hearing shall be scheduled within forty-five (45) days after the filing of the Notice and either the Plea Agreement or Acknowledgement and Waiver of Rights, with the hearing scheduled as close as possible to the end of the forty-five (45) day period. The probation office shall prepare an abbreviated presentence investigation report without the need for any further order of the court. The abbreviated presentence investigation report need not include information ordinarily set forth in Section C of a full presentence investigation report and will not contain a sentencing recommendation.

**(c)** The probation office shall disclose an abbreviated presentence investigation report to the parties by no later than five (5) days before the scheduled plea and sentencing hearing.

**(d)** The provisions of LCrR 32.1 requiring the filing of proposed Sentencing Options and Supervision Conditions do not apply to cases subject to this expedited plea and sentencing procedure.

**(e)** The deadlines set forth herein for cases subject to this expedited plea and sentencing hearing procedure supersede the deadlines set forth in LCrR 32.1. All other provisions of LCrR 32.1, not inconsistent with this rule remain in effect.

(Added 12/1/15; §§ (b) and (c) amended, former §§ (d) and (e) omitted, former §§ (f)-(g) relettered accordingly 12/1/21)

## 11.3 Disclosure of Medications.

In all cases in which the defendant intends to enter a plea of guilty, the defendant shall be prepared at the plea hearing to identify for the court all medications the defendant has been prescribed and/or is currently taking. The defendant may submit this information orally at the hearing or in writing. If a written list is provided to the court, it will not be retained by the court or docketed, but returned to counsel at the conclusion of the hearing.

(Added 12/1/17)

## 12.1 Motion Practice

**(a) Discovery Motions.** Discovery motions shall be filed within thirty (30) days after the arraignment.

**(b) Dispositive and Evidentiary Motions.** Dispositive and evidentiary motions, which shall not include motions in limine, shall be filed no later than twenty-one (21) days prior to trial. For the purpose of this rule and LR 7.1(a) and (c) – (f), dispositive motions include motions to dismiss and motions to suppress.

**(c) Motions in Limine.** Motions in limine shall be filed no later than seven (7) days prior to trial. Objections to motions in limine shall be filed on the day of trial.

**(d) Motions for Continuance of Trial.** Any defense motions to continue trial must either (1) be accompanied by a waiver of speedy trial signed by the defendant, or (2) contain a certification by defense counsel that (i) defense counsel has consulted with the defendant about the requested continuance, (ii) defense counsel has explained to the defendant that, by seeking a continuance, the defendant is waiving his constitutional and statutory rights to a speedy trial, (iii) the defendant has personally assented to the continuance, and (iv) defense counsel is mailing forthwith to the defendant a copy of the motion to continue. The motion must specify the jury selection date for the presiding judge's trial period to which the trial is being continued.

**(e) Assented to Motions to Extend Time to Indict.** Either simultaneous with the filing of an assented to motion to extend the time to indict, or within ten (10) days after an order granting the motion, defense counsel must file a waiver of speedy trial signed by the defendant or a certification as set forth in subsection (d).

**(f) Objections.** Unless the Federal Rules of Criminal Procedure or these local rules provide otherwise, an objection and memorandum in opposition to a motion shall be filed within fourteen (14) days from the date the motion is filed. Unless an objection is filed within the time established by this rule, the party opposing the motion shall be deemed to have waived objections, and the court may act on the motion.

(§ (d) amended 1/1/03; § (b) amended, § (c) added, former §§ (c)-(d) relettered accordingly 1/1/08; § (e) amended 12/1/09; § (e) added, former § (e) relettered accordingly, §§ (b) and new § (f) amended 12/1/21; §§ (b) and (d) amended 12/1/23)

**12.2 [reserved]** (Added 1/1/03)

**12.3 [reserved]** (Added 1/1/03)

**12.4.1 Disclosure Statement**

**(a) Nongovernmental Corporate Parties; Partnerships; Limited Liability Companies.**

**(1) Form of Filing.** The disclosure statement referenced in Fed. R. Crim. P. 12.4(a)(1) and this rule shall substantially conform to Criminal Form 2, Disclosure Statement.

**(2) Additional Information.** The disclosure statement shall also identify any publicly held corporation with which a merger agreement exists.

**(3) Partnerships and Limited Liability Companies.** When a partnership or a limited liability company (LLC) is a party to an action or proceeding, it shall file a disclosure statement providing the information required in Fed. R. Crim. P. 12.4(a)(1) and § (a)(2) of this rule or shall state that there is no such corporate entity that holds such an interest in the partnership/LLC.

**(b) Organizational Victims.**

**(1) Form of Filing.** The disclosure statement referenced in Fed. R. Crim. P. 12.4(a)(2) and this rule shall substantially conform to Criminal Form 3, Organizational Victim Statement.

**(2) Additional Information.** The disclosure statement shall also identify any publicly held corporation with which a merger agreement exists.

**(3) Partnerships and Limited Liability Companies.** When an organizational victim is a partnership or a limited liability company (LLC), the government shall file a disclosure statement providing the information required in Fed. R. Crim. P. 12.4(a)(1) and § (b)(2) of this rule or shall state that there is no such corporate entity that holds such an interest in the partnership/LLC.

(Formerly subject matter of LCrR 57.2, 57.3, which were added 1/1/01; renumbered and amended 1/1/03; §§ (a)(3) and (b)(3) amended 12/1/09; formerly LR 12.4 renumbered to 12.4.1 and §§ (a)(1) and (b)(1) amended 12/1/13)

## 16.1 Routine Discovery

The parties shall disclose the following information without waiting for a demand from the opposing party.

**(a) Criminal Record Report.** Prior to or during the course of the initial appearance, the United States Probation and Pretrial Service Office shall, to the extent in their possession, provide the government with two (2) copies of the defendant's criminal record report. Upon receipt, the government shall provide a copy of that report to counsel for the defendant, it being presumed that defense counsel has made a request for this information pursuant to Fed. R. Crim. P. 16(a)(1)(D).

**(b) Material Discoverable Pursuant to Fed. R. Crim. P. 16.**

**(1) By the Government.** The government shall disclose information described in Fed. R. Crim. P. 16(a)(1) within fourteen (14) days after the arraignment unless the parties agree on a different date or unless the defendant notifies the government within that time period and prior to receipt of such information that the defendant declines to receive that information.

**(2) By the Defendant.** The defendant shall disclose the information described in Fed. R. Crim. P. 16(b) within thirty (30) days after the arraignment unless the parties

agree on a different date or unless the defendant has timely notified the government pursuant to LCrR 16.1(b)(1) that the defendant declines reciprocal discovery.

**(3) Expert Witnesses and Reports/Summaries.** The initial disclosure requirements of subsection (b)(1) and (2) only require the disclosure of known expert witnesses and Fed. R. Crim. P. 16(a)(1)(G)(iii) and Fed. R. Crim. P. 16(b)(1)(C)(iii) materials possessed by the government or the defendant, or that can be obtained without undue burden, as of the disclosure deadline. Later identified expert witnesses, and all later obtained or created information specified in Fed. R. Crim. P. 16(a)(1)(G)(iii) and (b)(1)(C)(iii), shall be disclosed no later than thirty (30) days prior to trial. Rebuttal expert witnesses, and Fed. R. Crim. P. 16(a)(1)(G)(iii) materials relating to those witnesses, shall be disclosed no later than fifteen (15) days prior to trial.

**(c) Electronic Communications.** The government shall disclose any evidence suggesting that the government has intercepted the defendant's wire or electronic communications, as defined in 18 U.S.C. § 2510, within fourteen (14) days after the arraignment.

**(d) Exculpatory and Impeachment Material.** The government shall disclose any evidence material to issues of guilt or punishment within the meaning of Brady v. Maryland, 373 U.S. 83 (1963), and related cases, and any impeachment material as defined in Giglio v. United States, 405 U.S. 150 (1972), and related cases, at least twenty-one (21) days before trial. For good cause shown, the government may seek approval to disclose said material at a later time.

**(e) Witness Statements.** The government shall disclose any witness statements, as defined in Fed. R. Crim P. 26.2(f) and 18 U.S.C. § 3500, at least seven (7) days prior to the commencement of the proceeding at which the witness is expected to testify unless the government determines that circumstances call for later disclosure as allowed by Rule 26.2 and 18 U.S.C. § 3500.

**(f) Fed. R. Evid. 404(b) Material.** The government shall disclose the general nature of any evidence that it intends to introduce pursuant to Fed. R. Evid. 404(b) at least seven (7) days prior to trial.

**(g) Exhibits.** At least seven (7) days prior to trial, the parties shall exchange and file exhibit lists. Exhibits intended to be used solely for impeachment need not be listed. Objections to exhibit lists shall be filed on the day of trial. The parties shall deliver their exhibits to the clerk's office and a copy to each other at least one day before the start of evidence.

**(h) Presentation of Electronic Evidence to a Deliberating Jury.** At least seven (7) days prior to trial, the parties shall file a statement confirming that they have met and conferred on whether they intend to have the jury use the Jury Evidence Recording System (JERS) and stating their respective positions on the use of JERS at trial. To the extent one but not all parties want to use JERS, the party who wants to use JERS shall file a motion requesting leave to do so.

**(i) Witness Lists.** The parties shall exchange and file witness lists at least seven (7) days prior to trial. For good cause shown, either party may seek court approval to exchange witness lists at a later date.

(§§ (a)(2) and (d) amended 1/1/97; § (f) amended 1/1/06; § (a) added, former §§ (a) through (g) relettered accordingly, new § (d) amended 12/1/09; § (b)(3) added and § (g) amended 12/1/11; amended § (g), added § (h), relettered former § (h) 12/1/13; § (b)(3) amended 12/1/23).

### 16.2 Due Diligence and Duty to Supplement

Parties shall exercise due diligence in attempting to comply with their disclosure obligations. Parties shall supplement their disclosures whenever responsive information is discovered after the deadlines established under these rules.

### 16.3 Motions Seeking Routine Discovery

No motion seeking discovery covered by LCrR 16.1 shall be filed unless the opposing party has failed to comply with a written request for the discovery sought by the motion.

(Amended 1/1/97)

### 17.1 Subpoenas

**(a) Request for Issuance.** In all criminal matters in which the defendant is represented by a federal defender or by other court-appointed counsel, upon oral or written request of counsel for issuance of five or less subpoenas for a hearing or trial, the clerk shall issue such subpoena(s) without the necessity for an individual court order. A request for more than five subpoenas requires prior court approval.

