STATEMENT REGARDING COURTROOM OPPORTUNITIES FOR NEWER LAWYERS

MARK R. HORNAK, CHIEF UNITED STATES DISTRICT JUDGE

Courtroom opportunities for relatively new attorneys, particularly those who practice at larger firms or in more complex areas of the law, can be hard to come by.

I encourage the active participation of such attorneys in all court proceedings. Based on my experience, these newer lawyers are more than up to the task, and they can effectively handle not only relatively routine matters (such as discovery motions), but also more complex matters (such as motions for summary judgment, evidentiary hearings, or the examination of witnesses at trial).

In an effort to increase advocacy opportunities for newer lawyers, I will relax the usual requirement that only a single lawyer may present an argument, and will allow a more experienced lawyer to "back up" a newer lawyer in the examination of witnesses so long as doing so will not unduly prolong the proceeding, not prejudice the opposing party, and not result in undue "double dipping". Newer lawyers who actively participate in evidentiary hearings, including examining a witness at trial, should be accompanied and supervised by a more experienced attorney. The Court will regulate the proceedings to make sure that in the end, all sides of an issue get a fair shake.

Of course, all lawyers are expected to meet the high professional standards emblematic of our Court. Attorneys appearing in court are expected to be appropriately prepared, regardless of experience. For example, an attorney who is arguing a motion for summary judgment is expected to be thoroughly familiar with the factual record and the applicable law. In short, all lawyers should know and understand the "rules of the road".

I would ask that all attorneys appearing in court have a degree of authority commensurate with the proceeding that they are assigned to handle. For example, an attorney appearing at a scheduling conference ordinarily must have the full authority to propose and agree to a discovery or trial schedule and any other matters reasonably likely to arise at the conference, to address and argue any then-pending motion, and to discuss the status of any settlement discussions.

I have implemented this approach for more than five years, and have been uniformly impressed with exceptional in-court presentations by newer lawyers. Our more experienced lawyers are encouraged to engage their newer colleagues in advocacy opportunities in our Court. I believe that they will be inspired and energized by doing so, as I have been seeing those efforts in action.

Counsel are encouraged and welcomed to seek additional guidance from the Court as appropriate in particular cases concerning the scope or application of this statement.

Mark R. Hornak
Chief United States District Judge

Dated: July, 2022

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re:	:	Case No. 23-20004-GLT
	:	Chapter 13
SUZANNE N. STRICKLER,	:	
	:	
Debtor.	:	Related to Dkt. No. 124, 135
	:	

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MEMORANDUM OPINION

Having previously found that debtor Suzanne N. Strickler used serial filings to hinder or delay her creditors,[1] the Court dismissed her case upon a subsequent payment default and imposed a 90-day filing bar.[2] She now seeks a stay pending appeal, asserting that the order is infirm because "[t]here was no factual determination of bad faith prior to the dismissal."[3] Ronda J. Winnecour, the chapter 13 trustee ("Trustee"), disagrees but does not oppose a stay conditioned on adequate protection payments for all creditors.[4] Because the Court's reasoning is apparent from the record, it will deny the *Debtor's Motion for Stay Pending Appeal* ("Motion for Stay").

I. BACKGROUND

The material facts are not in dispute. The present case, filed in January 2023, was the Debtor's third attempt at chapter 13 since January 2020. Her first case lasted 20 months and

1 See *Order*, Dkt. No. 71.

2 *Order Dismissing Case with Prejudice and Terminating Wage Attachment*, Dkt. No. 114.

3 *Debtor's Motion for Stay Pending Appeal*, Dkt. No. 124 at ¶ 14.

4 *Chapter 13 Trustee's Response to Debtor's Motion for Stay Pending Appeal*, Dkt. No. 135 at ¶¶ 1-2.

was dismissed based on a plan default of $16,300, representing roughly six monthly payments.[5] The second case was dismissed after the Debtor failed to make any payments over seven months.[6]

This case was inauspicious from the start. Although the Debtor's chapter 13 plan contemplated monthly payments far in excess of the case filing fee,[7] she nonetheless asked to pay the fee in installments.[8] Both UMB Bank, N.A., the Debtor's mortgagee, and Santander Consumer USA Inc. ("Santander"), the holder of a security interest in her vehicle, promptly objected to confirmation.[9] And while no one objected to an extension of the automatic stay,[10] UMB Bank filed a motion seeking *in rem* stay relief as to her residence about a month later.[11]

Shortly before the hearing on UMB Bank's motion, the case was dismissed because the final installment of the filing fee was unpaid.[12] Days later, the Debtor remitted payment and moved for reconsideration,[13] which UMB Bank opposed.[14] At a hearing on both motions, the Trustee reported that the Debtor had yet to submit a plan payment in the three months the case had been pending.[15] The Court concluded that her payment history "show[ed] these cases [we]re being

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5 See *Chapter 13 Trustee's Response to Debtor's Motion for Stay Pending Appeal*, Dkt. No. 135 at ¶ 5; see also Case No. 20-20038-GLT.

6 See *Chapter 13 Trustee's Response to Debtor's Motion for Stay Pending Appeal*, Dkt. No. 135 at ¶ 6.

7 See *Chapter 13 Plan Dated 1/29/2023*, Dkt. No. 25.

8 *Application for Individuals to Pay the Filing Fee in Installments*, Dkt. No. 3.

9 See *Objections of UMB Bank, National Association, Not in its Individual Capacity, But Solely as Legal Title Trustee of LVS Title Trust XIII to Confimation [sic] of Debtors' Proposed Chapter 13 Plan*, Dkt. No. 39; *Objection to Confirmation*, Dkt. No. 49.

10 See *Order of Court*, Dkt. No. 22 (entered by the Hon. Jeffery A. Deller).

11 See *Motion of UMB Bank, National Association, Not in its Individual Capacity, But Solely as Legal Title Trustee Of LVS Title Trust XIII For In-Rem Relief From The Automatic Stay and Co-Debtor Under Section § 362 (d)(4)*, Dkt. No. 44.

12 See *Order*, Dkt. No. 62.

13 *Debtor's Motion to Reconsider Dismissal.* Dkt. No. 65.

14 *Response Of UMB Bank, National Association, Not in its Individual Capacity, But Solely as Legal Title Trustee of LVS Title Trust XIII To Debtors' Motion To Reconsider Dismissal*, Dkt. No. 68.

15 See *Order*, Dkt. No. 71 at 1.

used in a manner to hinder or delay [UMB Bank]'s collection efforts against the subject property."[16] Still, to "afford the Debtor one final opportunity," the Court reinstated her case and conditioned a stay of *in rem* relief in favor of UMB Bank on timely plan payments.[17]

The Debtor then entered the Court's Loss Mitigation Program seeking to modify UMB Bank's mortgage.[18] Unbeknownst to the Court, the Debtor unreasonably delayed the process by failing to complete the necessary documents for several months despite the express participation requirements and representations of her counsel.[19] No explanation was ever given.[20] In any event, when UMB Bank eventually offered a loan modification that would have brought the loan current, it was declined.[21]

Following the termination of loss mitigation, UMB Bank filed an affidavit of non-compliance indicating that the Debtor's plan was $7,740 in arrears for July through October 2023.[22] Apparently, she made only two partial payments in May and June 2023.[23] The Debtor did not deny the default or otherwise respond to the affidavit, so an order unconditionally granting UMB Bank *in rem* stay relief entered.[24]

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16 *Order*, Dkt. No. 71 at 1-2.

17 Id. at 2.

18 See *Loss Mitigation Order*, Dkt. No. 74.

19 See *Response to Order to Show Cause*, Dkt. No. 107 at ¶¶ 5-6; see also W.PA.LBR 9020-2(b); *Exhibit A*, Dkt. No. 60-1 at ¶ 2.

20 See *Response to Order to Show Cause*, Dkt. No. 107; *Order of Court Issuing Sanctions*, Dkt. No. 109.

21 *Response to Order to Show Cause*, Dkt. No. 107 at ¶¶ 7-8. Reportedly, the Debtor's co-debtor ex-husband refused to agree to the modification.

22 *Affidavit of Non-Compliance*, Dkt. No. 99 at ¶ 1.

23 See *Chapter 13 Trustee's Response to Debtor's Motion for Stay Pending Appeal*, Dkt. No. 135 at ¶ 7.

24 *Order*, Dkt. No. 101.

By January 2024, the Debtor's plan default grew to $9,605, prompting the Trustee to request dismissal.[25] Notably, the proposed order attached to the certificate of default contemplated the possibility of a dismissal with prejudice.[26] The Court entered an order requiring the Debtor to either propose a means to cure her default or amend her plan by February 12, 2024.[27] After she failed to respond or take any remedial action, the Court dismissed the case and imposed a 90-day filing bar given her anemic payment history spanning several cases.[28] Admittedly, the Court did not enter written findings of bad faith at that time.

On February 29, 2024, 17 days after the deadline to do so, the Debtor filed an amended plan and a *Motion to Reconsider Dismissal*.[29] She did not suggest the Court erred but simply asserted that she had since paid the Trustee $1,921 and could now complete a plan paying all creditors in full.[30] Viewing the *Motion to Reconsider Dismissal* as "a day late and a dollar short," the Court denied it.[31] The Debtor appealed.[32]

Fearing Santander would repossess her vehicle in the absence of the automatic stay, the Debtor filed the *Motion for Stay*.[33] She argued that repossession would inflict an irreparable harm, whereas the prejudice to Santander could be mitigated with monthly adequate protection

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25 *Trustee's Certificate of Default Requesting Dismissal of Case*, Dkt. No. 112 at ¶ 3.

26 See id. at 2.

27 See *Order Directing Further Action in Response to Chapter 13 Trustee's Certificate of Default Requesting Dismissal*, Dkt. No. 113.

28 See *Order Dismissing Case with Prejudice and Terminating Wage Attachment*, Dkt. No. 114.

29 See *Notice of Proposed Modification to Plan Dated 5/23/2023*, Dkt. No. 116; *Debtor's Motion to Reconsider Dismissal*, Dkt. No. 117.

30 *Debtor's Motion to Reconsider Dismissal*, Dkt. No. 117 at ¶¶ 4-5.

31 See *Order of Court*, Dkt. No. 118.

32 *Notice of Appeal*, Dkt. No. 119.

33 *Debtor's Motion for Stay Pending Appeal*, Dkt. No. 124 at ¶¶ 10-11.

payments in addition to the $2,999 she allegedly paid post-dismissal.[34] The Debtor further contended that "[t]here is a strong likelihood of success on appeal on the merits" because "[t]here was no factual determination of bad faith prior to the dismissal."[35]

In response, the Trustee observed that the Debtor's undisputed history of payment defaults was a sufficient basis for a dismissal with prejudice regardless of whether the Court issued express findings.[36] She also rejected the Debtor's assertion that "the possibility that the vehicle *may* be repossessed" alone demonstrates an irreparable injury.[37] That said, the Trustee did not oppose a stay conditioned on adequate protection payments for all creditors, not just Santander.[38] She argued that "[a]n unconditional stay effectively gives the Debtor all the benefits of the bankruptcy without imposing any of her obligations as a Chapter 13 debtor."[39]

During the hearing on the *Motion for Stay*, the Debtor conceded that she had no defense to the asserted payment defaults and that the case "deserved to be dismissed."[40] In fact, she could not explain why the payments were not made despite contending that she could do so now or make adequate protection payments to obtain a stay.[41] Ironically, she also acknowledged this same conduct (i.e., not paying Santander for approximately 14 months) created the threat of irreparable harm she sought to avoid.[42] As to the appeal's merit, the Debtor reiterated that the

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34 Id. at ¶¶ 7, 12-13, 15-16.

35 Id. at ¶ 14, 19.

36 *Chapter 13 Trustee's Response to Debtor's Motion for Stay Pending Appeal*, Dkt. No. 135 at ¶¶ 14-20.

37 Id. at ¶ 21 (emphasis in original).

38 Id. at ¶¶ 1-2.

39 Id. at ¶ 22.

40 *Audio Recording of March 13, 2024 Hearing* at 12:06:22-12:08:11 p.m.

41 Id. at 12:09:59-12:10:06 p.m.

42 Id. at 12:09:06-12:09:18 p.m.

filing bar was unsupported by findings, but later admitted the Court's earlier conclusions regarding her serial filings could control.[43]

II. DISCUSSION

Federal Rule of Bankruptcy Procedure 8007(a)(1) requires that a request for stay pending appeal be made in the bankruptcy court in the first instance.[44] To determine whether to grant a stay pending appeal, a court must balance the following four factors based on a consideration of their relative weight:

> (1) whether the stay applicant has made a strong showing that [it] is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.[45]

A strong showing of a likelihood of success on the merits is "arguably" the most important factor[46] because "jurisdiction exists only to remedy legal wrongs" regardless of whether the absence of a stay would spell "disaster" for the movant.[47] Without one, the court need not engage in a balancing of the equities.[48] In the Third Circuit, "a sufficient degree of success for a strong showing exists if there is 'a reasonable chance, or probability, of winning.'"[49] Put differently, the likelihood of

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43 Id. at 12:00:05-12:12:56 p.m.

44 Fed. R. Bankr. P. 8007(a)(1).

45 In re Revel AC, Inc., 802 F.3d 558, 568 (3d Cir. 2015) (quoting Hilton v. Braunskill, 481 U.S. 770, 776, 107 S.Ct. 2113, 95 L.Ed.2d 724 (1987)) (internal quotation marks omitted). The factors are the same as those considered on an application for a preliminary injunction. Id.

46 In re Revel AC, Inc., 802 F.3d at 568.

47 Roland Mach. Co. v. Dresser Indus., 749 F.2d 380, 387 (7th Cir.1984).

48 See In re Revel AC, Inc., 802 F.3d at 569; Scott v. U.S. Bank, N.A. (In re Scott), 605 B.R. 372, 377 (Bankr. W.D. Pa. 2019) (citing Nken v. Holder, 556 U.S. 418, 434, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009)).