**(b) Service.** Upon presentation to the United States Marshal of such a subpoena, the Marshal shall serve said subpoena in the same manner as in other criminal cases pursuant to Fed. R. Crim. P. 17(b).

**(c) Payment.** Subpoenas issued under subsection (a) are issued upon approval of the court. Therefore, whether the subpoena is served by the Marshal or by another individual, upon presentation to the United States Marshal of a properly executed claim form, certified by the federal defender, an assistant federal defender, or by the clerk upon affidavit of other court-appointed counsel (see 28 U.S.C. §1825), the Marshal shall pay the fees of the witness so subpoenaed as provided in Fed. R. Crim. P. 17(b)).

### 17.1.1 Final Pretrial Conference

The court will hold a final pretrial conference approximately seven (7) days prior to trial.

### 24.1 Jury Selection

The parties shall file any requests for special voir dire no later than seven (7) days prior to trial.

## 26.1 [reserved]

(LCrR 26.1, Motions in Limine, relocated to LCrR 12.1(c) 1/1/08)

## 30.1 Jury Instructions

Parties shall file requests for jury instructions no later than on the first day of trial. The parties shall submit only instructions concerning the elements of the offense and unusual evidentiary matters. Requests for routine instructions are unnecessary and should not be filed. Supplemental requests may be filed at the close of the evidence or at such time during trial as the court reasonably directs.

## 32.1 Guideline Sentencing

**(a) Generally.** Sentencing shall occur without unnecessary delay, but no more than fourteen (14) weeks (ninety-eight [98] days) following entry of a plea of guilty or nolo contendere, or a guilty verdict by a jury or the court, unless good cause is shown justifying sentencing at a later date. Any party filing a sentencing motion shall provide copies to all parties and the probation office. If the court delays sentencing, the date for disclosure of the presentence investigation report, filing of objections, and disclosure of a revised presentence investigation report shall be continued automatically.

**(b) Presentence Investigation Report.** The probation office shall prepare a presentence investigation report in every case unless the court finds that sufficient information exists in the record to enable the meaningful exercise of its sentencing authority pursuant to 18 U.S.C. § 3553. The probation office, during the presentence investigation, shall provide notice and a reasonable opportunity to defendant's counsel to attend any interview of the defendant.

**(c) Written Version of Facts.** No later than fourteen (14) days following a plea or verdict of guilty, the government shall provide the probation office with a written version of the facts of the case, including all relevant conduct. The government shall provide, at a minimum, the probation office with the same discovery materials it provided to the defendant. The prosecutor assigned to the case and the primary case agent shall make themselves reasonably available to the probation office to answer any inquiries.

**(d) Disclosure of Presentence Investigation Report.** No later than forty-two (42) days prior to the scheduled sentencing date, the probation officer shall disclose the initial presentence investigation report to the parties. One copy shall be given to counsel for the government. Two copies shall be given to defense counsel, who shall give one copy to the defendant for review. Defense counsel shall ensure that the defendant has timely reviewed and understands the presentence report.

**(e) Objections to Presentence Investigation Report.** No later than fourteen (14) days after receiving the initial presentence report, counsel for the government and counsel for the defendant shall deliver to the probation officer, and to each other, written objections of fact or guideline application to the initial presentence report. If counsel has no objections, counsel shall so notify the probation officer in writing. Delivery of said objections shall be made by email or mail. A party waives any objection to the presentence report by failing to comply

with this rule unless the court determines that the basis for the objection was not reasonably available prior to the deadline.

**(f) Revised Presentence Investigation Report and Addendum.** If either party objects to the presentence report, the probation officer shall conduct such further inquiry as is necessary to attempt to resolve the objections raised. Such inquiry may involve further investigation as well as consultation with counsel. The probation officer shall make such revisions to the initial presentence report as are required by this further inquiry. The probation officer shall also prepare an addendum to the presentence report that shall address the objections raised by counsel and identify those issues that remain unresolved. The objections filed by counsel shall be attached to the addendum.

**(g) Disclosure of Revised Presentence Investigation Report and Addendum.** No later than fourteen (14) days prior to the scheduled sentencing date, the probation officer shall provide the revised presentence investigation report and addendum, together with the proposed sentencing options and supervision conditions, to the court and the parties. One copy shall be given to counsel for the government. Two copies shall be given to defense counsel, who shall give one copy to the defendant for review. Defense counsel shall ensure that the defendant has timely reviewed and understands the revised presentence report as well as any addenda.

**(h) Nondisclosure to Parties of Probation Officer's Recommendation.** The probation officer shall also provide the court with a recommendation as to sentence. Such recommendation shall not be disclosed to the parties except in probation and supervised release revocation proceedings.

**(i) Deviations and Sentencing Memoranda.** Any party seeking a departure or a variance under the sentencing guidelines, or seeking to submit a sentencing memorandum, must file the motion or memorandum no later than ten (10) days before the date of the scheduled sentencing hearing and shall serve a copy upon opposing counsel and the probation officer. Any objections to the proposed sentencing options and supervised conditions must be included in the sentencing memorandum. Any motion for a departure or variance shall specify the grounds for relief and the legal authority for the departure or variance. A response to a sentencing memorandum or motion for departure or variance shall be filed no later than four (4) days before the date of the scheduled sentencing hearing and shall be served upon opposing counsel and the probation officer.

**(j) Acknowledgment of Proposed Sentencing Options and Supervised Conditions.** At the sentencing hearing, the defendant shall execute and file Criminal Form 5.

(§ (h) amended 1/1/97; § (i) added 1/1/00; §§ (d) and (g) amended 1/1/05; § (i) amended 1/1/08, 12/1/09; §§ (a), (d), (g) and (i) amended 12/1/11; §§ (g) and (i) amended, and § (j) added 12/1/15; §§ (e) and (i) amended 12/1/19)

## 32.2 Conditions of Probation and Supervised Release

The following are the standard conditions of probation and supervised release in this district:

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.

2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.

3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.

4. You must answer truthfully the questions asked by your probation officer.

5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

13. You must follow the instructions of the probation officer related to the conditions of supervision.

(§§ 6 and 7 amended 1/1/01; amended 10/17/16)

**32.3 [reserved]** (Added 1/1/97)

**32.4 Repayment of Financial Obligations**

Repayment of financial obligations imposed by the court shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties; and (7) reimbursement of attorney's fees.

**40.1 Commitment to Another District**

Magistrate judges are designated to conduct all necessary proceedings with regard to Fed. R. Crim. P. 40, Commitment to Another District, and prepare any orders attendant thereto.

(Added 1/1/97; amended 12/1/23)

**44.1 Appointment of Counsel**

**(a) Appointments.** If a defendant is financially unable to retain private counsel, the defendant shall file a financial affidavit. The court shall appoint counsel if the defendant is unable to afford counsel. However, the court may order partial or complete reimbursement of fees incurred.

The appointment will first be presented to the Federal Defender's office. If there is a conflict of interest or if the Federal Defender is otherwise unable to accept the appointment, counsel will be selected from the court's Criminal Justice Act (CJA) Panel.

**(b) Filing of Voucher for Fees and Expenses.** Counsel appointed under the CJA shall file their completed voucher for fees and expenses as soon as possible upon completion of services rendered but no later than forty-five (45) days from the date of disposition.

**(c) Authorizations and Vouchers Under 18 U.S.C. § 3006A(d) and (e).** All requests made pursuant to 18 U.S.C.§ 3006A(d) and (e) shall be filed and maintained in the court's eVoucher application.

(§ (c) amended 1/1/03; § (c) amended 12/1/15)

**44.2 [reserved]** (Added 1/1/97)

**44.3 Withdrawal of Appearances**

Counsel must obtain leave of court to withdraw an appearance.

**45.1 Computation of Time**

Wherever in these rules reference is made to filing, time periods shall be determined in accordance with Fed. R. Crim. P. 45(a). All time periods running from the date of service shall be determined in accordance with Fed. R. Crim. P. 45(a) and (c). Rule 45(c) does not apply to time periods calculated from the date of filing. The last day for documents submitted using the 24-hour depository shall end at midnight local time unless a different time is established by court order.

(Added 1/1/03; amended 12/1/09, 12/1/11)

**46.1 Conditions of Bail**

Any items surrendered as a condition of bail shall be returned only pursuant to written order of the court.

**48.1 Dismissal**

The government shall file written dismissals or shall orally request dismissal of any counts left unresolved at the time of sentencing. Unless expressly reserved for future prosecution by the government, any counts or charges not disposed of by oral or written motion at the sentencing hearing shall be deemed dismissed with prejudice and shall be so included in the judgment issued by the court.

(Amended 12/1/11)

**57.1 Release of Information in Criminal Cases**

**(a) By Counsel.** Counsel shall not release or authorize the release of information or opinion in connection with pending or imminent criminal litigation if there is a reasonable likelihood that dissemination of such information or opinion will interfere with a fair trial or otherwise prejudice the due administration of justice.
Counsel participating in, or associated with, a pending criminal investigation shall refrain from making any extrajudicial statement, which a reasonable person would expect to be disseminated by any means of public communication, that goes beyond the public record unless the statement is 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 any means of public communication, relating to that matter and concerning:

(1) the prior criminal record (including arrest, 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 government may release any information necessary to aid in the apprehension or to warn the public of any dangers which may be 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 any examination or test;

(4) the identity, testimony, or credibility of prospective witnesses, except that the lawyer of 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; and

(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 official or professional obligations from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made.

A lawyer involved in the investigation or litigation of a matter may state without elaboration the general nature of the claim or defense; the information contained in a public record; and

that an investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved and, except when prohibited by law, the identity of the persons involved.

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 any means of public communication, if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that the lawyer or 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 that lawyer.

**(b) By Courthouse Personnel.** All court supporting personnel, including among others, United States marshals, deputy marshals, court security officers, the clerk and deputy clerks, secretaries, law clerks, typists, court reporters, and employees or subcontractors retained by the court-appointed official reporters are prohibited from disclosing to any person, without specific authorization by the court, any information relating to a pending grand jury proceeding or criminal case that is not part of the public records of the court. This rule specifically forbids, but is not limited to, the divulgence of information concerning grand jury proceedings and arguments and hearings held in chambers or otherwise outside the presence of the public.