49 In re Revel AC, Inc., 802 F.3d at 568–69 (quoting Singer Mgmt.Consultants, Inc. v. Milgram, 650 F.3d 223, 229 (3d Cir.2011)).

winning on appeal must be significantly "better than negligible,"[50] but not necessarily "more likely than not."[51]

Frankly, there is no likelihood that the Debtor will prevail in her appeal. A bankruptcy court may dismiss a case with prejudice to the filing of a subsequent petition for "cause."[52] "Cause" includes a lack of good faith,[53] which may be demonstrated by a record of abusive serial filings.[54] On appeal, factual findings are reviewed for clear error while the imposition of a filing bar is reviewed for abuse of discretion.[55] A bankruptcy court abuses its discretion when its ruling rests upon an error of law or a misapplication of law to the facts.[56] In other words, "[a] court may not issue orders that are 'arbitrary or irrational.'"[57]

The Debtor's assertion that "[t]here was no factual determination of bad faith prior to the dismissal" is incorrect.[58] The Court merely did not memorialize its rationale given the clarity of the undisputed record.[59] As the Debtor grudgingly admits, the Court already found that her payment history established that she used serial bankruptcy filings to hinder or delay her

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50 Nken v. Holder, 556 U.S. at 434.

51 Singer Mgmt.Consultants, Inc. v. Milgram, 650 F.3d at 229.

52 11 U.S.C. § 349(a).

53 See In re Reppert, 643 B.R. 828, 847 (Bankr. W.D. Pa. 2022); In re Stone Fox Cap. LLC, 572 B.R. 582, 591 (Bankr. W.D. Pa. 2017).

54 See In re Snyder, 292 F. App'x 191, 193 (3d Cir. 2008); Community Bank v. Mazzei (In re Mazzei), No. BR 22-20395-JAD, 2023 WL 6471079, at *15 (Bankr. W.D. Pa. Oct. 4, 2023); U.S. v. Olayer (In re Olayer), 577 B.R. 464, 469 (Bankr. W.D. Pa. 2017); In re Thompson, 557 B.R. 856, 857 (Bankr. W.D. Pa. 2016); Rushmore Loan Mgmt. Servs., LLC v. Kohar (In re Kohar), 525 B.R. 248, 258 (Bankr. W.D. Pa. 2015); In re LeGree, 285 B.R. 615 (Bankr. E.D. Pa. 2002).

55 In re Ross, 858 F.3d 779, 783 (3d Cir. 2017).

56 Manus Corp. v. NRG Energy, Inc. (In re O'Brien Env't Energy, Inc.), 188 F.3d 116, 122 (3d Cir. 1999).

57 In re Ross, 858 F.3d at 786.

58 *Debtor's Motion for Stay Pending Appeal*, Dkt. No. 124 at ¶ 14.

59 A discretionary ruling unaccompanied by reasoning is entitled to less deference on appeal, but the district court may affirm for any reason supported by the record. In re Ross, 858 F.3d at 786 (citing Brightwell v. Lehman, 637 F.3d 187, 191 (3d Cir. 2011)).

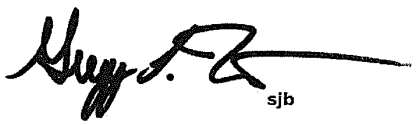
creditors.[60] Considering that her plan performance worsened after that ruling—remitting only one and a half payments in twelve months—the record obviously supported a filing bar to prevent further abuse.[61] Indeed, the Court notes that the Debtor did not express confusion or challenge the filing bar as unfounded on reconsideration.[62]

Ultimately, even if the lack of express findings was problematic, the Court's reasoning is now manifest. As such, the district court is unlikely to reverse on this record, rendering a stay pending appeal unwarranted.

III. CONCLUSION

In light of the foregoing, the *Motion for Stay* is denied. This opinion constitutes the Court's findings of fact and conclusions of law in accordance with Fed. R. Bankr. P. 7052. The Court will issue a separate order consistent with this opinion.

ENTERED at Pittsburgh, Pennsylvania.



Dated: March 15, 2024

GREGORY L. TADDONIO
CHIEF UNITED STATES BANKRUPTCY JUDGE

Case administrator to mail to:
Debtor

60 *Order*, Dkt. No. 71 at 1-2.

61 Even without a filing bar, her payment history and serial filings would raise the specter of bad faith in a new case, potentially providing cause to dismiss or grant stay relief.

62 For this reason, the Court suspects the Debtor and her counsel understood why her case was dismissed with prejudice.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re:	:	Case No. 23-20004-GLT
	:	Chapter 13
SUZANNE N. STRICKLER,	:	
	:	
Debtor.	:	Related to Dkt. No. 124, 135
	:	

ORDER

These matters came before the Court upon the *Debtor's Motion for Stay Pending Appeal*[1] ("Motion") filed by Suzanne N. Strickler and the *Chapter 13 Trustee's Response to Debtor's Motion for Stay Pending Appeal*[2] filed by Ronda J. Winnecour, the chapter 13 trustee. In accordance with the *Memorandum Opinion* of even date, it is hereby **ORDERED, ADJUDGED**, and **DECREED** that:

1. The *Motion* is **DENIED**.

2. In accordance with Fed. R. Bankr. P. 8007(b)(2)(B) and (C), the Debtor shall attach a copy of the *Memorandum Opinion* of even date to any motion seeking a stay pending appeal made before the United States District Court for the Western District of Pennsylvania.

ENTERED at Pittsburgh, Pennsylvania.

sjb

Dated: March 15, 2024

GREGORY L. TADDONIO
CHIEF UNITED STATES BANKRUPTCY JUDGE

Case administrator to mail to:
Debtor

[1] Dkt. No. 124.

[2] Dkt. No. 135.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re:	:	Case No. 22-20823-GLT
	:	Chapter 7
U LOCK, INC.,	:	
	:	
Debtor.	:	Related to Dkt. Nos. 340, 357, 368, 450, 454
	:	

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MEMORANDUM OPINION

In ten years, the Court has never held a stronger conviction that a fraud was perpetrated upon the court as it is following an evidentiary hearing on Shanni Snyder's claim.[1] Ms. Snyder obtained a default judgment under the Fair Labor Standards Act ("FLSA")[2] by swearing that debtor U Lock, Inc. employed her to monitor security cameras for ten hours a day, every day, for four years without paying wages.[3] *She lied.* First to the federal district court who awarded the judgment, and then to this Court by commencing an involuntary petition against U Lock based on a fraudulent claim. Ms. Snyder did so to frustrate creditor Christine Biros' efforts to gain control of U Lock's business premises ("Property"), which was awarded to Ms. Biros by

1 See *Objection to Claim Number 1 Filed by Shanni Snyder*, Dkt. No. 340; *Response to Objection to Claim Number 1 Filed [sic] Shanni Snyder*, Dkt. No. 357.

2 See 29 U.S.C. § 201, *et seq.*

3 See *Exhibit 7; Exhibit 8* at 5:1-24. With two exceptions, all page numbers refer to the exhibit's Bates-stamp digits. Because *Exhibit 8* and *Exhibit 16* are transcripts, the Court used their internal page numbering in its citations. The difference is apparent from the citation.

final state court orders.[4] As explained below, the Court will disallow Ms. Snyder's claim in its entirety and initiate sanction proceedings against her to address this profound abuse.

I. BACKGROUND

The validity of Ms. Snyder's claim implicates far more than whether U Lock owes her money.[5] As the sole petitioning creditor, and ostensibly the only significant claimant other than Ms. Biros, Ms. Snyder precipitated this bankruptcy filing and the acrimonious litigation that followed. The apparent goal was not U Lock's orderly liquidation, but to continue the bitter years-long legal battle over the fate of the Property. This is the prism through which the one-sided testimony must be viewed. Accordingly, the Court will appropriately frame this dispute in the context of the feud between the Snyder family and Ms. Biros.[6]

A. U Lock's Genesis and Prelude to Bankruptcy

The Property is essentially a junkyard located on Route 30 in North Huntingdon, Pennsylvania containing a run-down self-storage building.[7] In 2015, Ms. Snyder's brothers, Kash and George,[8] formed U Lock to acquire the Property in hopes of increasing its value through commercial development.[9] Ms. Biros loaned the funds to purchase the Property.[10]

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4 See Biros v. U Lock Inc., 2021 PA Super 104, 255 A.3d 489, 493 (2021), re-argument denied (July 28, 2021), appeal denied, 271 A.3d 875 (Pa. 2022).

5 For readability, the Court will forgo the tediousness of referring to it as the "alleged" or "purported" claim.

6 To the extent not otherwise in the record, the salient background facts are largely judicially established and a matter of public record appropriate for judicial notice. See Fed. R. Evid. 201(b)(2).

7 In re U Lock, Inc., No. 22-20823-GLT, 2023 WL 308210, at *1 (Bankr. W.D. Pa. Jan. 17, 2023) ("The Property is essentially a junkyard on Route 30, littered with construction debris, scrap piles, tire mounds, collapsed trailers, and inoperable vehicles. It contains two structures: a large, free-standing garage/warehouse and a rundown, single-story self-storage building. The Property is also subject to environmental contamination and was the site of a literal garbage fire post-petition.").

8 *Pretrial Statement/Stipulation*, Dkt. No. 454 at ¶ 6(3). With two Mr. Snyders involved in this case, clarity requires the Court to identify them by their first names. No disrespect is intended.

9 See *Exhibit 16* at 96:2-14, 97:9-16.

10 Biros v. U Lock Inc., 255 A.3d at 492.

Everyone agrees that the Property is worth at least two to three times more today than its 2015 purchase price of $325,316.[11]

The Snyders have repeatedly alleged that Ms. Biros and her brother John were also silent, controlling partners in U Lock.[12] The Biroses have denied control, though not their involvement. George once testified that Ms. Biros was to fund the development of the Property,[13] but that the project was in a "holding pattern" while the Biroses were under indictment.[14] Whatever the original intent, relations between the Snyders and the Biroses eventually soured and, as a cause or consequence, the Property was not developed. As a result, U Lock only ever used the Property as a self-storage facility to generate minimal revenue.[15] The statement of financial affairs reflects prepetition gross revenue ranging from $8,400 to $13,200 in the previous three years,[16] which George testified was consistent with prior operations as well.[17]

In 2017, Ms. Biros sued U Lock in the Court of Common Pleas of Westmoreland County ("Trial Court"), asserting that U Lock repaid no portion of the loan.[18] In August 2019, the Trial Court found the only equitable solution was to impose a constructive trust on the

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11 See, e.g., Snyder v. Biros (In re U Lock, Inc.), 652 B.R. 456, 462 (Bankr. W.D. Pa. 2023) (Ms. Snyder asserting that Ms. Biros valued the Property between $700,000 and $900,000); In re U Lock, Inc., 2023 WL 308210, at *1 (Debtor estimating the value of the Property in 2022 as $1.9 million).

12 See, e.g., Biros v. U Lock Inc., 255 A.3d at 492 ("George Snyder believed [Ms. Biros] and John Biros would be partners in the business venture"); *Exhibit 16* at 14:6-15:2; 17:10-13; 23:3-24:11; 25:5-8; 30:16-32:7; 97:17-20; 100:1-6; *Amended Adversary Complaint*, Adv. Pro. No. 23-2020-GLT, Dkt. No. 17 at ¶¶ 25-27, 34-39, 71-74, 80-83.

13 *Exhibit 16* at 74:8-21, 96:2-14, 97:9-16.

14 Id. at 17:10-18, 31:24-32:8.

15 In re U Lock, Inc., 2023 WL 308210, at *1.

16 *Statement of Financial Affairs For Non-Individuals Filing for Bankruptcy*, Dkt. No. 65 at 1.

17 *Exhibit 16* at 16:8-24.

18 Biros v. U Lock Inc., 255 A.3d at 492.

Property in favor of Ms. Biros.[19] The Superior Court of Pennsylvania affirmed in May 2021,[20] and the Supreme Court of Pennsylvania denied leave to appeal January 2022.[21] Days later, Ms. Biros recorded deeds purporting to convey legal title to the Property.[22] But for an appeal regarding the release of those deeds, U Lock was poised to lose possession of the Property.[23]

Ms. Snyder was aware of Ms. Biros' suit and attended at least one proceeding in the Trial Court.[24] She denied having any involvement with U Lock's defense.[25]

B. Ms. Snyder's Bankruptcy and Wage Claim Litigation

While Ms. Biros pursued collection from U Lock, Ms. Snyder was engaged with legal proceedings of her own. First, Ms. Snyder was involved in a child custody matter in March 2018. This is relevant only because she declared under the penalty of perjury that she was unemployed at the time.[26]

Less than two months later, in May 2018, Ms. Snyder filed her own chapter 7 case *pro se*.[27] On *Schedule I*, she again stated that she was "not employed."[28] On *Schedule A/B*, Ms. Snyder answered "no" when asked whether someone owed her amounts for "[u]npaid wages."[29] She twice declared under the penalty of perjury that the information contained within her petition

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19 Id.

20 Id. at 497.

21 Biros v. U Lock Inc., 271 A.3d 875 (Pa. 2022).

22 See In re U Lock, Inc., 652 B.R. at 461. As explained in the Court's prior *Memorandum Opinion*, there appears to be a break in the chain of title because Ms. Biros' deeds are from the original sellers rather than U Lock. Id. at 466.

23 Id. at 462.

24 *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 65:18-66:7, 66:21-67:8.

25 Id. at 66:12-67:8

26 *Exhibit 1* at BIROS_000001-02.

27 See *In re Shanni Sue Snyder*, Case No. 18-21983-CMB; *Exhibit 2*.

28 *Exhibit 2* at BIROS_000050.

29 *Exhibit 2* at BIROS_000023.

and schedules was "true and correct."[30] Ms. Snyder subsequently filed another declaration stating that she "did not have any payment advices from an employer because [she] was not employed during 2016, 2017, or 2018."[31] There appearing to be no assets available for distribution, she received a discharge and the case was closed in 2019.[32]

In July 2021, about two months after the Superior Court affirmed the Trial Court, Ms. Snyder sued U Lock for unpaid wages under the FLSA.[33] She prepared and filed the complaint herself using a form available online.[34] Despite Ms. Snyder's 2018 declarations, she now alleged that U Lock employed her from "January 1, 2016, through February 15, 2020" to "monitor[] video surveillance and cameras from 5 p.m. until 3 a.m. each day."[35] She claimed that she was to be paid $7.25 per hour on a monthly basis, but U Lock "continually asked that [compensation] be deferred until" the Property could be mortgaged.[36] In sum, she demanded judgment for $131,351, consisting of $108,079 for hourly wages and $23,272 for overtime.[37]

When U Lock did not respond to the complaint, Ms. Snyder moved for a default judgment.[38] The United States District Court for the Western District of Pennsylvania ("District Court") conducted a hearing on October 18, 2021.[39] The hearing lasted five minutes and only

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30 Id. at BIROS_000011, BIROS_000016.