(Amended 1/1/97)

**57.2 [Renumbered to LCrR 12.4(a) 1/1/03]**

**57.3 [Renumbered to LCrR 12.4(b) 1/1/03]**

**58.1 Procedure for Misdemeanors & Other Petty Offenses; Payment in Lieu of Collateral**

The court adopts the Schedules for Forfeiture of Collateral as may be amended from time to time. Said schedules shall be maintained by the clerk for public inspection. Under these schedules, in suitable cases, the payment of a fixed sum in lieu of appearance may be accepted and the proceedings terminated.

(Added 1/1/97)

## APPENDIX OF FORMS, CRIMINAL

### Criminal Form 1, Criminal Case Deadlines

**NOTE:** This chart is meant merely as a summary. Local and Federal Rules and orders in individual cases are controlling.

**Criminal Case Deadlines**
**Amended Through December 1, 2023**

| PROCEEDING, DOCUMENT, OR ACTION | RULE | DUE DATE |
|---|---|---|
| Statement identifying organizational victim. If corporation/partnership, disclosure statement. | LCrR 12.4.1 | At initial appearance |
| Disclosure statement. | LCrR 12.4.1 | At initial appearance |
| Arraignment held. Trial date set.<br><br>If complex, court sets status conference. | LCrR 10.1<br><br>LCrR 10.2 | |
| Post-arraignment meeting. Counsel confer to discuss discovery matters. | LCrR 10.3 | Within 7 days after arraignment |
| Status conference held, if complex. Deadlines for discovery and dispositive motions set by court. | LCrR 10.2 | Within 14 days after arraignment |
| Government discloses Fed. R. Crim. P. 16(a)(1) material. | LCrR 16.1(b)(1) | " |
| Government discloses electronic communications evidence. | LCrR 16.1(c) | " |
| Defendant discloses Fed. R. Crim. P. 16(b) material. | LCrR 16.1(b)(2) | Within 30 days after arraignment |
| Discovery motions due (except if complex). | LCrR 12.1(a) | " |
| Disclosure of Later Identified Expert Witnesses and Reports | LCrR 16.1(b)(3) | 30 days before trial; rebuttal 15 days before trial |
| Dispositive and evidentiary motions due (except if complex). | LCrR 12.1(b) | Not later than 21 days before trial |
| Government discloses Brady and Giglio material. | LCrR 16.1(d) | At least 21 days before trial |

| PROCEEDING, DOCUMENT, OR ACTION | RULE | DUE DATE |
|---|---|---|
| Government discloses witness statements. | LCrR 16.1(e) | At least 7 days before trial |
| Government discloses Fed. R. Evid. 404(b) material. | LCrR 16.1(f) | At least 7 days before trial |
| Parties exchange and file exhibit lists and file separate JERS statement. | LCrR 16.1(g) | " |
| Parties exchange and file witness lists. | LCrR 16.1(h) | " |
| Motions in limine due. | LCrR 12.1(c) | Not later than 7 days before trial |
| Requests for special voir dire due. | LCrR 24.1 | " |
| Final pretrial conference held. | LCrR 17.1.1 | Approximately 7 days before trial |
| Operation of courtroom technology. | LR 83.15 | 5 days before hearing/trial make arrangements to train on court's systems if desired |
| Objections to exhibit lists due. | LCrR 16.1(g) | Day of trial (day jury drawn) |
| Objections to motions in limine due. | LCrR 12.1(c) | " |
| Requests for jury instructions due. | LCrR 30.1 | Not later than day of trial |
| Parties file exhibits with the court. | LCrR 16.1(g) | 1 day before start of evidence |
| Transmission of exhibits for appeal. | LR 83.14(d) | Promptly after filing of appeal |
| **If defendant pleads or is found guilty:** | | |
| Government provides written version of facts to Probation. | LCrR 32.1(c) | 14 days after plea or finding of guilt |
| Probation discloses presentence investigation report. | LCrR 32.1(d) | 42 days prior to sentencing |
| Parties file objections to report (or notice of no objection). | LCrR 32.1(e) | 14 days after receipt of report |
| If applicable, Probation provides revised pre-sentence investigation report and addendum. | LCrR 32.1(g) | 14 days prior to sentencing |
| Motions for departure/variance/sentencing memoranda due. | LCrR 32.1(i) | 10 days prior to sentencing; response 4 days prior |
| Sentencing held. | LCrR 32.1(a) | 14 weeks (98 days) after plea or finding of guilt |

| PROCEEDING, DOCUMENT, OR ACTION | RULE | DUE DATE |
|---|---|---|
| Government dismisses unresolved counts. | LCrR 48.1 | At time of sentencing |
| If CJA appointed counsel, file completed voucher for fees and expenses. | LCrR 44.1(b) | 45 days after sentencing |

(Added 1/1/97; amended 1/1/00; 1/1/01, 1/1/03, 1/1/04, 1/1/06, 1/1/08, 12/1/09, 12/1/11, 12/1/13, 12/1/18, 12/1/21)

**Criminal Form 2, Disclosure Statement**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

*Plaintiff(s)*

v. Criminal No. Case #/Judge Initials

*Defendant(s)*

**DISCLOSURE STATEMENT**
**LCrR 12.4.1(a)**

[This form is to be completed and filed only by parties that are nongovernmental corporations, partnerships, or limited liability companies. Check the appropriate box(es).]

❒ The filing party, a nongovernmental corporation, identifies the following parent corporation and any publicly held corporation that owns 10% or more of its stock:

- O R -

❒ The filing party, a partnership, identifies the following parent corporation and any publicly held corporation that owns 10% or more of the corporate partner's stock:

- O R -

❒ The filing party, a limited liability company (LLC), identifies the following parent corporation and any publicly held corporation that owns a 10% or more membership or stock interest in the LLC:

- AND/O R -

❒ The filing party identifies the following publicly held corporations with which a merger agreement exists:

- O R -

❒ The filing party has none of the above.

(Added 1/1/01; amended 1/1/03, 12/1/09, 12/1/13)

**Criminal Form 3, Organizational Victim Statement**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

*Plaintiff(s)*

v. Criminal No. Case #/Judge Initials

*Defendant(s)*

**ORGANIZATIONAL VICTIM STATEMENT**
**LCrR 12.4.1(b)**

[This form is to be completed and filed by the government only when the victim of alleged criminal activity is an organization.]

The alleged victim in connection with the above-captioned case is the following organization: _____.

❒ The victim is a nongovernmental corporation and the government identifies the following parent corporation and any publicly held corporation that owns 10% or more of the victim's stock:

- O R -

❒ The victim is a partnership and the government identifies the following parent corporation and any publicly held corporation that owns 10% or more of the corporate partner's stock:

- O R -

❒ The victim is a limited liability corporation and the government identifies the following parent corporation and any publicly held corporation that owns a 10% or more membership or stock interest in the LLC:

- AND/O R -

❒ The government identifies the following publicly held corporation with which a merger agreement with the victim exists:

- O R -

❒ The victim has none of the above.

(Added 1/1/01; amended 1/1/03, 12/1/09, 12/1/13)

**Criminal Form 4, Notice for Expedited Plea and Sentencing Hearing**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

*Plaintiff(s)*

v. Criminal No. Case #/Judge Initials

*Defendant(s)*

**NOTICE FOR EXPEDITED PLEA AND SENTENCING HEARING**

The parties hereby notify the court that this case should be scheduled for an expedited plea and sentencing hearing within forty-five (45) days from the date of this filing.

Dated: _____
Defense Counsel

Dated: _____
Counsel for Government

**Criminal Form 5, Acknowledgment – Sentencing Options and Supervision Conditions**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

*Plaintiff(s)*

v. Criminal No. Case #/Judge Initials

*Defendant(s)*

**ACKNOWLEDGMENT**

I, _____, acknowledge that I have received, reviewed and understand the proposed Sentencing Options and Supervision Conditions filed by the U.S. Probation Office in this case.

Date:

_____
Defendant

_____
Defense Counsel

cc: Defendant
Defense Counsel
U.S. Attorney
U.S. Probation
U.S. Marshal

[INTENTIONALLY BLANK]

# APPENDIX A

# SUPPLEMENTAL RULES FOR ELECTRONIC CASE FILING

**Adopted as Administrative Procedures June 1, 2004**
**Incorporated as Supplement to Local Rules December 1, 2011**
**As Amended Through December 1, 2021**

---

## TABLE OF CONTENTS

# I. SCOPE OF THE RULES

## 1.1 General Rules

**(a) Title and Citation.** The procedures governing electronic case filing shall be known as the "Supplemental Rules for Electronic Case Filing," formerly known as the "Administrative Procedures for Electronic Case Filing in the United States District Court for the District of New Hampshire." They shall be cited as "AP ___."

**(b) Relationship to Other Rules.** These administrative procedures are intended to supplement the Local Rules of the United States District Court for the District of New Hampshire to the extent necessary to establish procedures for the signing, filing, service, maintenance and verification of documents by electronic means. Unless modified by approved stipulation or order of the court, all Federal Rules of Civil/Criminal Procedure, local rules, and standing orders of the court shall continue to apply to cases that are subject to electronic case filing.

**(c) Construction.** United States Code, title 1, Sections 1 to 5, shall govern the construction of these administrative procedures.

**(d) Definitions.**

"Conventionally Filed/Served" means documents presented to the court or party in paper or other non-electronic format.

"Data Storage Device" means a device used for storing and transporting electronic data files, including but not limited to a compact disk, USB device or floppy disk.

"Document" means any written matter filed by or with the court, whether filed conventionally or electronically, including but not limited to motions, pleadings, applications, petitions, notices, declarations, affidavits, exhibits, briefs, memoranda of law, orders, and deposition transcripts.

"ECF" means the court's Electronic Case Filing System, which is an automated system that receives and stores documents in electronic form.

"Electronic Filing" or "Electronically Filed" means the transmission of a document in a portable document format ("PDF") for filing using the ECF system facilities.

"Filing User" means those individuals who have a PACER issued login and password with permission to file documents electronically in this judicial district.

"Main Document" means motions, objections, replies, stipulations, waivers, notices and other pleadings, but does not include attachments or exhibits to such pleadings.

"Notice of Electronic Filing" ("NEF") means the notice automatically generated by ECF each time a document is electronically filed.

"PDF" means Portable Document Format. This includes both "Electronically Converted PDF Documents," which are created from a word processing system (MS Word, WordPerfect, etc.) using PDF/PDF-A creation software and are text searchable, and "Scanned PDF Documents," which are created from paper documents run through a scanner.

(§§ (b) and (f) amended 5/1/05, 6/1/11; § (b) amended 6/1/05, 8/1/05, 10/1/05, 10/1/06, 5/15/08, 12/1/09; omitted former §§ (b) and (e), relettered former §§ (c), (d) and (f) to (b), (c) and (d) accordingly, and amended § (a) 12/1/11; § (d) amended 12/1/19)

### 1.2 Relief From Administrative Procedures; Failure to Comply

**(a) Relief from Administrative Procedures.** The court may deviate from these procedures in specific cases, without prior notice, if deemed appropriate in the exercise of discretion, considering the need for the just, speedy, and inexpensive determination of matters pending before the court.

**(b) Relief from Failure to Comply.** The court may excuse a failure to comply with any administrative procedure whenever justice so requires.

**(c) Sanctions for Failure to Comply.** Except as provided by law, the court may impose sanctions for failure to comply with these administrative procedures as provided in LR 1.3.

## II. ELECTRONIC FILING AND SERVICE

### 2.1 Scope of Electronic Filing

**(a) Case Exemption.** An assigned judicial officer has the discretion to exempt a case, in whole or in part, from ECF.

**(b) Attorney Exemption.** An attorney may apply to the court for permission to file documents conventionally in a particular case. Should the court initially grant an attorney permission to file documents conventionally, the court may withdraw that permission at any time during the pendency of a case and require the attorney to re-file documents electronically using ECF. If one counsel of record is exempted from electronic filing, all electronically filed documents must be conventionally served on exempted counsel.

**(c) One Time Attorney Exemption.** An attorney, including an attorney appearing pro se, who is not a Filing User, may conventionally file the first document on behalf of a client or the attorney appearing pro se in an ECF case without leave of the court. Within thirty (30) days thereafter, the attorney, including an attorney appearing pro se, must register as a Filing User. Upon a showing of good cause, the court may exempt an attorney who is a pro se litigant from this rule in a particular case.

**(d) Non-Attorney Pro Se Litigants.** A non-incarcerated, non-attorney, pro se litigant in a pending case may apply to the court for permission to file documents electronically using ECF on a form prescribed by the clerk's office. If the court initially

grants a pro se litigant permission to file documents electronically, that permission is limited to the case specified and the court may withdraw that permission at any time during the pendency of a case.

In the absence of a court order authorizing electronic filing, all non-attorney pro se litigants shall conventionally file and serve all documents in accordance with the provisions of the Federal Rules of Civil/Criminal Procedures and the local rules of this court. In that event, all electronically filed documents must be conventionally served on the pro se litigant.

(§ (e) omitted 5/1/05; § (c) amended 6/1/05; §§ (a), (b) and (d) amended 10/1/05; § (d) amended 10/1/06, 6/1/11; § (a) amended 12/1/18; §§ (c) and (d) amended 12/1/21)

## 2.2 Consequences of Electronic Filing

**(a) Filing Defined**. The electronic filing of a document through ECF consistent with the ECF Administrative Procedures and rules of court, together with the transmission of a Notice of Electronic Filing from the court's ECF system, constitutes filing for all purposes of the Federal Rules of Civil/Criminal Procedure and local rules of this court.

**(b) Confirmation of Court Filing**. A document electronically filed through the court's ECF transmission facilities shall be deemed filed on the date and time stated on the Notice of Electronic Filing received from the court.

**(c) Official Record**. Except as provided herein, the clerk's office will not maintain a paper court file in any ECF case. The official court record shall be the electronic file maintained on the court's servers together with any paper documents filed in accordance with these procedures.

(§ (d) 12/1/09 omitted 12/1/09)

## 2.3 Format and Quality Control

**(a) PDF Format Required.** Documents electronically filed must be submitted in PDF format. Unless otherwise provided herein, main documents must be filed in an electronically converted PDF text searchable format. Attachments/Non-Trial Exhibits must also be filed in an electronically converted PDF text searchable format, unless the Filing User possesses only a paper copy of the document to be submitted, in which case a scanned PDF that is not text searchable may be submitted. All scanned documents shall conform with a standard of 300 pixels per square inch.

**(b) PDF Documents Exceeding Ten Megabytes.** No individual PDF document exceeding 10 megabytes will be accepted in ECF. Any individual PDF document exceeding 10 megabytes must be divided into separate PDF documents of less than 10 megabytes.

**(c) Title of Docket Entries/Pleadings.** All electronically filed documents shall be titled and docketed in accordance with the approved dictionary of civil/criminal events available on ECF. The clerk's office may, when necessary and appropriate, modify the docket entry description to comply with quality control standards.

**(d) Format of Electronic Filings.** Except as provided herein, electronically filed documents must comply with the formatting and page limit requirements for paper documents as set forth in the Federal Rules of Civil/Criminal Procedure and the local rules of this court.

**(e) Memorandum and Supporting Documents Required by LR 7.1(a)(2).** A memorandum of law or other attachment filed in support of a main document shall be filed as the first attachment to the main document and not as a separate docket entry. If the Filing User is contemporaneously filing an objection and cross motion, however, the memorandum of law shall be filed as the main document in a separate docket entry and linked to both the objection and cross motion.

**(f) Verify Readability.** The Filing User shall verify the readability of a converted or scanned PDF before electronically filing it in ECF.

**(g) Scanned Document Retention Requirement.** Paper documents converted to PDF through a scanner and filed using ECF must be retained by the Filing User until three (3) years after the date of filing or until the conclusion of all appeals in the case, whichever date is later. Upon request of the court or any party, a Filing User must make the paper document available for inspection.

**(h) Erroneous Submissions.**

**(1) Erroneous Docket Entries.** A Filing User may not correct a docket entry or document submission error after a document is electronically filed in ECF. If necessary to satisfy a filing deadline, a Filing User may electronically resubmit the entire document, including all attachments, in ECF. Otherwise, the Filing User shall not attempt to refile the document in ECF. The Filing User shall immediately contact the clerk's office to report the error and request necessary remedial action. The clerk's office may make an entry indicating that the document was filed in error and may request that the document be refiled. The court may, upon motion of a party or upon its own motion, strike any erroneously or inappropriately filed document.

**(2) Documents Conventionally Filed in ECF Cases.** Except as provided herein, documents may not be submitted conventionally in a case designated for ECF.

**(3) Documents Electronically Filed in Non-ECF Cases.** Except as provided herein, documents may not be submitted electronically through the ECF system in a case not designated for ECF.

**(i) Hyperlinks.** Electronically filed documents may contain the following types of hyperlinks:

(1) Hyperlinks to other portions of the same document;

(2) Hyperlinks to other documents filed within the CM/ECF system; and

(3) Hyperlinks to a location on the Internet that contains a source document for a citation.

Hyperlinks to cited authority may not replace standard citation format. Complete citations must be included in the text of the filed document. Neither a hyperlink, nor any site to which it refers, shall be considered part of the record, but are simply convenient mechanisms for accessing material cited in a filed document.

The court accepts no responsibility for, and does not endorse, any product, organization, or content at any hyperlinked site, or at any site to which that site may be linked. The court accepts no responsibility for the availability or functionality of any hyperlink.

**(j) PDF Document Restrictions.** The ECF system will not accept PDF documents containing tracking tags, embedded systems commands, password protections, access restrictions or other security features, special tags or dynamic features.

(§§ (a) and (b) amended; § (j) added 5/1/05; § (b) amended, § (k) added 10/1/05; § (f) stricken, former § (i) amended and relettered to (h), §§ (g)-(k) relettered accordingly 10/1/06; §§ (b) and (i) amended 5/15/08; §§(a) and (b) amended 12/1/09; § (b) amended 6/1/11; § (b) amended 12/1/15)

## 2.4 Civil and Miscellaneous Case Opening Documents

**(a) Filing.** Civil and miscellaneous case opening documents and related attachments may be (i) electronically filed through the court's ECF system if the attorney Filing User pays the filing fee using a credit card or ACH debit card through ECF's payment system, simultaneously submits a motion to proceed in forma pauperis, or if no filing fee is required, or (ii) conventionally filed with the appropriate filing fee. If conventionally filed by an attorney, the case opening documents and attachments must also be downloaded onto a data storage device as separate documents in PDF format and received within 48 hours.

"Civil case opening documents" shall include, but are not limited to, complaints, petitions, or notices of removal. Related attachments that should be electronically filed shall include, but are not limited to, the civil cover sheet and summons/notice of lawsuit and waiver of summons. A Filing User requesting summonses must complete the top section of each summons form before filing electronically or conventionally.

**(b) Service.** If summonses are submitted with the case opening documents, the clerk's office will return signed and sealed summonses either electronically through ECF or on paper by regular mail to counsel for the plaintiff(s) for service of process. Case opening complaints or petitions may not be served electronically and must be served in accordance with Fed. R. Civ. P. 4.

**(c) Return of Service.** All returns of service or other returns in civil and miscellaneous cases shall be electronically filed in a scanned PDF format.

(§ (a) amended 5/1/05, 10/1/06, 6/1/11; § (b) amended 8/1/05; §§ (a) and (c) amended 12/1/13)

## 2.5 Attachments/Non-Trial Exhibits

**(a) Submitted with Main Document as Separate Attachments.** Each exhibit or attachment to a main document shall be electronically filed as a separate attachment to a motion or pleading ("main document"), shall be individually numbered/lettered, and shall be followed by a short description of the document in the "description" field, which shall not exceed five (5) words. If attachments include more than one exhibit, the Filing User need not submit a separate table of contents or index as otherwise required by LR 5.1(a)(2) as the documents will be separately hyperlinked and indexed in the ECF system.

**(b) Excerpted Format.** A Filing User may submit as attachments and non-trial exhibits only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. Filing Users must promptly provide excerpted documents in full to any party making such a request. Responding parties may timely file additional excerpts, or the complete document, if they believe these additional submissions are directly germane. The court may require the parties to file additional excerpts or the complete document.

**(c) Bulky Attachments, Physical Exhibits and Demonstrative Evidence.** Attachments and non-trial exhibits that cannot reasonably be filed in an electronically converted or scanned PDF format, such as bulky attachments, physical exhibits, demonstrative evidence, and video or audio tapes, may be conventionally filed.