31 *Exhibit 3* at BIROS_000082.

32 See *In re Shanni Sue Snyder*, Case No. 18-21983-CMB, Dkt. Nos. 36, 38, 39.

33 *Exhibit 7*. Apparently, Ms. Snyder filed her complaint only days before the Superior Court denied U Lock's motion for a rehearing. See Biros v. U Lock Inc., 255 A.3d at 489, re-argument denied (July 28, 2021).

34 See *Pro Se 8 (Effective 12/1/2016) Complaint for Violation of Fair Labor Standards*, https://www.uscourts.gov/forms/pro-se-forms/complaint-violations-fair-labor-standards

35 *Exhibit 7* at BIROS_000202.

36 Id.

37 Id. at BIROS_000203.

38 *Exhibit D*.

39 See *Exhibit E*; *Exhibit 8*.

Ms. Snyder attended.[40] Before entering judgment, the District Court asked her to confirm under oath that her factual allegations were true and that she had no other witnesses or evidence.[41] Ms. Snyder testified that she "worked for U Lock" and calculated her claim based on "70 hours a week, 30 being overtime at minimum wage."[42] She did not reveal that U Lock was owned by her brothers, nor that her wage claim partially belonged to her bankruptcy estate. Based on her representations, the District Court entered judgment against U Lock in the amount of $262,702, doubling the amount she requested with an award of liquidated damages.[43]

Still acting *pro se*, Ms. Snyder transferred her judgment to the Trial Court in December 2021 and took no further action until March 2022.[44] Then she filed a *Praecipe for a Writ of Summons in Equity and Assumpsit and for Lis Pendens* in the Trial Court, requesting that the Westmoreland County Prothonotary index a lis pendens against the Property.[45] Notably, Ms. Snyder named U Lock, Ms. Biros, the seller-estates, the Trial Court judge, the Westmoreland County Recorder of Deeds, and the Attorney General as defendants.[46]

C. U Lock's Chapter 7

On April 27, 2022, Ms. Snyder filed an involuntary chapter 7 petition against U Lock.[47] Curiously, she initially listed her claim as $375,100 on the involuntary petition before filing a proof of claim in the amount of $263,100 a month later.[48] U Lock did not oppose the

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40 *Exhibit 8*.

41 Id. at 4:17-6:2.

42 Id. at 5:16-23.

43 Id. at 6:3-8:9; see *Exhibit G*.

44 *Exhibit A* at JPL000005.

45 *Exhibit 9*.

46 Id.

47 *Pretrial Statement/Stipulation*, Dkt. No. 454 at ¶ 6(1).

48 Compare *Involuntary Petition Against a Non-Individual*, Dkt. No. 1 at 3, with *Claim 1-1* at 2. Ms. Snyder initially asserted that her claim was secured, but later stipulated that the judgment "is not secured in the

petition and, in fact, repeatedly signaled a desire to use bankruptcy relief to recover the Property from Ms. Biros.[49] An order for relief entered in June 2022.[50]

During the gap period, the Trial Court ordered the Prothonotary to issue a writ of possession in favor of Ms. Biros.[51] Ms. Snyder appealed, asserting a judgment lien against the Property.[52] The Court subsequently held that the Trial Court's order was void as having entered in violation of the automatic stay.[53] The Court suspects that the filing of the involuntary petition shortly before the Trial Court's order was not a coincidence.

Without recounting every senseless moment of this case, all matters have been unreasonably contentious.[54] This seems a function of both the parties' personal animosity and their incompatible perspectives regarding the Property. For her part, Ms. Snyder asserts that Ms. Biros manipulated the legal system to fraudulently acquire the Property.[55] Meanwhile, Ms. Biros argued at every turn that Ms. Snyder's actions are a scheme to contrive a right to the Property and impede her ownership and possession.[56] Even so, Ms. Biros did not file a claim objection

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tangible and intangible assets of U Lock." *Stipulation Between Chapter 7 Trustee, Charles O. Zebley, Jr., Chapter 7 Trustee Robert H. Slone, and Chapter 7 Debtor, Shanni Sue Snyder*, Dkt. No. 228 at ¶ 30.

49 See *Exhibit 16* at 8:8-9:16; *Transcript of August 9, 2022 Hearing*, Dkt. No. 115 at 13:2-9, 14:13-15:14.

50 See *Order for Relief Under Chapter 7*, Dkt. No. 42.

51 See *Exhibit 12*; *Exhibit 13*.

52 Id.

53 See *Order*, Dkt. No. 143.

54 For example, nearly every exhibit offered in support or opposition to Ms. Snyder's claim was subject to an objection despite the overlap between the parties' exhibit lists and the fact that the documents in question were court records. See *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 6:7-10:22.

55 See In re U Lock, Inc., 652 B.R. at 464-465; see also *Brief in Opposition to Motion to Dismiss Amended Adversary Complaint*, Adv. Pro. No. 23-2020-GLT, Dkt. No. 29.

56 See *Pretrial Statement/Stipulation*, Dkt. No. 454 at ¶ 3; *Post-Trial Brief in Support of Christine Biros' Objection to Shanni Snyder's Proof of Claim*, Dkt. No. 498 at 2.

for over a year. The effect of this perpetual fighting is that it has driven the estate into administrative insolvency.[57]

Matters started coming to a head in December 2022. To end persistent challenges to her standing, Ms. Snyder reopened her 2018 bankruptcy and settled her estate's interest in the wage claim with her chapter 7 trustee.[58] Then, after a frustratingly protracted sale process, she outbid Ms. Biros in a sale of U Lock's tangible and intangible assets.[59] Ms. Snyder's motivation was to acquire the estate's right to bring a speculative avoidance action against Ms. Biros to recover the Property.[60]

In February 2023, Ms. Snyder commenced her avoidance action and Ms. Biros moved to dismiss.[61] Ultimately, the Court dismissed the complaint with prejudice, concluding that the Trial Court's imposition of the constructive trust meant that there was no avoidable "transfer of an interest of the debtor."[62] Ms. Snyder promptly appealed and the District Court affirmed.[63]

Around the same time Ms. Snyder filed her adversary proceeding, Ms. Biros finally objected to Ms. Snyder's claim.[64] She primarily argued that it was incredible given the "exorbitant number of hours" Ms. Snyder allegedly worked and emphasized that George and

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57 See *Status Report*, Dkt. No. 477 at ¶¶ 1-3.

58 See *Stipulation Between Chapter 7 Trustee, Charles O. Zebley, Jr., Chapter 7 Trustee Robert H. Slone, and Chapter 7 Debtor, Shanni Sue Snyder*, Dkt. No. 228 at ¶ 24. Essentially, the parties stipulated that Ms. Snyder would have standing to pursue all claims and objections against U Lock and her estate would receive the first $32,500 of any recovery to pay her unsecured creditors. Id. at ¶ 24(a).

59 In re U Lock, Inc., 2023 WL 308210, at *2. Prior to the initial sale hearing, many of the tangible assets disappeared from the Property, prompting an investigation. For present purposes, suffice it to say that the assets were found and the propriety of their removal is the subject of a forthcoming decision.

60 See In re U Lock, Inc., 652 B.R. at 459.

61 Id. at 458.

62 Id. at 466-469.

63 See Snyder v. U Lock, Inc., 2:23-cv-1410-AJS, 2024 WL 69628 (W.D. Pa. Jan. 5, 2024).

64 *Objection to Claim Number 1 Filed by Shanni Snyder*, Dkt. No. 340.

Kash testified that U Lock had no employees.[65] In response, Ms. Snyder accused Ms. Biros of collaterally attacking the propriety of a final judgment, which she insisted should be resolved by the District Court who entered it.[66] Ms. Snyder also revealed that Ms. Biros launched a simultaneous challenge to the judgment through a "RICO"[67] action against her and her brothers in the District Court.[68] After a preliminary hearing in April 2023, the Court found that Ms. Snyder's default judgment was not entitled to preclusive effect and scheduled an evidentiary hearing.[69]

Ms. Snyder sought withdrawal of the reference prior to the evidentiary hearing,[70] but the District Court has yet to take any action on her motion.[71] As such, matters proceeded before this Court as scheduled. Following the evidentiary hearing, the parties submitted additional briefing and the Court took the matter under advisement.[72]

D. The Evidentiary Record

Three witnesses testified at the evidentiary hearing: Ms. Snyder, George Snyder, and Kash Snyder. As explained below, none of them testified credibly in support of Ms. Snyder's claim. Frankly, all that was offered was an implausible, self-serving narrative littered with discrepancies and contradicted by prior sworn statements.

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65 Id. at ¶¶ 26-37, 49-52, 60.

66 *Response to Objection to Claim Number 1 Filed by Shanni Snyder*, Dkt. No. 357 at ¶¶ 11-15.

67 See Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*

68 See Biros v. Snyder, 2:23-cv-297-RJC.

69 *Transcript of April 13, 2023 Hearing*, Dkt. No. 377 at 12:20-14:9 (citing O'Neal Steel, Inc. v. Chatkin (In re Chatkin), 465 B.R. 54, 65 (Bankr. W.D. Pa. 2012)); *Order of Court*, Dkt. No. 368.

70 See *Motion to Withdraw Reference Pursuant to 28 USC 157(d) and Fed. R. Bk. Proc. 5011(a) as to the Objection to Claim Number 1*, Dkt. No. 389; *Response in Opposition to Motion to Withdraw Reference*, Dkt. No. 403.

71 See Snyder v. U Lock, Inc., 2:23-cv-979-RJC.

72 See *Post-Hearing Brief Regarding Shanni Snyder Claim and the Objection Thereto*, Dkt. No. 497; *Post-Trial Brief in Support of Christine Biros' Objection to Shanni Snyder's Proof of Claim*, Dkt. No. 498.

Generally, Ms. Snyder projected confidence on direct examination, appearing relaxed and speaking clearly, but her testimony was consciously abridged to limit the scope of cross-examination. When pressed about inconsistencies, her demeanor became evasive and the volume of her voice dropped as she began to shift and rock in her seat. Other times Ms. Snyder appeared defiant, self-assured that no matter how dubious, no one could disprove anything she said. In sum, while her testimony never strayed far from her concise direct responses, the frequent lack of elaboration left confusing (if not pregnant) gaps which undermined her story.

Ms. Snyder testified that she worked for U Lock from January 1, 2016 to February 15, 2020[73] monitoring an "independent dropcam of the premises"[74] every night from 5 p.m. to 3 a.m.[75] She explained that she did not typically watch a camera the entire time, but instead checked them on her iPhone when she received motion-activated push notifications.[76] If something unusual appeared, such as an unfamiliar vehicle or loitering kids, Ms. Snyder would call George.[77] In four years, she never made a report to law enforcement.[78] No testimony was offered or elicited to demonstrate the value or necessity of such surveillance, or why it ended at 3 a.m.

Although Ms. Snyder repeatedly insisted that she "dedicated" certain hours to monitoring the Property,[79] her full testimony betrays that as an overstatement. Indeed, she acknowledged that during her "work hours" she regularly cared for her three young children

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73 *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 15:2-3, 33:11-18, 35:5-9.

74 Id. at 15:6-7.

75 Id. at 15:22-24.

76 Id. at 15:8-16:2.

77 Id. at 16:11-17:5. Ms. Snyder noted that John Biros and his father would "show up at night and just walk around" but that "it was okay they were there." Id. at 17:2-11.

78 Id. at 81:4-12.

79 Id. at 15:22-16:10, 18:1-6, 36:11-15.

without assistance, cooked, slept, and went to social gatherings.[80] Ms. Snyder also claims to have never taken a vacation day, a sick day, or any other time off from her duties over a span of roughly 1,500 days.[81] Even a hospitalization for the birth of her twins could not sideline her because she always had her iPhone available.[82] At best, she described a sort of "on-call" arrangement with no indication as to how much time was spent curating push notifications for George.

There is no written agreement or writing of any kind evidencing U Lock's employment of Ms. Snyder.[83] Nor was there testimony revealing how and why she began monitoring U Lock's Property. Still, Ms. Snyder expected to be paid for this work.[84] She testified that George "promised to pay when things got straightened out, if he got a mortgage on the place, if the property were developed."[85] Despite this vague understanding, Ms. Snyder expected "[a]t least minimum wage, but [George] at one point said he would give [her] more."[86]

Ultimately, U Lock never paid Ms. Snyder anything.[87] Though she never made a written demand for payment,[88] Ms. Snyder testified that she and George repeatedly argued about the lack of pay and that she kept getting the "runaround."[89] But according to Ms. Snyder, she continued to work for years without payment because she hoped her brother "would square up

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80 Id. at 16:3-10, 17:17-18:6, 78:9-24.

81 Id. at 35:21-36:12.

82 Id.

83 Id. at 64:17-20, 79:19-80:25, 82:6-9

84 Id. at 79:19-80:25.

85 Id. at 18:16-19:4, 37:23-25.

86 Id. at 19:5-7, 41:9-12, 45:23-25.

87 Id. at 18:11-12, 23:22-23, 38:3-6, 52:18-22

88 Id. at 80:17-21.

89 Id. at 19:9-13.

with [her] when the time came."[90] By 2020, however, she no longer believed she would be paid and ceased working for U Lock.[91]

Much of Ms. Snyder's cross-examination focused on her sworn declarations that she was neither employed nor owed unpaid wages. She conceded that they were signed under the penalty of perjury at a time when she claims that she monitored U Lock's Property and was owed about $50,000.[92] When asked to reconcile this disjoint, Ms. Snyder's response devolved into hair splitting between "working" and being "employed." Basically, she says she never viewed U Lock as her employer because she was not paid for her work.[93] U Lock was not a job but "a favor with a promise to be paid."[94] And Ms. Snyder similarly justified the omission of any unpaid wages from her schedules because she had not received income and was unaware that she could collect from U Lock.[95] She testified that she only learned she could sue U Lock when the Department of Labor came to her home and "said there's no favors, there's no bartering, there's no sisterly love, . . . they should have paid me the $7.25."[96] Unsurprisingly, no context was given for the alleged house call by the Department of Labor.

As to the wage claim litigation in the District Court, Ms. Snyder denied coordinating with either George or U Lock.[97] She also testified that she did not know why U Lock neither appeared nor responded to her complaint.[98] And given that Ms. Snyder admitted

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90 Id. at 47:6-10, 53:2-3.

91 Id. at 19:14-20.

92 Id. at 48:6-20, 51:10-11, 52:9-25.

93 Id. at 41:2-8, 45:16-22, 46:4-8, 46:23-47:1, 62:17-19, 63:19-64:5.

94 Id. at 61:13-19.

95 Id. at 23:10-13, 23:25-24:1, 46:7-8, 51:20-52:8, 54:10-24, 56:3-17, 57:18-58:14, 59:2-7, 60:10-17.

96 Id. at 45:16-22, 52:6-8, 64:2-5.

97 Id. at 21:13-18.

98 Id. at 21:19-25.

that the promised compensation was always to be deferred, she could not explain why she alleged U Lock was supposed to pay her monthly.[99]

While Ms. Snyder is neither a lawyer nor has legal training, she concedes that she has become fairly adept at litigation from "be[ing] in Court for the last 15 years."[100] In that vein, she testified that she prepared and filed the *Praecipe for a Writ of Summons in Equity and Assumpsit and for Lis Pendens* without assistance of counsel.[101] Though it might have been illuminating to probe Ms. Snyder's understanding of a lis pendens and why she requested one, that did not happen. But despite naming Ms. Biros, the seller-estates, the Trial Court judge, the Recorder of Deeds, and the Attorney General as defendants, she could only offer that she sued U Lock because that was who owed her money.[102] Similarly incongruous, Ms. Snyder purports to be unsure whether Ms. Biros prevailed in her litigation against U Lock,[103] but still filed a notice of appeal in the Trial Court as a non-party appellant.[104] She also asserts that it is purely coincidental that it was timestamped two minutes before U Lock's notice of bankruptcy and does not suggest any coordination with its counsel.[105]

Finally, in a bizarre and telling admission, Ms. Snyder testified that it is unimportant to her whether U Lock has assets to pay her claim so long as she has one.[106] She did not explain why, leaving the Court to wonder if she inadvertently said the quiet part out loud.

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99 Id. at 36:18-37:11.

100 Id. at 71:3-7.

101 Id. at 70:18-71:2; see *Exhibit 9*.

102 *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 71:12-20.

103 Id. at 68:15-69:19.

104 See *Exhibit 13*.

105 *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 74:11-75:24; Compare *Exhibit 13* with *Exhibit 14*.

106 *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 59:10-60:5.

For his part, George provided only half-hearted corroboration of the basic premise of Ms. Snyder's claim. Before delving into his testimony, the Court must stress that it has observed George both on and off the witness stand many times during the pendency of U Lock's case. In the past, the Court has often (though not always) found him to be the most credible party involved with a calm, forthright demeanor. *But this was a different George.* From the minute he took the witness stand, George awkwardly clutched the back rail as if holding on for dear life. He was visibly nervous and flushed, constantly shifting in his seat. It seemed George was testifying against his will.

The Court presumes that George's apparent discomfort stemmed from the fact that he already testified many times here and in the Trial Court that U Lock did not have employees.[107] Much like his sister, George suggested that any perceived inconsistency was a matter of semantics.[108] He testified that U Lock had several dozen "workers" helping throughout the years, but would not call them "employees" because there were no formal employment documents or payroll associated with them.[109] In fact, George did not necessarily know their last names or have their phone numbers.[110] Still, he insisted that no one worked more than "a few hours a year"[111] and were paid no more than $500 or $600.[112]

As to Ms. Snyder, George conceded that she "watched the cameras" for the years stated.[113] When asked if he expected to pay her for that work, he answered: "In some way,

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107 Id. at 95:17-21, 97:23-100:7.

108 Id. at 96:18-97:15.

109 Id. at 86:21-87:8, 95:17-100:7.

110 Id. at 97:1-14.

111 Id. at 95:22-96:4, 87:2-8.

112 *Exhibit 16* at 26:20-24.

113 *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 86:14-15.

shape, or form. . . . I was eventually planning on paying everybody."[114] George did not elaborate further, but previously offered a more robust response at the meeting of creditors:

> Shanni, you know, we didn't really consider her an employee. She's my sister, and I thought it was more of a favor and the understanding was when we developed the property, she would get something. . . . I think my brother might have said that he thought it was sisterly love."[115]

He described their "agreement" as "[j]ust that she would get something when . . . we got . . . everything off the ground."[116]

The meeting of creditors' transcripts revealed an intriguing detail not explored during the evidentiary hearing: Ms. Snyder provided her own camera system. George explained that the closed-circuit system he controlled was not remotely accessible, so she supplied her own.[117] Yet he also testified that the Property lacked internet service at the time.[118] As a result, he was unsure how Ms. Snyder accessed the cameras from her iPhone.[119] He mused that she might have tapped into someone else's Wi-Fi.[120]

Turning to the wage claim litigation, George admitted that he was aware of Ms. Snyder's complaint, but denied colluding with her to establish a claim against U Lock.[121] He testified that U Lock did not respond to the complaint because U Lock's counsel informed him that defending a labor claim would cost over $10,000.[122] Surprisingly, George did not inform

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114 Id. at 86:16-20.

115 *Exhibit 16* at 64:21-65:4, 105:6-12.

116 Id. at 21:17-21 (stammering omitted).

117 Id. at 79:21-81:16.

118 Id. at 80:22-81:2.

119 Id. at 79:10-22.

120 Id.

121 *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 87:10-18.

122 Id. at 87:19-24.

counsel that it was Ms. Snyder who commenced the suit.[123] Because U Lock lacked resources,[124] he reasoned that "if something fell through with the court case and everything with Biros that then there would be no money to pay, so it was kind of a moot point."[125] At the meeting of creditors, George put it bluntly: "we kind of thought she'd go away."[126] And even though he did not consider Ms. Snyder an employee of U Lock,[127] he purportedly has "no position" as to whether she was truthful with the District Court.[128]

Kash Snyder testified last. It did not go well. The most remarkable moment involved an extended back and forth over whether he remembered testifying minutes earlier that he has trouble remembering.[129] From the start, Kash claimed to be unaware that he was identified as a principal of U Lock.[130] He then shockingly stated that he had no recollection of Ms. Biros suing U Lock in 2017 before conceding there was a lawsuit over the Property.[131] Nor did he recall testifying under oath in the Trial Court during that case.[132] In fact, the only thing Kash appeared to remember clearly was that Ms. Snyder was performing "camera work" for U Lock, of which he "had limited knowledge."[133] Needless to say, his testimony was neither credible nor useful.

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123 Id. at 87:24-25.

124 *Exhibit 16* at 20:20-21:10, 21:21-24.

125 *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 88:1-7.

126 *Exhibit 16* at 21:7-10, 47:5-49:5

127 Id. at 20:20-21:10.

128 Id. at 27:23-28:16.

129 *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 108:10-25. To be clear, there was no suggestion that Kash's memory lapses resulted from a diagnosed condition.

130 Id. at 103:2-4.

131 Id. at 104:1-14, 104:24-105:9.

132 Id. at 106:3-9.

133 Id. at 108:3-6.

II. JURISDICTION

This Court has authority to exercise jurisdiction over the subject matter and the parties under 28 U.S.C. §§ 157(a), 1334, and the Order of Reference entered by the United States District Court for the Western District of Pennsylvania on October 16, 1984. This is clearly a core proceeding under 28 U.S.C. § 157(b)(2)(B) as it pertains to the "allowance or disallowance of claims against the estate."

Nevertheless, Ms. Snyder disputes the Court's jurisdiction.[134] She theorizes that withdrawal of the reference is mandatory because resolution of the contested matter requires "consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce."[135] Practically, Ms. Snyder is not so much denying this Court's jurisdiction as she is hoping it will evaporate upon a future event.[136] As it stands, unless the reference is withdrawn, the Court is duty-bound to exercise the jurisdiction it has been granted by the Order of Reference.

III. DISCUSSION

A. Threshold Issues

At the preliminary hearing on the claim objection, the Court ruled on the applicability of both collateral and judicial estoppel. Given that Ms. Snyder continues to argue that the facts underlying her judgment cannot be relitigated, as well as the likelihood of an appeal, it is worthwhile to reiterate those findings now.

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134 See *Respondent Shanni Snyder's Portion of the Pretrial Statement/Stipulation*, Dkt. No. 450 at ¶ 2; *Brief Regarding Bankruptcy Court Jurisdiction Over Contested Matter as to the Validity of Shanni Snyder Claim*, Dkt. No. 469.

135 28 U.S.C. § 157(d).

136 It is telling that Ms. Snyder neither sought expedited consideration from the District Court nor a stay of the evidentiary hearing pending a determination of her motion.

1. The Preclusive Effect of a Default Judgment

Collateral estoppel prohibits the re-litigation of issues that have been adjudicated in a prior lawsuit.[137] Although both state and federal courts recognize collateral estoppel principles, the preclusive effect of a federal judgment is determined by federal law.[138] Under federal law, collateral estoppel bars a party from relitigating an issue when:

> (1) the issue sought to be precluded [is] the same as the one involved in the prior action;
>
> (2) the issue [was] actually litigated;
>
> (3) it [was] determined by a valid and final judgment; and
>
> (4) the determination [was] essential to the prior judgment.[139]

An additional implicit requirement is that "the party against whom [collateral estoppel] is asserted [must be] a party or in privity with a party to the prior adjudication."[140]

Generally, issues raised in a default judgment are not "actually litigated" for purposes of collateral estoppel if the defendant neither appears nor participates.[141] The United States Court of Appeals for the Third Circuit observed that "invok[ing] the doctrine of collateral estoppel in default causes is not only an oppressive application of the doctrine, but it misconceives the nature of a default judgment."[142] Indeed, "[a] judgment by default only admits

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137 Wolstein v. Docteroff (In re Docteroff), 133 F.3d 210, 214 (3d Cir. 1997).

138 See Doe v. Hesketh, 828 F.3d 159, 171 (3d Cir. 2016); Paramount Aviation Corp. v. Agusta, 178 F.3d 132, 144 (3d Cir. 1999).

139 Peloro v. United States, 488 F.3d 163, 175 (3d Cir. 2007); see In re Docteroff, 133 F.3d at 214; Burlington N. R. Co. v. Hyundai Merch. Marine Co., 63 F.3d 1227, 1232 (3d Cir. 1995); In re Ross, 602 F.2d 604, 608 (3d Cir. 1979); In re McMillan, 579 F.2d 289, 291-92 (3d Cir. 1978); Haize v. Hanover Ins. Co., 536 F.2d 576, 579 (3d Cir. 1976).

140 Bestwall LLC v. Armstrong World Indus., Inc. (In re Bestwall LLC), 47 F.4th 233, 243 (3d Cir. 2022) (quoting Doe v. Hesketh, 828 F.3d at 171)). It appears this element is often omitted from case law unless it is at issue.

141 In re McMillan, 579 F.2d 289, 293 (3d Cir. 1978); see In re Chatkin, 465 B.R. at 65; Consumers Produce Co., Inc. v. Masdea (In re Masdea), 307 B.R. 466, 473 (Bankr. W.D. Pa. 2004).

142 In re McMillan, 579 F.2d at 293.

for the purpose of the action the legality of the demand or claim in suit: it does not make the allegations of the declaration or complaint evidence in an action upon a different claim."[143] As explained by the Supreme Court of the United States:

> Various considerations, other than the actual merits, may govern a party in bringing forward grounds of recovery or defence [sic] in one action, which may not exist in another action upon a different demand, such as the smallness of the amount or the value of the property in controversy, the difficulty of obtaining the necessary evidence, the expense of the litigation, and his own situation at the time. A party acting upon considerations like these ought not to be precluded from contesting in a subsequent action other demands arising out of the same transaction.[144]

Thus, a default judgment is "conclusive in a subsequent suit on the same cause of action involving the same parties," but does not "preclude the litigation of issues not litigated in the defaulted action."[145]

There is, however, an exception to the general rule. Issues may be deemed "actually litigated" where the defendant "participates extensively" before the default "but deliberately prevents a resolution of [a lawsuit] and a default judgment is entered . . . as a sanction."[146] In such cases, the "actually litigated" element is sometimes articulated as "the party against whom the bar is asserted had a full and fair opportunity to litigate the issue in

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143 Cromwell v. Sac Cnty., 94 U.S. 351, 356, 24 L. Ed. 195 (1876).

144 Id. See In re McMillan, 579 F.2d at 293 ("The defendant in a suit should not be compelled, at his peril, to embark on extensive litigation involving perhaps some minor matter 'in order to prevent the operation of a judgment which would be held conclusively to have established against him every material fact alleged and not denied in the declaration, so as to preclude him from showing the truth if another controversy should arise between the same parties.'") (quoting Vol. 1B Moore's Federal Practice P 0.444(2) at 4006-07).

145 In re McMillan, 579 F.2d at 293.

146 In re Masdea, 307 B.R. at 473 (citing In re Docteroff, 133 F.3d at 215).

question."[147] But this exception applies only to "atypical" defaults. Simply put, "a full and fair opportunity to litigate" does not render "typical" non-appearance defaults "actually litigated."[148]

Here, it is undisputed that U Lock never appeared, answered, or otherwise defended against Ms. Snyder's wage claim in the District Court. As such, her judgment is a "typical" default judgment. While the District Court conducted a brief hearing under Fed. R. Civ. P. 55(b)(2) and Ms. Snyder supplied perfunctory testimony in support of her claim, U Lock's complete lack of participation is dispositive. Under these circumstances, proper notice and "a full and fair opportunity to litigate" do not impact whether issues were "actually litigated." Accordingly, Ms. Biros's objection to Ms. Snyder's proof of claim is not barred by collateral estoppel.