**(d) Attachments/Non-Trial Exhibits Conventionally Filed in ECF Case.**

**(1) Notice of Conventional Filing.** If an attachment or exhibit is submitted conventionally in an ECF case, the Filing User shall electronically file a Notice of Conventional Filing on a form prescribed by the clerk's office in the place where the attachment or exhibit would have been submitted electronically as an attachment to the main document.

**(2) Filing Date.** If an attachment or exhibit is conventionally filed, the main document shall be deemed filed upon the issuance of the Notice of Electronic Filing, provided that the conventionally submitted matters are filed and served within 72 hours. A paper copy of the Notice of Electronic Filing shall be attached to the conventionally submitted matter.

**(3) Maintained in the Clerk's Office.** If an attachment or exhibit is conventionally filed, it will be maintained and available for inspection in the clerk's office and will not be added to the court's electronic docket.

(§ (a) amended 5/1/05; § (d) lapsed, § (e) relettered to § (d) 6/1/05; § (d) amended 10/1/05; § (d) amended 10/1/06)

## 2.6 Certified Documents/Records and Social Security Administrative Records

Except as provided herein, the following shall be electronically filed consistent with AP 2.3: (a) certified documents and records, including the state court record filed in removal proceedings, and (b) to the extent available in electronic format, the administrative record filed in social

security cases. In social security cases, (1) the record must be submitted in segments of less than 10 megabytes, and (2) the government shall provide the court with a conventionally filed courtesy copy of the record.

(Amended 6/1/11; amended 12/1/15)

## 2.7 Signatures on Electronically Filed Documents

**(a) Form of Signature.** All electronically filed documents must include a signature block and must set forth the Filing User's name, bar registration number, address, primary telephone number, and e-mail address. The name of the Filing User under whose log-in and password the document is submitted must be preceded by (1) a "/s/ [Insert Signatory's Name]" and typed in the space where the signature would otherwise appear, or (2) a digital signature where the signature would otherwise appear.

**(b) Multiple Party Documents.** The following applies when a pleading, stipulation, or other document requires multiple signatures.

**(1) Form of Signatures.** All electronically filed documents that contain more than one signature must list thereon all the names of other signatories by means of a "/s/ [Insert Signatory's Name]" block or a digital signature for each signatory.

**(2) Certification and Proof of Consent.** By electronically filing a document pursuant to subparagraph (b)(1), the Filing User certifies that each of the other signatories has expressly agreed to the form and substance of the document and that the filing attorney has their actual authority to submit the document electronically.

**(c) Affidavits/Verified Pleadings/Other Non-Attorney Signatures.** Preexisting affidavits and other preexisting non-Filing User signature documents shall be filed in a scanned PDF format. All other affidavits and non-Filing User signature documents, including the signature of a notary or other jurat, shall be filed in an electronically converted PDF format and shall contain a "/s/ [Insert Signatory's Name]" block or a digital signature indicating that the paper document bears an original signature.

**(d) Objection to Authenticity.** A non-Filing User signatory or party who disputes the authenticity of an electronically filed document must file an objection to the document within fourteen (14) days of the filing of the document in question.

**(e) Retention of Documents.** Documents that are electronically filed and contain original signatures other than that of the Filing User, as well as consents to file under subsection (b)(2) to the extent memorialized, shall be maintained in paper form by the Filing User until three (3) years after the date of filing or until the conclusion of all appeals in the case, whichever date is later. Upon request of the court or any party, a Filing User must make the original documents available for inspection.

(§§ (a)(2), (b)(1) and (c) amended 10/1/05; § (d) amended 12/1/09; § (a)(2) amended 12/1/17; § (a)(1) removed, § (a)(2) became § (a) 12/1/18; §§ (a), (b)(1) and (c) amended 12/1/21)

## 2.8 Service of Electronically Filed Documents

**(a) Proof of Electronic Service.** The ECF system generated Notice of Electronic Filing constitutes proof of service upon a Filing User in accordance with the Fed. R. Civ. P. 5(d).

**(b) Conventional Service of Electronically Filed Documents.** Attorneys and pro se litigants who are not Filing Users must be conventionally served with any electronically filed pleading or other document in accordance with the Federal Rules of Civil/Criminal Procedure.

(§ (b) amended 5/15/08; §§ (b) and (c) amended 12/1/13; §§ (a) and (b) removed, former §§ (c) and (d) relettered to §§ (a) and (b) 12/1/18)

## 2.9 [reserved]

(§§ (a) and (b) amended 5/1/05; stricken 5/15/08)

## 2.10 Technical Failure

**(a) Definition.** A technical failure is deemed to have occurred when the court's ECF system cannot accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 pm (noon) on a given day, excepting such periods resulting from scheduled court maintenance for which public notice was provided.

**(b) Filing Options.** A Filing User experiencing a technical failure may conventionally file the document if accompanied by a declaration attesting to the Filing User's attempts to timely file the document using ECF.

**(c) Service Options.** A Filing User experiencing a technical failure may serve the document in any alternative manner permitted by the Federal Rules of Civil/Criminal Procedure.

**(d) Clerk Notification.** A Filing User shall immediately report a technical failure to the clerk's office help desk.

**(e) Extension of Filing Deadline for Technical Failure.** If a Filing User misses a filing deadline due to an inability to file electronically as a result of a technical failure, such a failure shall constitute a condition rendering the office of the clerk of court inaccessible within the meaning of Fed. R. Civ. P. 6 and Fed. R. Crim. P. 45. In such circumstances, the Filing User may electronically or conventionally file the document, accompanied by a declaration stating the reasons for missing the deadline, no later than 12:00 noon of the first day on which the court is open for business following the original filing deadline. Jurisdictional deadlines, however, cannot be extended by the court for any reason and counsel is responsible to ensure that a document is timely filed to comply with a jurisdictional deadline.

**(f) Filing User Systems Failure.** A problem with the Filing User's systems or equipment shall not constitute a technical failure nor excuse an untimely filing. In such

circumstances, however, a Filing User may file the document conventionally with a declaration explaining how the systems failure precluded filing in ECF.

(§ (a) amended 10/1/05; § (e) amended 12/1/13)

### 2.11 Refund of Fees Paid Electronically

**(a) Applicability.** Consistent with the Judicial Conference guidance on the refund of fees that are paid electronically, the clerk's office may refund electronic payments made when no payment was required, when duplicative of previous payments made, or when the amount submitted exceeds the actual amount owed for the transaction.

**(b) Delegation of Authority.** Although the authority to approve or deny a refund is a judicial determination, the initial determination is delegated to the clerk. All requests for refund of fees paid electronically shall be made on the Request for Refund of Filing Fee form or Request for Refund of Attorney Admission Fee form, as appropriate, which are available on the court's public website. This form may be submitted by email or filed conventionally. Persons denied a refund by the clerk may seek judicial review by electronically filing a motion for refund. If a motion for refund is filed in an unassigned case, it will be reviewed by the chief judge.

**(c) Refund Processing.** Refunds shall be processed through the electronic credit or debit card system.

(Added 12/1/11; § (c) amended 12/1/13; §§ (b) and (c) amended 12/1/23)

## III. CONVENTIONAL FILING OF DOCUMENTS

### 3.1 Conventional Filings in Criminal Cases

Unless otherwise provided herein, the clerk's office will add to the court's public electronic docket all non-sealed conventionally filed documents referenced in this section.

**(a) Criminal Charging Documents.** All charging documents, including indictments, superseding indictments, informations, complaints and citations or violation notices, and accompanying documents such as supporting affidavits, warrants for arrest, praecipe for summons or warrant, summons (if applicable) and criminal case cover sheets, shall be conventionally filed. Issued warrants for arrest and criminal case cover sheets will not be added to the court's electronic docket.

**(b) Criminal Applications and Accompanying Affidavits.** The following applications, accompanying affidavits and warrants/proposed orders, shall be conventionally filed: seizure warrants, search warrants, pen registers (wire tap requests), and electronic tracking device requests. Issued search/seizure warrants and pen registers (wire tap requests) will not be added to the court's public electronic docket.

**(c) Return of Service Documents in Criminal Cases.** All returns of service or other returns in criminal cases shall be conventionally filed.

**(d) Grand Jury Matters.** All grand jury matters shall be conventionally filed and not added to the court's public electronic docket, including but not limited to the following: record of grand jurors concurring, motions to quash subpoena, motions to compel production/testimony, motions for immunity, motions for appointment of counsel, petitions for writ of habeas corpus ad testificandum/prosequendum, applications to disclose income tax returns/information, and notification required by Fed. R. Crim. P. 6(e)(3)(B) & (D).

**(e) Documents Signed by Criminal Defendants.** All documents containing the signature of a criminal defendant, with the exception of Financial Affidavits, shall be filed either conventionally or electronically in scanned PDF format. Financial Affidavits will be sealed and will not be added to the court's public electronic docket.

**(f) Undocketed Submissions.** The following documents may be received in paper by the clerk's office in a criminal case, but will not be added to the public docket in either electronic or conventional format unless ordered by the court: Pretrial Services Reports and Statements of Reasons.

**(g) CJA Materials.** All requests under the CJA shall be filed using eVoucher, and will not be added to the court's public electronic docket.

**(h) Juvenile Matters.** All documents filed in juvenile criminal matters shall be conventionally filed unless the court rules that the juvenile shall be tried as an adult.

(§ (h) amended 5/1/05; § (g) amended 12/1/09; preamble and §§ (a), (b), and (g), amended 6/1/11; §§ (a), (b), (d), (e) and (g) amended, § (f) removed; §§ (g), (h) and (i) relettered 12/1/15; preamble relocated, § (e) amended 12/1/21)

### 3.2 Conventional Filings in Civil/Miscellaneous Cases

Unless otherwise provided herein, the clerk's office will not scan and insert the following documents to the court's electronic docket.

**(a) Administrative Records.** Except as provided in AP 2.6, all administrative review proceeding records and transcripts shall be conventionally filed.

**(b) Habeas Corpus Rule 5 Materials.** The record of state court proceedings and any other materials submitted with the answer as provided in Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts shall be conventionally filed.