2. Applicability of Judicial Estoppel

Judicial estoppel "generally prevents a party from prevailing . . . on an argument and then relying on a contradictory argument to prevail in another phase" of litigation or subsequent case.[149] The flagrant use of inconsistent positions is "an evil the courts should not tolerate" and an "affront to judicial dignity,"[150] so the doctrine exists "'to protect the integrity of

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147 See In re Bestwall LLC, 47 F.4th at 243; Doe v. Hesketh, 828 F.3d at 171.

148 See In re McMillan, 579 F.2d at 293; In re Chatkin, 465 B.R. at 65; In re Masdea, 307 B.R. at 473.

149 Pegram v. Herdrich, 530 U.S. 211, 227, n. 8, 120 S.Ct. 2143, 147 L.Ed.2d 164 (2000); see Zedner v. United States, 547 U.S. 489, 504, 126 S. Ct. 1976, 1987, 164 L. Ed. 2d 749 (2006); New Hampshire v. Maine, 532 U.S. 742, 749, 121 S. Ct. 1808, 1814, 149 L. Ed. 2d 968 (2001); see also Davis v. Wakelee, 156 U.S. 680, 689, 15 S. Ct. 555, 558, 39 L. Ed. 578 (1895) ("where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him.").

150 Scarano v. Cent. R. Co. of N. J., 203 F.2d 510, 513 (3d Cir. 1953).

the judicial process.'"[151] Thus, unlike collateral estoppel, judicial estoppel is a sanction targeting a litigant's conduct rather than a doctrine of finality.[152]

Judicial estoppel is largely a matter of discretion.[153] "[T]here is no rigid test"[154] because "'[t]he circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle.'"[155] Still, several factors inform a court's decision to apply the doctrine in a particular case. First, a party's later position must be clearly and irreconcilably inconsistent with its earlier position.[156] Next, a court must have accepted the initial position, introducing the risk of inconsistent rulings and the perception that one of the courts was misled.[157] The Third Circuit instructs that the change in position must be adopted in bad faith.[158] The court also should consider whether the inconsistent positions would bestow an unfair advantage to the asserting party or an unfair detriment to the other.[159] Finally, because judicial estoppel is a sanction, it may be applied only if "'tailored to address the harm

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151 New Hampshire v. Maine, 532 U.S. at 749 (quoting Edwards v. Aetna Life Ins. Co., 690 F.2d 595, 598 (6th Cir. 1982)).

152 Montrose Med. Grp. Participating Sav. Plan v. Bulger, 243 F.3d 773, 779 (3d Cir. 2001); see Klein v. Stahl GMBH & Co. Maschinefabrik, 185 F.3d 98, 109 (3d Cir. 1999) ("Judicial estoppel is one arrow in the quiver of sanctions at a court's disposal.").

153 New Hampshire v. Maine, 532 U.S. at 750.

154 G-I Holdings, Inc. v. Reliance Ins. Co., 586 F.3d 247, 262 (3d Cir. 2009), as amended (Dec. 4, 2009).

155 New Hampshire v. Maine, 532 U.S. at 750 (quoting Allen v. Zurich Ins. Co., 667 F.2d 1162, 1166 (4th Cir. 1982)).

156 Id.; see G-I Holdings, Inc. v. Reliance Ins. Co., 586 F.3d at 262; Dam Things from Denmark, a/k/a Troll Co. ApS, v. Russ Berrie & Co., Inc., 290 F.3d 548, 559 (3d Cir. 2002).

157 New Hampshire v. Maine, 532 U.S. at 750-751; G-I Holdings, Inc. v. Reliance Ins. Co., 586 F.3d at 262.

158 See G-I Holdings, Inc. v. Reliance Ins. Co., 586 F.3d at 262; Dam Things from Denmark, a/k/a Troll Co. ApS, v. Russ Berrie & Co., Inc., 290 F.3d at 559; Montrose Med. Grp. Participating Sav. Plan v. Bulger, 243 F.3d at 779.

159 New Hampshire v. Maine, 532 U.S. at 751; see United States v. Pelullo, 399 F.3d 197, 223 (3d Cir. 2005), as amended (Mar. 8, 2005).

identified' and no lesser sanction would adequately remedy the damage done by the litigant's misconduct."[160]

Ms. Biros argues that Ms. Snyder should be judicially estopped from asserting a wage claim against U Lock here because she failed to disclose one in her chapter 7 case.[161] Certainly, Ms. Snyder's schedules and declarations that she was neither employed nor owed wages are patently inconsistent with her contemporaneous assertion of a wage claim in the District Court. And, of course, a discharge without the payment of claims evidences judicial acceptance of Ms. Snyder's representation that she had no non-exempt assets.[162] Nevertheless, judicial estoppel is an inappropriate sanction under the circumstances.

The wage claim asserted against U Lock is partially an asset of Ms. Snyder's chapter 7 estate and is now subject to an agreement with her trustee.[163] Their stipulation specifically grants Ms. Snyder the standing to pursue the estate's interest in the wage claim on behalf her creditors.[164] While the Third Circuit has repeatedly estopped debtors who concealed pending or potential claims,[165] a trustee "'is not tainted or burdened by the debtor's misconduct.'"[166] Otherwise judicial estoppel punishes the wrong party since "creditors should not be denied the benefit of a cause of action, and potential recovery, due to [a debtor]'s failure

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160 Montrose Med. Grp. Participating Sav. Plan v. Bulger, 243 F.3d at 779–80 (quoting Klein v. Stahl GMBH & Co. Maschinefabrik, 185 F.3d at 108).

161 *Objection to Claim Number 1 Filed by Shanni Snyder*, Dkt. No. 340 at ¶¶ 20-25.

162 See *Exhibit 2* at BIROS_000014

163 See *Stipulation Between Chapter 7 Trustee, Charles O. Zebley, Jr., Chapter 7 Trustee Robert H. Slone, and Chapter 7 Debtor, Shanni Sue Snyder*, Dkt. No. 228.

164 Id. at ¶ 24.

165 See Krystal Cadillac–Oldsmobile GMC Truck, Inc. v. Gen. Motors Corp., 337 F.3d 314 (3d Cir. 2003); Oneida Motor Freight, Inc. v. United Jersey Bank, 848 F.2d 414 (3d Cir. 1988).

166 Killmeyer v. Oglebay Norton Co., 817 F. Supp. 2d 681, 692 (W.D. Pa. 2011) (quoting Parker v. Wendy's Int'l, Inc., 365 F.3d 1268, 1273 (11th Cir. 2004)); see Riazuddin v. Schindler Elevator Corp. (In re Riazuddin), 363 B.R. 177, 187-88 (B.A.P. 10th Cir. 2007).

to disclose."[167] Therefore, despite Ms. Snyder's presumed bad faith,[168] she cannot be judicially estopped from asserting the claim any more than her chapter 7 trustee could be.[169]

B. The Claim Objection

Under section 502(a) of the Bankruptcy Code,[170] a proof of claim "is deemed allowed, unless a party in interest . . . objects."[171] The Federal Rules of Bankruptcy Procedure further provide that "[a] proof of claim executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the claim."[172] "In other words, a claim that alleges facts sufficient to support a legal liability to the claimant satisfies the claimant's initial obligation to go forward."[173] Then, "the burden shifts to the objector to produce sufficient evidence to negate the *prima facie* validity of the filed claim."[174] The objector "must produce evidence equal in force to the *prima facie* case" that "would refute at least one of

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167 Killmeyer v. Oglebay Norton Co., 817 F. Supp. 2d at 692.

168 A presumption of bad faith arises when "averments in the pleadings demonstrate both knowledge of a claim and a motive to conceal that claim in the face of an affirmative duty to disclose." Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. Gen. Motors Corp., 337 F.3d at 321 (citing Oneida Motor Freight, Inc. v. United Jersey Bank, 848 F.2d 416-18).

169 Because the Court finds that Ms. Snyder does not have a claim against U Lock, it need not consider whether she should be judicially estopped from asserting a wage claim beyond her chapter 7 estate's interest.

170 Unless expressly stated otherwise, all references to "Bankruptcy Code" or to specific sections shall be to the Bankruptcy Reform Act of 1978, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Pub. L. No. 109-8, 119 Stat. 23, 11 U.S.C. § 101, *et seq*. All references to "Bankruptcy Rule" shall be to the Federal Rules of Bankruptcy Procedure.

171 11 U.S.C. § 502(a).

172 Fed. R. Bankr. P. 3001(f). Ms. Snyder contends that "[t]he scheduling of a debt constitutes evidence of the validity and amount of the claim," *Post-Hearing Brief Regarding Shanni Snyder Claim and the Objection Thereto*, Dkt. No. 497 at 3, but that is only true in chapter 11 cases. See 11 U.S.C. 1111(a); Fed. R. Bankr. P. 3003(a)-(b).

173 In re Allegheny Int'l,, Inc., 954 F.2d 167, 173 (3d Cir. 1992).

174 Payne v. Lampe (In re Lampe), 665 F.3d 506, 514 (3d Cir. 2011).

the allegations that is essential to claim's legal sufficiency."[175] If successful, "the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence."[176]

At the start of the evidentiary hearing, the Court concluded that Ms. Snyder's claim was not presumptively valid on the record before it.[177] On its face, the wage claim (which was established solely by a default judgment) clashed with her contemporaneous court-filed declarations that she was neither employed nor owed wages. Given this patent contradiction, the burden shifted to Ms. Snyder to prove the existence of her claim by a preponderance of the evidence.[178] The Court finds that she did not carry her burden legally or factually.[179]

1. Ms. Snyder Has Not Established the FLSA Applies

To start, the Court observes that Ms. Snyder offered only cursory arguments on the applicability of the FLSA.[180] This appears to have been driven by her refusal to acknowledge that such issues were in play as part of a claim objection.[181] Whatever the reason, the Court is left with only a superficial theory regarding a deceptively complex area of law.

"The FLSA establishes federal minimum-wage, maximum-hour, and overtime guarantees that cannot be modified by contract."[182] In this sense, the FLSA does not "create new wage liabilities," but merely fixes standards to existing obligations.[183] And while the FLSA

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175 In re Allegheny Int'l,, Inc., 954 F.2d at 173-74.

176 Id. at 174.

177 *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 11:7-12:7.

178 Presumably because Ms. Snyder maintains her judgment is unassailable, she contends that the burden of proof should not have shifted to her. *Post-Hearing Brief Regarding Shanni Snyder Claim and the Objection Thereto*, Dkt. No. 497 at 4.

179 For the removal of any doubt, the analysis contained in sections III.B.1 and III.B.2, *infra*, each provide an independent justification to disallow Ms. Snyder's claim in its entirety.

180 See *Post-Hearing Brief Regarding Shanni Snyder Claim and the Objection Thereto*, Dkt. No. 497 at 7-8.

181 See section II, *supra*.

182 Genesis Healthcare Corp. v. Symczyk, 569 U.S. 66, 69, 133 S. Ct. 1523, 1527, 185 L. Ed. 2d 636 (2013).

183 Bowman v. Pace Co., 119 F.2d 858, 860 (5th Cir. 1941).

covers most workers, it does not reach them all. To determine the applicability of the minimum wage provisions requires parsing a web of statutory definitions.

A reasonable starting point is section 206(a) of the FLSA, which provides:

> Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates . . . .[184]

An "employee" is "any individual employed by an employer,"[185] while an "employer" "includes any person acting directly or indirectly in the interest of an employer in relation to an employee."[186] The Third Circuit has recognized that "[t]he FLSA defines employer and employee broadly and with 'striking breadth.'"[187] "Employ," in turn, means "to suffer or permit to work."[188]

Ms. Snyder's argument stops short with these three terms, avoiding a critical concept: *commerce*. "Commerce" is defined under the FLSA as "trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof."[189] Her omission is significant because the constitutional

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184 29 U.S.C. § 206(a).

185 29 U.S.C. § 203(e)(1).

186 29 U.S.C. § 203(d).

187 Burrell v. Staff, 60 F.4th 25, 43 (3d Cir. 2023), cert. denied sub nom. Lackawanna Recycling Ctr., Inc. v. Burrell, 143 S. Ct. 2662, 216 L. Ed. 2d 1239 (2023), (quoting Rutherford Food Corp. v. McComb, 331 U.S. 722, 730, 67 S.Ct. 1473, 91 L.Ed. 1772 (1947)).

188 29 U.S.C. § 203(g). For the sake of completeness, "[t]he Supreme Court interprets 'work' broadly as 'physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the [employer's] benefit.'" Tyger v. Precision Drilling Corp., 78 F.4th 587, 591 (3d Cir. 2023) (quoting IBP, Inc. v. Alvarez, 546 U.S. 21, 25, 126 S.Ct. 514, 163 L.Ed.2d 288 (2005) (internal quotation marks omitted)).

189 29 U.S.C. § 203(b).

authority for the FLSA derives from the Commerce Clause,[190] meaning that interstate commerce is its legislative hook.[191]

Returning to section 206(a) of FLSA, employee coverage can be triggered if either the employee or employer is "engaged in commerce." Individual coverage applies when employees are themselves "engaged in commerce or in the production of goods for commerce,"[192] but activities that "merely 'affect commerce'" are insufficient.[193] In contrast, "enterprise"[194] coverage extends to employees "employed in an enterprise engaged in commerce or in the production of goods for commerce."[195] Because individual coverage focuses on the activities of the employee rather than the business of the employer, it is the narrower alternative.

Although most cases under the FLSA fall within enterprise coverage, notable limitations are relevant here. For example, to be an "enterprise engaged in commerce," it must have an "annual gross volume of sales made or business done [that] is not less than $500,000."[196] There is also a so-called "Mom and Pop" exemption applicable to "[a]ny establishment that has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner."[197] The implementing regulations clarify that "other

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190 U.S. Const., Art. I, § 8, cl. 3.

191 See Mitchell v. Lublin, McGaughy & Assocs., 358 U.S. 207, 211, 79 S. Ct. 260, 264, 3 L. Ed. 2d 243 (1959); Cruz v. Chesapeake Shipping, Inc., 932 F.2d 218, 225-26 (3d Cir. 1991).

192 29 U.S.C. § 206(a).

193 Mitchell v. Lublin, McGaughy & Assocs., 358 U.S. at 211.

194 Generally, "enterprise" under the FLSA "means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor." 29 U.S.C. § 203(r)(1).

195 29 U.S.C. § 206(a).