**(c) Mediation Documents**. The following mediation documents shall be conventionally filed: Notice of Selection of Mediator; Mediator's Post ADR Reporting Form; and, if a magistrate judge is serving as the mediator in a case, the Mediation Conference Statement and Mediation Conference Statement Confidential Addendum. The Mediator's Notice of Mediation may be filed either electronically or conventionally.

**(d) Letters Rogatory.** Applications or requests for letters rogatory and accompanying documents shall be conventionally filed.

**(e) Administrative Inspection Warrants.** Applications or requests for administration inspection warrants and accompanying documents shall be conventionally filed. Once ruled upon, the clerk's office will scan and insert these documents into the court's electronic docket.

(§ (c) amended 10/1/05, 10/1/06; § (a) amended 6/1/11; § (f) removed 12/1/11; § (c) amended 12/1/23)

### 3.3 Sealed Matters

**(a) Documents Filed in Sealed Cases.** Documents shall be conventionally filed in sealed cases unless the court orders the case unsealed. The Filing User shall also contemporaneously provide the court with a data storage device containing the main document and any accompanying memorandum of law or exhibits as separate documents in PDF format, which shall be named and organized in a manner that clearly identifies each document.

**(b) Sealed Documents Filed In Non-Sealed Cases.**

**(1) Entire Filing Sealed.** If an entire submission, which includes the main document and any accompanying memorandum of law and attachments/exhibits, is sought to be filed under seal, the entire submission shall be conventionally filed. No Notice of Conventional filing should be electronically filed in this circumstance. The Filing User shall also contemporaneously provide the court with a data storage device containing the main document and any accompanying memorandum of law or exhibits as separate documents in PDF format, which shall be named and organized in a manner that clearly identifies each document.

**(2) Filing Containing Both Sealed and Unsealed Documents**. If a filing contains both sealed and unsealed documents, the submission shall be electronically filed and a Notice of Conventional Filing shall be inserted in the place where the sealed document(s) would otherwise have appeared on the electronic docket. The documents sought to be sealed shall be conventionally filed within 72 hours of the electronic submission and contemporaneously produced on a data storage device as separate documents in PDF format, which shall be named and organized in a manner that clearly identifies each document.

**(c) Motions to Seal.** All motions to seal shall be conventionally filed.

(§ (a) amended 5/1/05; §§ (a) and (b) amended, § (c) added 10/1/06; §§ (a) and (b) amended 6/1/11)

### 3.4 Ex Parte Pleadings

All ex parte pleadings shall be conventionally filed. Ex parte pleadings will be scanned and added to the public docket contemporaneously with the entry of the court's order on the ex parte request.

### 3.5 Conventional Filings by Email

**(a)** In addition to filing in paper, the following conventionally filed documents may be submitted by email as defined in the accompanying cited rule:

(1) Criminal Charging Documents (AP 3.1(a));

(2) Criminal Applications and Accompanying Documents (AP 3.1(b));

(3) Return of Service Documents in Criminal Cases (AP 3.1(c));

(4) Grand Jury Documents (AP 3.1(d));

(5) Documents Signed by Criminal Defendants (AP 3.1(e));

(6) Administrative Records (AP 3.2(a));

(7) Habeas Corpus Rule 5 Materials (AP 3.2(b));

(8) Mediation Documents (AP 3.2(c));

(9) Letters Rogatory (AP 3.2(d));

(10) Administrative Inspection Warrants (AP 3.2(e));

(11) Sealed Documents (AP 3.3(a)-(c));

(12) Ex Parte Pleadings (AP 3.4); and

(13) Notice of Intent to Proceed by Pseudonym (LR 10.1).

**(b)** Any documents filed by email pursuant to this rule shall be submitted as follows:

(1) Emails shall be submitted to the following address: ecfintake@nhd.uscourts.gov.

(2) Documents submitted by email shall be in Portable Document Format (PDF). If the main document has attachments, each PDF shall be submitted as described in AP 2.5.

(3) The court will not read, consider, or respond to any text in the email itself and will only upload the attached PDF files to the case docket.

**(c)** All filings must comply with the formatting requirements found in the Local and Federal Rules.

**(d)** Signatures may be added electronically to pleadings submitted by email in the following format: /s/ Full Name.

**(e)** Unless a filer is authorized to file documents electronically using the court's Electronic Case Filing (ECF) system, all case initiating documents (e.g. complaints,

petitions) and all notices of appeal still must be filed in paper with either the required filing fee or a motion to proceed in forma pauperis.

**(f)** Filings submitted by email to the court must still be conventionally served on all counsel or pro se parties to a case as required by Fed. R. Civ. P. 5 and Fed. R. Crim. P. 49.

(Added 12/1/23)

### 3.6 Trial Exhibits/Exhibit Lists

All trial exhibits and exhibit lists shall be conventionally filed in accordance with LR 83.14. The clerk's office will scan and insert into the court's electronic docket only the final exhibit list and not trial exhibits.

(Amended 12/1/13; AP 3.5 renumbered to AP 3.6 12/1/23)

### 3.7 Notice of Appeal

A Notice of Appeal may be (i) electronically filed through the court's ECF system if the attorney Filing User pays the filing fee using the ECF credit card payment system, simultaneously submits a motion to proceed in forma pauperis, or if no filing fee is required, or (ii) conventionally filed with the appropriate fee. Conventionally filed notices will be scanned and inserted into the court's electronic docket.

(Amended 10/1/06; AP 3.6 renumbered to AP 3.7 12/1/23)

### 3.8 Pro Hac Vice Motions

A Motion for Leave to Appear Pro Hac Vice may be (i) electronically filed through ECF if the attorney Filing User pays the filing fee using the ECF credit card payment system, or (ii) conventionally filed with the appropriate fee. Conventionally filed pro hac vice motions will be scanned and inserted into the court's electronic docket. Due to technical limitations of the CM/ECF system, Filing Users must submit a separate motion for each attorney whose admission is sought pro hac vice and may not request the pro hac vice admission of multiple attorneys in one motion.

(Amended 10/1/06; AP 3.7 renumbered to 3.8 12/1/23)

### 3.9 Letters and Correspondence

All letters and correspondence shall be conventionally filed. The clerk's office may scan and add substantive letters and correspondence to the court's electronic docket.

(Added 10/1/06; AP 3.8 renumbered to AP 3.9 12/1/23)

### 3.10 Service of Conventional Filings

Documents that are filed conventionally shall be conventionally served in accordance with the Federal Rules of Civil/Criminal Procedure and the local rules of this court.

(Amended 5/1/05; AP 3.8 renumbered to AP 3.9 10/1/06; AP 3.9 renumbered to AP 3.10 12/1/23)

## IV. COURT ORDERS AND TRANSCRIPTS

### 4.1 Court Orders

**(a) Electronic Signature.** An electronically signed order shall have the same force and effect as a paper order containing an original signature and conventionally entered on the court's docket. An electronically signed order shall include, but is not limited to, the signatories name (i) preceded by a "/s/", (ii) typed in the document or in a docket text order, or (iii) inserted in the document as an imaged signature. Both judicial officers and court clerks may electronically sign orders as appropriate.

**(b) Docket Text Orders.** The court may issue orders by a text only entry on the court's docket and without the issuance of a PDF document. The parties will receive notice of such an order through the Notice of Electronic Filing.

**(c) Entry of Orders.** All electronically signed/endorsed orders will be electronically filed by a judicial officer or court personnel.

**(d) Proposed Orders.** All proposed orders shall be submitted electronically as a separate attachment to a motion or other request for relief or contained within the body of a stipulation. A proposed order may not be submitted as a separate docket entry in ECF unless so requested by the court. Proposed orders shall be submitted in a converted PDF format, not a scanned PDF format, and shall be clearly captioned as a "Proposed" order. The court may request the parties submit a proposed order in word processing format on a data storage device or by e-mail.

**(e) Notice of Orders.** The electronic transmission to a Filing User of an order or judgment through the Notice of Electronic Filing constitutes notice as required by Fed. R. Civ. P. 77(d) and Fed. R. Crim. P. 49(c). When mailing paper copies of an electronically filed order to a party who is not a Filing User, the clerk's office will include the Notice of Electronic Filing.

(§ (d) amended 6/1/11; § (e) amended 12/1/13)

### 4.2 Transcripts of Federal Court Proceedings in this District

**(a) Electronic Filing of Original Transcripts.** All original transcripts shall be electronically filed, which shall generate a Notice of Electronic Filing of a Transcript to be served on the parties.

**(b) Obligation to Review Transcripts for Personal Identifiers.** Within twenty-one (21) days after the date on the Notice of Electronic Filing of a Transcript, any party who purchased an original or a copy of the transcript shall:

(1) Review the transcript to determine whether it contains any personal identifiers listed in Fed. R. Civ. P. 5.2 or Fed. R. Crim. P. 49.1, whichever is applicable; and

(2) Electronically file a Transcript Redaction Request if that party concludes the transcript contains personal identifiers that must be redacted.

Any party that did not request an original or copy of the transcript may also review the transcript for personal identifiers and may electronically file a Transcript Redaction Request within this same twenty-one (21) day period.

The responsibility for redacting personal identifiers rests solely with counsel and the parties and neither the court reporter nor court staff are responsible to independently redact information from the case unless there is a redaction request by a party to the case. The parties will be charged no fee for redactions made by a court reporter.

**(c) Requests to Redact Other Information.** Requests to redact any information other than the personal identifiers listed in Fed. R. Civ. P. 5.2 or Fed. R. Crim. P. 49.1 must be made by motion within twenty-one (21) days after the date on the Notice of Electronic Filing of a Transcript.

**(d) Failure to Submit Transcript Redaction Request.** The failure to file a Transcript Redaction Request within the designated twenty-one (21) day period will result in a presumption that the redaction of personal identifiers is not necessary and the original transcript will be made available at the clerk's office and by remote Internet access through PACER as set forth below.

**(e) Electronic Filing of Redacted Transcripts.** If a Transcript Redaction Request is timely made or a motion to redact additional information is granted, a redacted transcript shall be electronically filed within thirty-one (31) days after the original transcript was filed with the court.

**(f) Public Access to Transcripts.** For a period of ninety (90) days following the filing of an original transcript, only Filing Users who purchased an original or a copy of the transcript will be permitted remote Internet access to the transcript through PACER. The public may review, but may not copy or reproduce, the transcript in the clerk's office in paper format or in electronic format at public terminals during this initial ninety (90) day period. At the conclusion of this initial ninety (90) day period, unless extended by court order, the public will be permitted to copy or reproduce the transcript in the clerk's office and will be permitted remote Internet access to the transcript though PACER. If a redacted transcript is filed, the original transcript will remain available to the parties in the case but will not be otherwise made available to the public at the clerk's office or through PACER. Persons accessing transcripts using PACER, including both Filing Users who purchased the transcript and other members of the public, will be assessed a PACER user fee in accordance with 28 U.S.C. § 1914.

**(g) Electronic Signatures.** An electronically signed transcript shall have the same force and effect as a paper transcript containing an original signature and certification stamp. An electronically signed transcript shall include, but is not limited to, the signatories name (i) preceded by a "/s/", or (ii) inserted in the document as an imaged or digital signature.

(Amended 5/15/08; preamble omitted 12/1/09; §§ (a) & (e) amended 6/1/11)

### 4.3 Transcripts of Court Proceedings in Other Courts

A transcript of a proceeding of another court shall be electronically filed in PDF format if available. If the transcript is not available in PDF format, then it shall be conventionally filed.

(Formerly AP 4.2 (b), renumbered 5/15/08)

## V. PUBLIC ACCESS TO ECF DOCKET/DOCUMENTS

### 5.1 Public Access at the Court

The public may obtain electronic access to the electronic docket and documents that have not been sealed at no charge at the clerk's office during regular business hours. A copy fee for an electronic reproduction will be assessed in accordance with 28 U.S.C. § 1914.

### 5.2 Internet Access

The public may use a PACER log-in and password to obtain remote electronic access to the electronic docket and documents at the court's Internet site (www.nhd.uscourts.gov) or directly at http://ecf.nhd.uscourts.gov. A user fee for accessing court information through PACER will be assessed in accordance with 28 U.S.C. § 1914.

(Amended 5/1/05, 5/15/08)

### 5.3 Conventional Copies and Certified Copies

Conventional and certified copies of electronic documents may be purchased from the clerk's office for a fee in accordance with 28 U.S.C. § 1914.

## VI. REGISTRATION FOR ECF

### 6.1 Participants

**(a) Mandatory Attorney Registration.** Attorneys admitted to the bar of this court and in good standing who intend to appear in an ECF case in this judicial district shall request access to the court's ECF system through the attorney's individual PACER account. Neither represented parties nor incarcerated pro se litigants may register as a Filing User.

**(b) Attorneys Admitted Pro Hac Vice.** An attorney admitted pro hac vice in an ECF case shall request access to the court's ECF system through the attorney's individual PACER account.

**(c) Pro Se Registration.** A non-incarcerated pro se litigant in a pending case may apply to the court for permission to become a Filing User on a motion form prescribed by the clerk's office. If the motion is granted, the litigant must have or obtain a PACER account, through which the litigant may request access to the court's ECF system. If during the course of the action the pro se litigant retains an attorney who appears on their behalf, the clerk's office shall terminate the pro se litigant's access to the court's ECF system upon the attorney's appearance.

(§ (a) amended 12/1/09; §§ (a) through (c) amended 12/1/19)

## 6.2 Registration

**(a) PACER.** Filing Users manage access to the court's ECF system through their individual PACER account.

**(b) Log-In/Password Usage.** No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User, such as a designated ECF filing assistant. The use of a Filing User's log-in and password by another attorney or other authorized agent shall be deemed to be the act of the Filing User.

**(c) Obligation to Protect Password**. Filing Users must change their password if they learn that the security of their PACER password has been compromised.

**(d) Obligation to Update Information**. A Filing User has an obligation to update the Filing User's PACER account with any change in the following information: name; mailing address; firm name or affiliation; primary email address or primary telephone number. If participating in an active ECF case, a Filing User shall also provide written notice of such change through the use of the "Notice of Change of Address" event in ECF in each active case. Filing Users are also obligated to ensure that the email addresses associated with their accounts are correct and able to successfully accept notices from the court. The court is not responsible for notices that are rejected by a Filing User's primary and/or secondary email address.

**(e) Withdrawal as Registered User.** Once registered, an attorney of record in an active ECF case may withdraw from participating in the ECF system only upon motion in that case. Otherwise, an attorney may withdraw from participating in this court's ECF system through their PACER account. An attorney's withdrawal from participation in the ECF system will not be construed as authorization for the attorney to file cases or documents conventionally unless so authorized by court order.

(§ (a) amended 5/15/08; § (e) amended 12/1/15; § (e) amended 12/1/17; § (b) removed, former §§ (c) through (f) relettered accordingly 12/1/18; §§ (a), (c), and (d) amended; former § (e) removed, former § (f) amended and relettered 12/1/19)

[INTENTIONALLY BLANK]

# APPENDIX B
# SUPPLEMENTAL RULES
# FOR PATENT CASES

**Incorporated as Supplement to Local Rules December 1, 2011**
**As Amended Through December 1, 2023**

---

## TABLE OF CONTENTS

[INTENTIONALLY BLANK]

## 1.1 SCOPE OF SUPPLEMENTAL RULES

**(a) Title and Citation**. The procedures governing all patent cases in which jurisdiction is based, in whole or in part, on 28 U.S.C. § 1338, shall be known as the "Supplemental Patent Rules." They shall be cited as "SPR ___."

**(b) Court Discretion to Depart from Rules**. The court shall have the discretion to depart from the specific provisions of the Supplemental Patent Rules to the extent a particular case presents exceptional circumstances warranting such departure.

**(c) Compliance**. In cases in which the Supplemental Patent Rules apply, the provisions herein shall bind the parties, and the parties may not seek to circumvent these provisions (e.g., by pursuing discovery into infringement and invalidity contentions through discovery requests seeking responses prior to the contentions process set out herein).

**(d) Relationship to Other Rules**. For all matters not addressed by the Supplemental Patent Rules, the Federal Rules of Civil Procedure, other applicable Local Rules, and any applicable judicial orders shall govern.

## 2.1 PLEADING PATENT INFRINGEMENT CLAIMS OR COUNTERCLAIMS

**(a) Special Pleading Requirements**. Any pleading containing patent infringement claims or counterclaims must contain:

(1) a list of all products or processes (by model number, trade name, or other specific identifying characteristic) for which the claimant or counterclaimant has developed a good-faith basis for alleging infringement, as of the time of filing the pleading; and

(2) at least one illustrative asserted patent claim (per asserted patent) for each accused product or process.

**(b) Scope of Discovery**. Discovery shall not be limited to the products and processes named in the complaint. The party asserting infringement may also engage in discovery into other products with reasonably similar features or other processes with reasonably similar steps.

## 3.1 SCHEDULING CONFERENCE, DISCOVERY PLAN, AND DISCOVERY ORDER

**(a) Scheduling Conference/Discovery Plan**. In the absence of exceptional circumstances, not later than thirty (30) days after service of the last filed answer, the court will hold a patent case scheduling conference. Pursuant to the process set forth in Fed. R. Civ. P. 26(f), the parties shall meet and confer in advance of this conference. The parties' Rule 26(f) "Discovery Plan" shall address the following sections contained

in the Civil Form 2, Discovery Plan: Date/Place of Conference; Counsel Present/ Representing; Case Summary; Jurisdictional Questions; Type of Trial; Discovery Needed; Electronic Information Disclosures; Stipulation Regarding Claims of Privilege/Protection of Trial Preparation Materials; Interrogatories; Requests for Admission; Depositions; Disclosures of Claims Against Unnamed Parties; Joinder of Additional Parties; Amendment of Pleadings; Settlement Possibilities; Joint Statement Re Mediation; Trial Estimate; and Trial Date.

**(b) Protective Order**. Contemporaneous with the filing of the Discovery Plan, the parties may also submit:

(1) a jointly proposed protective order, or

(2) competing proposed protective orders accompanied by memoranda (5 pages or less) explaining the differences between the proposed orders and each party's justification for its proposal.

Jointly proposed protective orders are strongly preferred by the court.

**(c) Discovery Order**. The court will issue a discovery order promptly after the conference, which shall include a trial date. Subject to the demands of the court's docket, trial should be scheduled for no later than two (2) years after the date the complaint was filed. The court will also rule promptly after the conference on any proposed protective order(s).

**(d) Confidential Disclosures Pending Entry of Protective Order**. Prior to entry of a protective order, no party may delay disclosures under the Supplemental Patent Rules, or responses to discovery, on the ground of confidentiality. Confidential disclosures and discovery responses may be designated (by the producing party) as "outside attorneys' eyes only" until the entry of a protective order, at which point all information must be treated in accord with the terms of the protective order.

(§ (a) amended 12/1/13)

## 4.1 GENERAL PROVISIONS GOVERNING PATENT DISCLOSURES

**(a) Certification of Disclosures**. All statements, disclosures, or charts filed or served in accordance with the Supplemental Patent Rules shall be dated and signed by counsel of record. Counsel's signature shall constitute a certification that to the best of his or her knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the information contained in the statement, disclosure, or chart was complete and correct at the time it was made.

**(b) Admissibility of Disclosures.** Statements, disclosures, or charts governed by the Supplemental Patent Rules are admissible evidence to the extent permitted by the Federal Rules of Evidence or Procedure and any applicable judicial orders (e.g., orders adjudicating motions in limine). The statements, disclosures, or charts are also admissible in separate proceedings (e.g., Patent Office proceedings) to the extent permitted by the rules governing such proceedings.

**(c) Declaratory Judgment Actions**. The same disclosure process (including the same sequence of disclosures) shall apply in declaratory judgment actions in which the plaintiff is asserting noninfringement and/or invalidity and/or unenforceability of the patent(s)-in-suit. For example, in such actions the defendant-patentee will assert Preliminary Infringement Contentions pursuant to the schedule set out below. If infringement is not contested, the parties shall follow the same disclosure process, but shall limit their contentions and accompanying document productions to those issues that are in dispute.

## 5.1 PRELIMINARY PATENT DISCLOSURES

**(a) Preliminary Infringement Contentions**. Not later than forty-five (45) days after filing of the last answer, a party claiming patent infringement shall serve on all parties its "Preliminary Infringement Contentions." The "Preliminary Infringement Contentions" shall include an infringement claim chart for each accused product or process ("Accused Instrumentality"). However, if certain Accused Instrumentalities have the same relevant characteristics, they can be grouped together in the same chart.