196 29 U.S.C. § 203(s)(1)(A)(ii).

197 29 U.S.C. § 203(s)(2); see Donovan v. Sutherland, 530 F. Supp. 748, 749 (E.D. Mich. 1982).

member of the immediate family of such owner" includes relationships such as brothers and sisters.[198]

Ms. Snyder has never articulated a theory of FLSA coverage, but U Lock is plainly not an "enterprise engaged in commerce" under section 206(a).[199] Putting aside whether U Lock engaged in *interstate* commerce, the record reflects that its gross revenue never reached $14,000, let alone $500,000. Further, U Lock appears to fall within the "Mom and Pop" exemption because its only regular employees were George, Kash, and (allegedly) Ms. Snyder. Although George testified that "several dozen other people did extensive work for U Lock over the years,"[200] this fails to demonstrate the existence of "regular employees."[201] His insistence that no one worked more than "a few hours a year"[202] suggests that such "help" was infrequent, irregular, and sporadic.[203] It seems unlikely these workers "filled roles and functions which were an integral part of the operation of the establishment."[204] In fact, no one explained what these workers did.

Without enterprise coverage, Ms. Snyder needed to show that her individual activities on behalf of U Lock qualified as being "engaged in [interstate] commerce."[205] She declined to do so. As a result, the Court is left to wonder how monitoring push notifications from a junkyard's camera system implicates interstate commerce. This is particularly true where

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198 29 C.F.R. § 779.234.

199 29 U.S.C. § 206(a).

200 *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 87:2-8.

201 29 U.S.C. § 203(s)(2).

202 *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 95:22-96:4.

203 See 29 C.F.R. § 779.234 ("The 1966 amendments extended the exception to include family operated establishments which only employ persons other than members of the immediate family infrequently, irregularly, and sporadically.").

204 Donovan v. Sutherland, 530 F. Supp. at 750; see Coronado v. Selkirk, No. G88-474CA7, 1989 WL 161165, at *5 (W.D. Mich. June 23, 1989); Donovan v. I & J, Inc., 567 F. Supp. 93, 102 (D.N.M. 1983).

205 29 U.S.C. § 206(a).

U Lock's minimal self-storage revenue raises questions as to the scope of its own commercial engagement. Further muddying the waters is the fact U Lock was meant to commercially develop the Property, but undisputedly remained stuck in a "holding pattern."[206] It was incumbent on Ms. Snyder as the claimant to establish these elements through an affirmative showing.

Even if Ms. Snyder could overcome those hurdles, there is another unappreciated complexity to her claim. As examined below, Ms. Snyder testified that her work for U Lock was essentially an on-call arrangement with her primarily responding to iPhone push notifications. Herein lies the rub: time spent on-call is compensable under the FLSA only if the employee was "engaged to wait," and not if they "waited to be engaged."[207] The distinction largely boils down to "whether waiting time is spent predominantly for the benefit of the employer" and "the degree to which the employee is free to engage in personal activities."[208] Because Ms. Snyder testified that she engaged in a multitude of personal activities unimpeded, including child care, socializing, and sleeping,[209] only time spent actively working would be compensable.

For all these reasons, Ms. Snyder failed to prove that the FLSA applied to the services she allegedly performed for U Lock.

2. Ms. Snyder's Claim is Not Credible

Ms. Snyder declares victory in her post-hearing brief, arguing that Ms. Biros provided no testimony or evidence refuting her claim that she provided services to U Lock

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206 *Exhibit 16* at 17:10-18.

207 See Skidmore v. Swift & Co., 323 U.S. 134, 137, 65 S. Ct. 161, 163, 89 L. Ed. 124 (1944).

208 Ingram v. Cnty. of Bucks, No. 96-2122, 1997 WL 197299, at *3 (E.D. Pa. Apr. 16, 1997), aff'd, 144 F.3d 265 (3d Cir. 1998) (citing Owens v. Local No. 169, 971 F.2d 347, 350 (9th Cir. 1992), Renfo v. City of Emporia, Kan., 948 F.2d 1529, 1537 (10th Cir. 1991), and Brock v. El Paso Nat. Gas Co., 826 F.2d 369, 372-73 (5th Cir. 1987)).

209 *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 16:3-10, 17:17-18:6, 78:9-24.

without payment.[210] Her assertion grossly mischaracterizes her burden and the record. Not a scintilla of objective or documentary evidence supports her wage claim, and her own contemporaneous declarations unequivocally deny that she was employed or owed wages. Ms. Snyder's attempt to weave an unimpeachable narrative within the confines of her and her brothers' prior sworn statements is transparent and strains credulity. As will be explained, her testimony often omitted salient details, relied on implausible ones, and contradicted the factual predicates of her claim. The inescapable conclusion is that Ms. Snyder fabricated a possible explanation for her proof of claim to (awkwardly) fit within her false representations to the District Court.

Reviewing the evidentiary record, the Court is struck by the lack of exposition that should have connected Ms. Snyder's assertions into a coherent account. George and Kash confirmed that she "watched the cameras,"[211] but little else. Consider the following unanswered questions:

> ***How did Ms. Snyder come to work for U Lock in the first place?*** In terms of telling a convincing story, the beginning is a curious thing to leave out.
>
> ***Why was it necessary to monitor the Property?*** After all, Ms. Snyder never reported an incident to law enforcement in four years.[212] Nor was there evidence that she ever alerted George to anything of importance. And, to be blunt, it was a junkyard full of debris and scrap, so what required protection?
>
> ***How frequent were the push notifications and how much time was actually spent checking the cameras and contacting George?*** While the record is thin, there is more information about Ms. Snyder's personal activities during work hours than the work she actually performed.

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210 *Post-Hearing Brief Regarding Shanni Snyder Claim and the Objection Thereto*, Dkt. No. 497 at 6.

211 *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 86:14-15; 108:3-6.

212 Id. at 81:4-12.

> ***Who monitored the Property after Ms. Snyder quit in February 2020?*** Did anyone? The answer would seem to bear on the likelihood that Ms. Snyder did so previously.
>
> ***Why stop at 3 a.m.?*** The time appears arbitrary since it neither reflects a standard eight-hour work shift nor is it a full night shift.
>
> ***What happened after 3 a.m.?*** Remember that only Ms. Snyder had remote access to the cameras, so George or Kash would have to go to the Property to relieve her between 3 a.m. and 5 p.m.
>
> ***How was Ms. Snyder able to remotely access the cameras at all if U Lock did not have Wi-Fi at the time?*** She did not say, George did not know,[213] and Kash generally professed "limited knowledge."[214] Was this issue not raised during the evidentiary hearing because Ms. Biros received a satisfactory answer through discovery?
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> ***Why did George not acquire his own dropcams or download the application to monitor them himself?*** Whatever the economic realities of U Lock, the cost of a few webcams should have been an achievable investment if 24-hour surveillance was necessary. But even if U Lock needed Ms. Snyder to supply the cameras, why have her monitor them? And why would Ms. Snyder want to be an unpaid middleman forwarding alerts to George when they could have been sent to him directly?
>
> ***Why did the Department of Labor visit Ms. Snyder's home?*** In the absence of any explanation, the Court is left to envision a world in which officials go door-to-door like an evangelical sect spreading the "good news" about potential wage claims.

These details are so obviously relevant that the Court cannot help but view their absence as calculated.[215]

In any event, Ms. Snyder insists that she worked ten hours a night, seven days a week, for four years without a single sick day, vacation, or assistance with her three children.

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213 *Exhibit 16* at 80:22-81:2.

214 *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 108:3-6.

215 Given the shifting burdens, the Court surmises that Ms. Biros' counsel intentionally avoided throwing Ms. Snyder a rope as to these matters on cross-examination.

Ms. Biros argues this feat is implausible,[216] an "insinuation" Ms. Snyder shrugs off as unproven.[217] Normally, a Cal Ripken-esque 1,506-day streak of ten-hour workdays would seem unrealistic (and perhaps unlawful). But the idea that someone would do that without pay is downright fanciful. To combat this perception, Ms. Snyder steered into the skid, contending that "work" essentially meant having her iPhone handy. Far from time being "dedicated" or "set aside,"[218] she apparently went about her day until she received a push notification. That is, Ms. Snyder cared for her young children, cooked meals, socialized outside her home, and slept.[219] And, as she would have it, even childbirth and the accompanying hospitalization did not interfere with her work for U Lock.[220] But Ms. Snyder also asserts that her work was not completely passive: "there were times in the day I would watch it, too."[221]

Even before weighing credibility, Ms. Snyder's testimony is problematic on its face. There is inherent tension between portraying her work as real and substantial and the seeming lack of any disruption to her personal life or objective evidence supporting its occurrence. Ms. Snyder's attempts to temper her over-the-top assertions, like the suggestion that a daily ten-hour work schedule was uninterrupted by childbirth, necessarily minimize her alleged commitment to U Lock. It is the difference between monitoring *cameras* and monitoring *notifications* from cameras. At the same time, rather than defend the materiality of relying on phone alerts alone, Ms. Snyder vaguely maintains that she sometimes watched the camera

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216 *Post-Trial Brief in Support of Christine Biros' Objection to Shanni Snyder's Proof of Claim*, Dkt. No. 498 at 17-19.

217 *Post-Hearing Brief Regarding Shanni Snyder Claim and the Objection Thereto*, Dkt. No. 497 at 6.

218 *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 36:14-15.

219 Id. at 16:3-10, 17:17-18:6, 78:9-24.

220 Id. at 36:1-7.

221 Id. at 16:9-10.

feed.[222] So all the Court has is her word that she performed some nebulous services while doing other things without any sense of the actual effort or time expended.

Ultimately, "[t]he lady doth protest too much, methinks."[223] The Court does not believe that Ms. Snyder ever watched the cameras without a prior notification because doing so makes as much sense as watching a phone to see if it will ring. Nor is it convinced that she monitored camera alerts on her phone to any substantial degree. Frankly, there is an inverse relationship between Ms. Snyder's credibility and the amount of work claimed given her testimony's bizarre mix of exaggeration and contradiction. After all, why would anyone keep working ten hours a day for four years without payment? Her testimony shunned any degree of detail about her alleged work in favor of self-serving, generalized statements that raise more questions than they answer. And Ms. Snyder's vehemence that her testimony must be accepted if not disproven misapprehends her burden and overestimates her credibility.

But Ms. Snyder's testimony was not unrebutted—her own contemporaneous bankruptcy declarations explicitly refute her present testimony in support of a wage claim. As does her declaration in the child custody matter.[224] Taking all as true, Ms. Snyder signed a sworn declaration that she was neither employed nor owed wages in between two ten-hour work shifts while expecting roughly $50,000 in wages. She dances around this paradox with feeble excuses: that she did not understand the direct questions asked, view herself as employed, or know that she could sue U Lock for unpaid wages. The Court is floored by the jarring dichotomy of presenting Ms. Snyder as a savvy pro se litigant who is simultaneously befuddled

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222 Id.

223 WILLIAM SHAKESPEARE, *HAMLET*, Act III, Scene 2.

224 *Exhibit 1* at BIROS_00001-02.

when asked to list "amounts someone owes you" including "[u]npaid wages."[225] That Ms. Snyder could obtain a lis pendens—a fairly esoteric legal mechanism—but not understand that she was owed wages that were promised for completed work is preposterous. If anything, it is more noteworthy that Ms. Snyder, much like George and Kash, testified that she did not actually consider herself "employed" by U Lock at the time.[226] Her change in position comes across as opportunistic, even if the Department of Labor's convenient house-call is less far-fetched than it sounds, given its timing and her failure to promptly amend her schedules.[227] In sum, Ms. Snyder's efforts to distance herself from her prior sworn statements are not credible.

Ironically, the agreement described by Ms. Snyder and George is likely the most plausible aspect of their testimony, but it is irreconcilable with the wage claim she asserts. Indeed, Ms. Snyder consistently expressed George's promise to pay her as conditional:

> [George] promised to pay *when* things got straightened out, *if* he got a mortgage on the place, *if* the property were developed. You know, he kept promising he would pay. It continued. He promised over and over.[228]
>
> * * *
>
> And [George] said he would pay in the beginning. He said, *when* we got things straightened out. You know, there were legal issues with the Biroses. . . . And we were waiting on that money *maybe* to clear up after 2018.[229]
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> * * *

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225 *Exhibit 2* at BIROS_000023.

226 *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 41:2-8, 45:16-18, 46:4-8, 46:23-47:1, 62:17-19, 63:19-64:5.

227 To be clear, Ms. Snyder gets no credit for amending her schedules three years later after this Court advised her to do so.

228 *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 18:16-19 (emphasis added).

229 Id. at 18:25-19:4 (emphasis added).

> [Ms. Snyder expected] [a]t least minimum wage, but [George] at one point said he would give me more. *If* it were developed and it took off, it could have been a commercial, a strip mall, whatever it was.[230]

During the evidentiary hearing, George's testimony was non-committal:

> In some way, shape, or form. . . . I was eventually planning on paying everybody.[231]
>
> * * *
>
> [W]e had big plans for the property, and I figured there would be money to pay at the end.[232]

At the meeting of creditors, however, he made clear that he viewed their agreement as contingent on the development of the Property:

> [The agreement was] [j]ust that she would get something *when* . . . we got . . . everything off the ground.[233]
>
> * * *
>
> [Ms. Snyder]'s my sister, and I thought it was more of a favor and the understanding was *when* we developed the property, she would get something.[234]

Assuming Ms. Snyder and George testified truthfully, they outlined an agreement to share the profits of a real estate venture, not an employment agreement. This is supported by the conditional promise of compensation, the economic realities of U Lock, and the fact that no one—Ms. Snyder included—considered her an employee.

The conditional promise to an undefined share of profits from a property venture bears no relation to the wage claim Ms. Snyder filed in the District Court. Her expectation of a

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230 Id. at 19:5-8 (emphasis added).

231 Id. at 86:18-20.

232 Id. at 88:2-3.

233 *Exhibit 16* at 21:17-21 (stammering omitted, emphasis added).

234 Id. at 64:23-65:1 (emphasis added).

minimum wage appears largely one-sided, to have arose after the fact, and stems from her discovery of the FLSA rather than any agreement with George. Worse still, the allegation that Ms. Snyder was to be paid monthly conflicts with their testimony that she would be paid "if" or "when" the Property was developed. Therefore, as previewed in the introduction to this *Memorandum Opinion*, the Court finds that Ms. Snyder lied to the District Court to establish her wage claim, and then to this Court in pressing it.