(1) Each claim chart shall contain the following contentions:

(A) Each claim of each patent in suit that is allegedly infringed by such Accused Instrumentality;

(B) For each claim, an identification of the subsection(s) of 35 U.S.C. § 271 that are asserted;

(C) A specific identification of where each limitation of the claim is found within each Accused Instrumentality, including for each limitation that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function; and

(D) Whether each limitation of each asserted claim is alleged to be literally present or present under the doctrine of equivalents in the Accused Instrumentality.

(2) In addition to the claim chart(s), the "Preliminary Infringement Contentions" shall also include the following contentions:

(A) For each claim which is alleged to have been indirectly infringed, an identification of any direct infringement, the identity of the known direct infringer(s), and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement;

(B) To the extent that the alleged direct infringement is based on joint acts of multiple parties, the identity of each such party and the role of each such party in the direct infringement;

(C) For any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled; and

(D) If a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that it practices (or practiced) the claimed invention, the party shall identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that practices (or practiced) that particular claim, and the date(s) that the party began and (if completed) ended such practicing of the claimed invention.

**(b) Document Production Accompanying Preliminary Infringement Contentions**.

With the Preliminary Infringement Contentions, the party asserting patent infringement shall produce to each opposing party or make available for inspection and copying:

(1) Documents (e.g., contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, and third party or joint development agreements) sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, or any public use of, the claimed invention prior to the date of application for each patent in suit. A party's production of a document as required herein shall not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102;

(2) All documents evidencing the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application for each patent in suit or the priority date identified pursuant to SPR 5.1(a), whichever is earlier;

(3) A copy of the file history for each patent in suit;

(4) All documents evidencing ownership of the patent rights by the party asserting patent infringement; and

(5) If a party identifies its own practicing instrumentalities pursuant to SPR 5.1(a), documents sufficient to show the operation of any aspects or elements of such instrumentalities the patent claimant relies upon as embodying any asserted claims.

The producing party shall separately identify by production number(s) which documents correspond to each category.

**(c) Preliminary Invalidity Contentions**. Not later than forty-five (45) days after service of the Preliminary Infringement Contentions, each party opposing a claim of patent infringement shall serve on all parties its "Preliminary Invalidity Contentions," which shall contain the following contentions:

(1) The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication shall be

identified by its title, date of publication, and where feasible, author and publisher. Prior art under 35 U.S.C. § 102(b) shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. Prior art under 35 U.S.C. § 102(f) shall be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. Prior art under 35 U.S.C. § 102(g) shall be identified by providing the identities of the person(s) or entities involved in, and the circumstances surrounding, the making of the invention before the patent applicant(s);

(2) Whether each item of prior art anticipates each asserted claim or renders it obvious and, if obviousness is alleged, an explanation of why the prior art renders the asserted claim obvious, including an identification of combinations of prior art showing obviousness, and an explanation of why a person of skill in the art would find obvious the asserted claim(s) in light of such combinations (e.g., reasons for combining references);

(3) A chart (or charts) identifying where specifically in each alleged item of prior art each limitation of each asserted claim is found, including for each limitation that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and

(4) Any other asserted grounds of invalidity of any asserted claim(s), including contentions based on 35 U.S.C. § 101 or 35 U.S.C. § 112.

**(d) Document Production Accompanying Preliminary Invalidity Contentions**. With the Preliminary Invalidity Contentions, the party opposing a claim of patent infringement shall produce or make available for inspection and copying:

(1) Documents sufficient to show the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its SPR 5.1(a) chart(s); and

(2) A copy or sample of the prior art identified pursuant to SPR 5.1(c) which does not appear in the file history of the patent(s) at issue. To the extent any such item is not in English, an English translation of the portion(s) relied upon shall be produced.

The producing party shall separately identify by production number(s) which documents correspond to each category.

(§ (a) amended 12/1/21)

## 6.1 CLAIM CONSTRUCTION PROCEEDINGS

**(a) Exchange of Proposed Terms for Construction**. Not later than fourteen (14) days after service of the Preliminary Invalidity Contentions, or not later than sixty (60) days after service of the Preliminary Infringement Contentions in those actions in which validity is not at issue (and SPR 5.1(c) does not apply), each party shall serve on all other parties a list of claim terms which that party contends should be construed by the court, and identify any claim term which that party contends should be governed by 35 U.S.C. § 112(f).

**(b) Exchange of Preliminary Claim Constructions and Extrinsic Evidence, and Conference of the Parties**.

(1) Not later than fourteen (14) days after the exchange of the proposed terms for construction pursuant to SPR 6.1(a), the parties shall simultaneously exchange proposed constructions of each term identified by either party for claim construction. Each such "Preliminary Claim Construction" shall also, for each term which any party contends is governed by 35 U.S.C. § 112(f), identify the function of that term and the structure(s), act(s), or material(s) corresponding to that term's function;

(2) At the same time the parties exchange their respective Preliminary Claim Constructions, each party shall also identify all references from the specification or prosecution history that support its proposed construction and designate any supporting extrinsic evidence including, without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses. Extrinsic evidence shall be identified by production number or by producing a copy if not previously produced. With respect to any supporting witness, percipient or expert, the identifying party shall also provide a description of the substance of that witness' proposed testimony that includes a listing of any opinions to be rendered in connection with claim construction;

(3) Not later than fourteen (14) days after the exchange of the Preliminary Claim Constructions, the parties shall thereafter meet and confer for the purposes of limiting the terms in dispute by narrowing or resolving differences and facilitating the ultimate preparation of a Joint Claim Construction and Prehearing Statement. The parties shall also jointly identify no more than ten (10) disputed terms per patent in suit, for inclusion in the Joint Claim Construction and Prehearing Statement. In the event of a dispute as to which terms to include in the Joint Claim Construction and Prehearing Statement, each side shall be presumptively limited to five (5) disputed terms per patent in suit, which limit can only be altered by leave of court.

**(c) Joint Claim Construction and Prehearing Statement**. Not later than fourteen (14) days after they meet and confer pursuant to SPR 6.1(b)(3), the parties shall complete and file a Joint Claim Construction and Prehearing Statement. This statement shall

address no more than ten (10) disputed terms per patent in suit, and shall contain the following information:

(1) The construction of those terms on which the parties agree;

(2) Each party's proposed construction of each disputed term, together with an identification of all references from the specification or prosecution history that support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction or to oppose any other party's proposed construction, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses;

(3) The anticipated length of time necessary for the Claim Construction Hearing; and

(4) Whether any party proposes to call one or more witnesses at the Claim Construction Hearing, the identity of each such witness, and for each witness, a summary of his or her testimony including, for any expert, each opinion to be offered related to claim construction.

**(d) Completion of Claim Construction Discovery**. Not later than twenty-one (21) days after the filing of the Joint Claim Construction and Prehearing Statement, the parties shall complete all discovery relating to claim construction, including any depositions with respect to claim construction of any witnesses, including experts, identified in the Joint Claim Construction and Prehearing Statement.

**(e) Claim Construction Briefs**.

(1) Not later than twenty-one (21) days after the deadline for completion of claim construction discovery as set forth in section (d) above, the parties shall file their respective opening briefs and any evidence supporting their claim constructions. Each party's opening brief may not exceed thirty (30) pages absent prior leave of court;

(2) Not later than fourteen (14) days after the filing of an opening brief, each opposing party shall file its responsive brief and supporting evidence. Each party's responsive brief may not exceed twenty (20) pages absent prior leave of court;

(3) Further briefing (including reply and surreply briefing) is not permitted without prior leave of court.

**(f) Claim Construction Hearing**. Not later than sixty (60) days after the filing of responsive briefs, and subject to the convenience of the court's calendar, the court will conduct a claim construction hearing if the court believes a hearing is necessary for construction of the claims at issue. The court may also order in its discretion a tutorial hearing, to occur before, or on the date of, the claim construction hearing. The court will work expeditiously to issue a prompt claim construction order after the hearing.

(§§ (a) and (b)(1) amended 12/1/15; §§ (e)(2) and (f) amended 12/1/21)

## 7.1 FINAL PATENT DISCLOSURES

**(a) Final Infringement Contentions**.

(1) Not later than twenty-one (21) days after the filing of the court's claim construction order, any party asserting infringement must serve on all parties its "Final Infringement Contentions," which shall include the party's final statement of all contentions required by SPR 5.1(a). A party may not assert at trial any infringement contentions not set out in its Final Infringement Contentions;

(2) To the extent the Final Infringement Contentions identify additional accused products or processes not set out in the Preliminary Infringement Contentions, such amendment must be supported by good cause (e.g., discovery of previously unavailable information) and the party asserting infringement must include a separate statement providing the specific grounds establishing such good cause. The accused infringer may move to exclude such amendment on the ground that good cause does not exist. Such motion must be filed within fourteen (14) days after service of the Final Infringement Contentions. If such motion is not filed (or if filed not granted), the amendment will be effective.

**(b) Final Invalidity Contentions**.

(1) Not later than twenty-one (21) days after service of the Final Infringement Contentions, each accused infringer must serve on all parties its "Final Invalidity Contentions," which must include that party's final statement of all contentions required by SPR 5.1(c). The party may not assert at trial any invalidity contentions not set out in its Final Invalidity Contentions;

(2) To the extent the Final Invalidity Contentions identify additional prior art, such amendment must be supported by good cause (e.g., discovery of previously unavailable information) and the accused infringer must include a separate statement providing the specific grounds establishing such good cause. The party asserting infringement may move to exclude such amendment on the ground that good cause does not exist. Such motion must be filed within fourteen (14) days after service of the Final Invalidity Contentions. If such motion is not filed (or if filed not granted), the amendment will be effective.

(§ (a)(1) amended 12/1/21)

## 8.1 EXPERT DISCOVERY

Expert discovery on issues other than claim construction will proceed as follows:

**(a) Expert Reports**.

(1) Opening expert reports on issues for which the parties will bear the burden of proof at trial will be due forty-five (45) days after service of the Final Invalidity Contentions, or, in cases in which invalidity is not at issue, forty-five (45) days after service of the Final Infringement Contentions;

(2) Rebuttal expert reports will be due forty-five (45) days after service of the opening expert reports.

**(b) Completion of Expert Depositions**. Completion of expert depositions will occur no later than forty-five (45) days after service of the rebuttal expert reports.