It is not hard to discern why Ms. Snyder fabricated her claim: to manufacture a means to continue the litigation against Ms. Biros in hopes of recapturing the Property. The first thing Ms. Snyder did ostensibly to enforce her judgment against U Lock was to cloud the title to the Property already awarded to Ms. Biros. Certainly, the avowed purpose of U Lock's chapter 7 was to avoid the transfer of the Property to Ms. Biros as a preference or fraudulent transfer. For that reason alone, Ms. Snyder's assertion that she was unsure if Ms. Biros prevailed against U Lock in the state courts is absurd. So again, "[t]he lady doth protest too much,"[235] further damaging her credibility.

The timing of Ms. Snyder's actions is also revealing. First, she "discovered" her wage claim two months after the Superior Court affirmed the imposition of a constructive trust on the Property and only days before re-argument was denied.[236] Next, Ms. Snyder only asserted an interest in the Property after the Supreme Court denied U Lock's leave to appeal despite obtaining the judgment five months earlier.[237] Finally, U Lock's involuntary petition appears timed to stay the Prothonotary from issuing a writ of possession in favor of Ms. Biros.

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235 WILLIAM SHAKESPEARE, *HAMLET*, Act III, Scene 2.

236 See Biros v. U Lock Inc., 255 A.3d at 489, re-argument denied (July 28, 2021).

237 It is important to remember that Ms. Snyder disagrees with the Court (and the District Court) that the Trial Court's order necessarily held that U Lock never owned the Property's equitable interest. So from her perspective, her judgment clouded U Lock's interest before it could be transferred to Ms. Biros.

Frankly, the wage claim is transparently a means to an end. On the one hand, Ms. Snyder demanded nearly $130,000 in unpaid wages from U Lock, insisting that she implausibly worked ten hours a day for four years straight. Yet during the evidentiary hearing, she testified that she "was willing to reduce [her] claim to have *a claim*," acknowledging that U Lock lacked funds to pay any.[238] This statement is curious because U Lock never had the capacity to pay—that was why her alleged compensation was deferred. Given that Ms. Snyder was always aware of that, the Court perceives her contrasting approach to her claim as utilitarian. Outside of bankruptcy, it was strategically necessary to have a large judgment to sufficiently cloud title to the Property, but any claim will afford standing to participate in a bankruptcy case. Sometimes people accidentally say what they really think.

In a similar vein, Ms. Snyder's conduct reveals that she was never serious about collecting a wage claim. She knew U Lock lacked the financial resources to satisfy a judgment, but did not pursue George, Kash, or the Biroses as U Lock's responsible parties.[239] Instead, Ms. Snyder opted to sue U Lock alone and then assert a lien against a property U Lock did not own based on a Trial Court order affirmed on appeal.[240]

Finally, the Court observes (without necessarily finding) that there is also ample reason to believe that others helped facilitate Ms. Snyder's fraud. George's conduct is particularly suspect. He did not oppose Ms. Snyder's wage claim in the District Court despite not believing she was an employee and, as previously suggested, his own potential personal liability. George is also surprisingly agnostic about whether Ms. Snyder was truthful with the

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238 *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 60:4-5 (emphasis added).

239 The Court mentions the Biroses not because there is evidence that Ms. Biros and her brother were U Lock's responsible parties, but because Ms. Snyder has repeatedly alleged that they were in control of U Lock.

240 In fact, the Trial Court's order would have been final but for the Supreme Court of Pennsylvania staying the remand to permit U Lock to petition the United States Supreme Court for review. See In re U Lock, Inc., 652 B.R. at 461.

District Court.[241] And the Court recognizes that he began walking back his state court testimony that U Lock had no employees soon after this case was filed.[242]

Having analyzed the wage claim, it is apparent that it would not have withstood any degree of scrutiny if challenged. In fairness, George's economic justification to permit the default is far from far from irrational. Yet his averment that he did not inform U Lock's counsel that Ms. Snyder commenced the FLSA action does not look innocent. If credible, hiding such a detail from counsel suggests George's complicity in her fraud. If not, his testimony is a naked attempt to insulate counsel from their scheme. The Court also notes that the timing of certain state court pleadings hints at coordination between U Lock's counsel and Ms. Snyder.[243]

For today, it is enough to find that Ms. Snyder's wage claim was a sham and disallow it in its entirety. But the fraud on *this* Court cannot go unanswered, so she will be required to show cause why sanctions should not be imposed.

That said, the Court cautions that prudential concerns will necessarily limit the scope of the show cause proceedings. Only the District Court can address the fraud that precipitated the judgment. Also, judicial economy (particularly given the inevitability of appeals) urges that any determination of Ms. Biros' damages arising from Ms. Snyder's fraudulent conduct be resolved through the pending RICO action. As it stands, the Court's focus is two-fold: (1) the estate's administrative insolvency must be remedied; and (2) Ms. Snyder's chapter 7 trustee, who was unnecessarily reappointed to administer a fraudulent claim, should

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241 *Exhibit 16* at 27:23-28:16.

242 See, e.g., id. at 63:1-65:13; *Transcript of July 14, 2023 Evidentiary Hearing*, Dkt. No. 488 at 95:17-97:15.

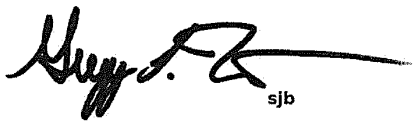
243 Compare *Exhibit 13* with *Exhibit 14*.

not be out of pocket either. Absent any general unsecured creditors other than Ms. Biros, there is little point to prolonging the final disposition of this case with additional litigation.[244]

IV. CONCLUSION

In light of the foregoing, Ms. Snyder's proof of claim is disallowed in its entirety. This opinion constitutes the Court's findings of fact and conclusions of law in accordance with Fed. R. Bankr. P. 7052. The Court will issue a separate order consistent with this opinion.

ENTERED at Pittsburgh, Pennsylvania.



Dated: February 29, 2024

GREGORY L. TADDONIO
CHIEF UNITED STATES BANKRUPTCY JUDGE

Case administrator to mail to:
Debtor
George Snyder
Charles O. Zebley, Jr.

244 The Court is also mindful that an order to show cause will likely be held in abeyance due to an appeal of this *Memorandum Opinion*.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re:	:	Case No. 22-20823-GLT
	:	Chapter 7
U LOCK, INC.,	:	
	:	
Debtor.	:	Related to Dkt. Nos. 340, 357, 368, 450, 454
	:	

ORDER

These matters came before the Court upon the *Objection to Claim Number 1 Filed by Shanni Snyder*[1] ("Objection to Claim") filed by Christine Biros and the *Response to Objection to Claim Number 1 Filed [sic] Shanni Snyder*[2] filed by Shanni Snyder. In accordance with the *Memorandum Opinion* of even date, it is hereby **ORDERED, ADJUDGED,** and **DECREED** that:

1. The *Objection to Claim* is **SUSTAINED**.

2. Claim No. 1 filed by Shanni Snyder is **DISALLOWED**.

ENTERED at Pittsburgh, Pennsylvania.

sjb

Dated: February 29, 2024

GREGORY L. TADDONIO
CHIEF UNITED STATES BANKRUPTCY JUDGE

Case administrator to mail to:
Debtor
George Snyder
Charles O. Zebley, Jr.

1 Dkt. No. 340.

2 Dkt. No. 357.

LOCAL RULES OF COURT

Effective: November 1, 2016

Table of Contents

LOCAL CIVIL RULES OF COURT

LCvR 1.1 SCOPE OF RULES

A. Title and Citation. These rules shall be known as the Local Rules of the United States District Court for the Western District of Pennsylvania. They may be cited as "LCvR."

B. Scope of Rules. These rules shall apply in all proceedings in civil and criminal actions.

C. Relationship to Prior Rules; Actions Pending on Effective Date. These rules supersede all previous rules promulgated by this Court or any Judge of this Court. They shall govern all applicable proceedings brought in this Court after they take effect. They also shall apply to all proceedings pending at the time they take effect, except to the extent that in the opinion of the Court the application thereof would not be feasible or would work injustice, in which event the former rules shall govern.

D. Rule of Construction and Definitions. United States Code, Title 1, Sections 1 to 5, shall, as far as applicable, govern the construction of these rules. Unless the context indicates otherwise, the word "Judge" refers to both District Judges and Magistrate Judges.

LCvR 1.2 RULES AVAILABLE ON WEBSITE OR IN OFFICE OF CLERK OF COURT

Copies of these rules, as amended and with any appendices attached hereto, are available on the Court's website (http://www.pawd.uscourts.gov) or in hard copy from the Clerk of Court's office for a reasonable charge to be determined by the Board of Judges. When amendments to these rules are made, notices of such amendments shall be provided on the Court's website, in the legal journals for each county and on the bulletin board in the Clerk of Court's office. When amendments to these rules are proposed, notice of such proposals and of the ability of the public to comment shall be provided on the Court's website, in the legal journals for each county and on the bulletin board in the Clerk of Court's office.

LCvR 3 ASSIGNMENT TO ERIE, JOHNSTOWN OR PITTSBURGH DOCKET

Where it appears from the complaint, petition or other pleading that the claim arose OR any plaintiff or defendant resides in: Crawford, Elk, Erie, Forest, McKean, Venango, or Warren County, the Clerk of Court shall give such complaint, petition or other pleading an Erie number and it shall be placed on the Erie docket. Should it appear from the complaint, petition or other pleading that the claim arose OR any plaintiff or defendant resides in: Bedford, Blair, Cambria, Clearfield or Somerset County, the Clerk of Court shall give such complaint, petition or other pleading a Johnstown number and it shall be placed on the Johnstown docket. All other cases or matters for litigation shall be docketed and processed at Pittsburgh. In the event of a conflict between the Erie and

Johnstown dockets, the Clerk of Court shall place the action on the plaintiff's choice of those two dockets.

LCvR 5.1 GENERAL FORMAT OF PAPERS PRESENTED FOR FILING

A. Filing and Paper Size. In order that the files in the Clerk of Court's office may be kept under the system commonly known as "flat filing," all papers presented to the Court or to the Clerk of Court for filing shall be flat and as thin as feasible. Further, all pleadings and other documents presented for filing to the Court or to the Clerk of Court shall be on 8½ by 11 inch size paper, white in color for scanning purposes and electronic case filing (ECF).

B. Lettering. The lettering or typeface shall be clearly legible and shall not be smaller than 12 point word processing font or, if typewritten, shall not be smaller than pica. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. The font type and size used in footnotes shall be the same as that used in the body of the brief. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

C. Printing on One Side. The lettering or typeface shall be on only one (1) side of a page.

D. Page Fasteners. All papers and other documents filed in this Court shall be securely fastened with a paper clip, binder clip or rubber band. The use of plastic strips, staples or other such fasteners is prohibited, with the exception that administrative and judicial records may be firmly bound.

E. Exhibits to Briefs. Exhibits to a brief or motion shall accompany the brief or motion, but shall not be attached to or bound with the brief or motion. Exhibits shall be secured separately, using either lettered or numbered separator pages to separate and identify each exhibit. Each exhibit also shall be identified by letter or number on the top right hand corner of the first page of the exhibit. Exhibits in support of a pleading or other paper shall accompany the pleading or other paper but shall not be physically bound thereto. In all instances where more than one exhibit is part of the same filing, there shall be a table of contents for the exhibits.

F. Separate Documents. Each motion and each brief shall be a separate document.

G. Exceptions on Motion. Exceptions to the provisions of this rule may be made only upon motion and for good cause or in the case of papers filed in litigation commenced *in forma pauperis*.

H. Withdrawal of Files. Records and papers on file in the office of the Clerk of Court may be produced pursuant to a subpoena from any federal or state Court, directing their production. Records and papers may be removed from the files only upon order of Court. Whenever records and papers are withdrawn, the

person receiving them shall leave with the Clerk of Court a signed receipt describing the records or papers taken.

I. Exhibits. All exhibits received in evidence, or offered and rejected, upon the hearing of any cause or motion, shall be presented to the deputy clerk, who shall keep the same in custody, unless otherwise ordered by the Court, except that the clerk may without special order permit an official court reporter to withdraw exhibits, by means of a signed descriptive receipt, for the purpose of preparing the transcript.

J. Law Enforcement Evidence. In all cases where money, firearms, narcotics, controlled substances or any matter of contraband is introduced into evidence, such evidence shall be maintained for safekeeping by law enforcement during all times when court is not in session, and at the conclusion of the case. The law enforcement agent will be responsible for its custody if the evidence is required for any purpose thereafter. *See also* LCrR 23.

K. Exhibits Retained by Clerk. Trial exhibits shall be retained by the deputy clerk until it is determined whether an appeal has been taken from a final judgment. In the event of an appeal, exhibits shall be retained by the deputy clerk until disposition of the appeal. Otherwise, they may be reclaimed by counsel for a period of thirty (30) days after which the exhibits may be destroyed by the deputy clerk.

L. Hyperlinks. The use of hyperlinks is permitted but is not required. Because a hyperlink contained in a filing is no more than a convenient mechanism for accessing material cited in the document, a hyperlink reference is extraneous to any filed document and does not make the hyperlinked document part of the court's record.

1 Electronically filed documents may contain:

(a) Hyperlinks to either Westlaw or Lexis/Nexis for cited legal authority, but hyperlinks to a cited authority may not replace standard citation format. Standard citations must be included in the text of the filed document;

(b) Hyperlinks to other documents previously filed within the CM/ECF in the Western District of Pennsylvania or from any other federal court; and

(c) Hyperlinks to other portions of the same document.

2 Electronically filed documents may not contain in text or footnotes:

(a) Hyperlinks to sealed or restricted documents;

(b) Hyperlinks to websites not listed in (a); or

(c) Hyperlinks to audio or video files.

Hyperlinking must comply with the hyperlinking protocol in the Court's Electronic Case Filing Policies and Procedures. Non-conforming documents may be ordered stricken by the Court.

LCvR 5.2 DOCUMENTS TO BE FILED WITH THE CLERK OF COURT

A. Only Original to be Filed. As to any document required or permitted to be filed with the Court in paper form, only the original shall be filed with the Clerk of Court.

B. Attorney Identification. Any document signed by an attorney for filing shall contain under the signature line the name, address, telephone number, fax number, e-mail address (if applicable) and Pennsylvania or other state bar identification number. When listing the bar identification number, the state's postal abbreviation shall be used as a prefix (e.g., PA 12345, NY 246810).

C. No Faxed Documents. Documents shall not be faxed to a Judge without prior leave of Court. Documents shall not be faxed to the Clerk of Court's office, except in the event of a technical failure with the Court's Electronic Case Filing ("ECF") system. "Technical failure" is defined as a malfunction of Court owned/leased hardware, software, and/or telecommunications facility which results in the inability of a Filing User to submit a filing electronically. Technical failure does not include malfunctioning of a Filing User's equipment.

D. Redaction of Personal Identifiers. A filed document in a case (other than a social security case) shall not contain any of the personal data identifiers listed in this rule unless permitted by an order of the Court or unless redacted in conformity with this rule. The personal data identifiers covered by this rule and the required redactions are as follows:

1. Social Security Numbers. If an individual's Social Security Number must be included in a document, only the last four digits of that number shall be used;

2. Names of minor children. If the involvement of a minor child must be mentioned, only that child's initials shall be used;

3. Dates of birth. If an individual's date of birth must be included, only the year shall be used;

4. Financial account numbers. If financial account numbers must be included, only the last four digits shall be used.

Additional personal data identifier in a criminal case document only:

5. Home addresses. If a home address must be included, only the city and state shall be listed.

E. Personal Identifiers Under Seal. A party wishing to file a document containing the personal data identifiers listed above may file in addition to the required redacted document:

1. a sealed and otherwise identical document containing the unredacted personal data identifiers, or

2. a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended as of right.

F. Unredacted Version Retained by Court. The sealed unredacted version of the document or the sealed reference list shall be retained by the Court as a part of the record.

G. Counsel and Parties Responsible. The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk of Court will not review each document for compliance with this rule.

H. Leave of Court Required To File Under Seal. A party wishing to file any document under seal must obtain prior leave of Court for each document that is requested to be filed under seal. A party must file a motion seeking leave to file such documents under seal. Only after obtaining an order of Court granting such a motion will a party be permitted to file a document under seal.

Comment (2016)

LCvR 5.2.H implements the Court's standing Order dated January 27, 2005 (2:05-mc-00045-DWA) *In re Confidentiality and Protective Orders in Civil Matters*, which ordered that effective July 1, 2005, any provision in a Confidentiality Order or Protective Order filed on or after June 30, 2005 that permits the parties to designate documents as confidential documents to be filed with the Court under seal is null and void and that on or after July 1, 2005, parties wishing to file documents under seal must obtain prior leave of Court for each ECF document that is requested to be filed under seal.

LCvR 5.3 PROOF OF SERVICE WHEN SERVICE IS REQUIRED BY FED. R. CIV. P. 5

Except as otherwise provided by these rules, the filing or submission to the Court by a party of any pleading or paper required to be served on the other parties pursuant to Fed. R. Civ. P. 5, shall constitute a representation that a copy thereof has been served upon each of the parties upon whom service is required. No further proof of service is required unless an adverse party raises a question of notice.

LCvR 5.4 FILING OF DISCOVERY MATERIALS

A. No Filing of Discovery Materials. Discovery requests and responses referenced in Fed. R. Civ. P. 5(d) shall not be filed with the office of the Clerk of Court except by order of Court.

B. Discovery Materials Necessary to Decide a Motion. A party making or responding to a motion or seeking relief under the Federal Rules of Civil Procedure shall file only that portion of discovery requests and responses as needed to decide the motion or determine whether relief should be granted.

C. Necessary Portions to be Filed With Clerk of Court. When discovery requests and responses are needed for an appeal, upon an application and order of the Court, or by stipulation of counsel, the necessary portion of the discovery requests and responses shall be filed with the Clerk of Court.

D. Custodian of Discovery Materials. The party serving discovery requests or responses or taking depositions shall retain the original and be custodian of it.

LCvR 5.5 FILING OF DOCUMENTS BY ELECTRONIC MEANS

Except for documents filed by *pro se* litigants, or as otherwise ordered by the Court, documents must be filed, signed and verified by electronic means to the extent and in the manner authorized by the Court's Standing Order regarding Electronic Case Filing Policies and Procedures and the ECF User Manual. A document filed by electronic means in compliance with this Local Rule constitutes a written document for the purposes of applying these Local Rules, the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

LCvR 5.6 SERVICE OF DOCUMENTS BY ELECTRONIC MEANS

Documents may be served through the Court's transmission facilities by electronic means to the extent and in the manner authorized by the Standing Order regarding Electronic Case Filing Policies and Procedures and the ECF User Manual. Transmission of the Notice of Electronic Filing constitutes service of the filed document upon each party in the case who is registered as a Filing User. Any other party or parties shall be served documents according to these Local Rules, the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

LCvR 7 MOTION PRACTICE AND STIPULATIONS

A. Motions Filed in Actions Pending in this Court. Motions in all civil actions pending in this Court shall comply with the applicable Federal Rules of Civil Procedure, the applicable Local Rules, the orders of the assigned Judge and the practices and procedures of the assigned Judge that are posted at the following internet link: http://www.pawd.uscourts.gov/pages/chamber.htm.

B. Motions Not Filed in Actions Pending in this Court. All motions of a civil nature that are not filed in a civil action pending in this Court shall comply with the applicable Federal Rules of Civil Procedure and the applicable Local Rules, shall be filed with the Clerk of Court upon payment of any appropriate filing fee, and shall be served on any interested parties. The Court's fee schedule is posted at the following internet link: http://www.pawd.uscourts.gov/pages/fee.htm.

C. Discovery Motions. In addition to the general requirements of this LCvR 7, any discovery motion filed pursuant to Fed. R. Civ. P. 26 through 37 shall comply with the requirements of LCvR 37.1 and 37.2, and any motion *in limine* shall comply with the requirements of LCvR 16.1.C.4.

D. Proposed Order of Court. All motions shall be accompanied by a proposed order of Court.

E. Stipulations. The parties, without Court approval, may file a stipulation one time which extends for a period not to exceed 45 days from the original due date the time for filing either an answer to a complaint or a motion pursuant to Fed. R. Civ. P. 12.

LCvR 7.1 DISCLOSURE STATEMENT AND RICO CASE STATEMENT

A. Disclosure Statement.

1. Disclosure Statement Required. A corporation, association, joint venture, partnership, syndicate, or other similar entity appearing as a party or amicus in any proceeding shall file a Disclosure Statement, at the time of the filing of the initial pleading, or other Court paper on behalf of that party or as otherwise ordered by the Court, identifying all parent companies, subsidiaries, and affiliates that have issued shares or debt securities to the public. In emergency or any other situations where it is impossible or impracticable to file the Disclosure Statement with the initial pleading, or other Court paper, it shall be filed within seven days of the date of the original filing. For the purposes of this rule, "affiliate" shall be a person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified entity; "parent" shall be an affiliate controlling such entity directly, or indirectly through intermediaries; and "subsidiary" shall be an affiliate controlled by such entity directly or indirectly through one or more intermediaries.

2. Purpose of Disclosure Statement. The purpose of this Disclosure Statement is to enable the Judges of this Court to determine the need for recusal pursuant to 28 U.S.C. § 455 or otherwise. Counsel shall have the continuing obligation to amend the Disclosure Statement to reflect relevant changes.

3. Disclosure Statement Contents. The Disclosure Statement shall identify the represented entity's general nature and purpose and if the entity is

unincorporated. The statement shall include the names of any members of the entity that have issued shares or debt securities to the public. No such listing need be made, however, of the names of members of a trade association or professional association. For purposes of this rule, a "trade association" is a continuing association of numerous organizations or individuals operated for the purpose of promoting the general commercial, professional, legislative, or other interests of the membership. The form of the Disclosure Statement is set forth in "Appendix LCvR 7.1.A" to these Rules.

B. RICO Case Statement. Any party filing a civil action under 18 U.S.C. §§ 1961-1968 shall file with the complaint, or within fourteen (14) days thereafter, a RICO case statement in the form set forth at "Appendix LCvR 7.1.B" or in another form as directed by the Court.

LCvR 8 PLEADING UNLIQUIDATED DAMAGES

No party shall set forth in a pleading originally filed with this Court a specific dollar amount of unliquidated damages in a pleading except as may be necessary to invoke the diversity jurisdiction of the Court or to otherwise comply with any rule, statute or regulation which requires that a specific amount in controversy be pled in order to state a claim for relief or to invoke the jurisdiction of the Court.

LCvR 10 *PRO SE* CIVIL RIGHTS ACTIONS BY INCARCERATED INDIVIDUALS

A. Approved Form Required. All *pro se* civil rights actions filed in this district by incarcerated individuals shall be submitted on the Court approved form supplied by the Clerk of Court. If the plaintiff does not use the Court approved form, the complaint must substantially follow the form. Any complaint that does not utilize or substantially follow the form, or does not comply with the requirements set forth herein, may be returned to the *pro se* petitioner with a copy of the court's standardized form, a statement of reasons for its return and a directive that the prisoner resubmit the claims outlined in the original filing in compliance with the Court's requirements.

A properly filed complaint must:

1. be submitted on the required form;

2. identify each defendant in the caption of the complaint; and

3. be signed by the plaintiff;

If additional pages are needed, they must be neatly written or typed, on one side only, of 8½ by 11 inch paper, white in color for scanning purposes and ECF.

B. Responsibilities; Service. All individuals filing *pro se* civil rights actions assume responsibilities inherent to litigation. Incarcerated individuals are not

relieved of these responsibilities. One important obligation is the service of a properly filed complaint. Failure to comply with the requirements set forth herein may render the service of the complaint impossible and subject to dismissal for failure to prosecute.

To effectuate proper service, a plaintiff must provide:

1. an identical copy of the complaint for each named defendant. It is the plaintiff's responsibility, not that of the Clerk of Court or the Court, to submit these copies;

2. a completed United States Marshals 285 Form for each and every defendant named in the complaint. Additional copies of this form are available either through the United States Marshal's Office or the Clerk of Court;

3. a completed **Notice of Lawsuit and Waiver of Service of Summons** form for each and every defendant named in the complaint who **is not** an employee, or agency of, the federal government sued in his or her official capacity. Additional copies of this form are available through the Office of the Clerk of Court; and

4. a completed **Summons** form for each and every defendant that **is** an employee, or agency of, the federal government, as well as an identical copy of the complaint and a completed summons form for service on the Attorney General of the United States and the United States Attorney for the Western District of Pennsylvania.

C. Timing of Appointment of Counsel. Absent special circumstances, no motions for the appointment of counsel will be granted until after dispositive motions have been resolved.

D. Appeal. The *pro se* plaintiff shall have thirty (30) days to file an appeal with the Third Circuit Court of Appeals from a final decision of the District Court on a dispositive motion. Where it appears that the papers filed by a prisoner show that he had delivered his notice of appeal to the prison authorities within 30 days after the date of judgment from which the appeal is taken, the time for filing the formal notice of appeal shall be extended for a period not to exceed 30 days beyond the time required by Rule 4 of the Federal Rules of Appellate Procedure.

E. Powers of a Magistrate Judge. Within 21 days of commencement of a civil rights proceeding, the plaintiff shall execute and file a "CONSENT TO JURISDICTION BY UNITED STATES MAGISTRATE JUDGE" form, either consenting to the jurisdiction of the Magistrate Judge or electing to have the case randomly assigned to a District Judge. Respondent shall execute and file within 21 days of its appearance a form either consenting to the jurisdiction of the Magistrate Judge or electing to have the case randomly assigned to a District Judge. If all parties do not consent to Magistrate Judge jurisdiction, a District Judge shall be assigned and the Magistrate Judge shall continue to manage the case consistent with 28 U.S.C. § 636.

The "CONSENT TO JURISDICTION BY UNITED STATES MAGISTRATE JUDGE" form is available on this Court's website (www.pawd.uscourts.gov). If a party elects to have the case assigned to a District Judge, the Magistrate Judge shall continue to manage the case by deciding non-dispositive motions and submitting reports and recommendations on the petition and on dispositive motions, unless otherwise directed by the District Judge.

Comment (June 2008)

With regard to LCvR 10.D, examples of final judgments are Court orders that: 1) grant a motion to dismiss, or a motion for judgment on the pleadings or a motion for summary judgment **AND** 2) end all claims against all defendants. If a Court order ends fewer than all claims against all defendants, it generally cannot be appealed to the Third Circuit Court of Appeals until there is a subsequent Court order that ends all of the remaining claims against all of the remaining defendants.

LCvR 16.1 PRETRIAL PROCEDURES

A. Scheduling and Pretrial Conferences -- Generally.

1. There shall be two phases of pretrial scheduling as set forth in LCvR 16.1.B: (1) a discovery phase to be governed by an initial scheduling order; and (2) a post-discovery phase to be governed by a final scheduling order.

2. As soon as practicable but not later than thirty (30) days after the appearance of a defendant, the Court shall enter an order, which may be revised as set forth in LCvR 16.1.A.3 below, setting forth the date and time of an initial scheduling conference and the dates by which the parties shall confer and file the written report required by Fed. R. Civ. P. 26(f), which shall be in the form set forth at "Appendix LCvR 16.1.A" to these Rules and shall be referred to as the Rule 26(f) Report. Unless the Court finds good cause for delay, the initial scheduling conference shall take place within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared. The Court may defer the initial scheduling conference if a motion that would dispose of all of the claims within the Court's original jurisdiction is pending.

3. The Court may conduct such further conferences as are consistent with the circumstances of the particular case and this Rule, and may revise any prior scheduling order for good cause.

4. Unrepresented parties are subject to the same obligations as those imposed upon attorneys representing a party. All counsel and unrepresented parties shall have sufficient knowledge of the claim asserted, defenses presented, relief sought, and legal issues fairly raised by the pleadings so as to allow for a meaningful discussion of all such matters at each conference.

5. Upon request or *sua sponte*, the Court may permit attendance by telephone of counsel or unrepresented parties at any conference.

6. Scheduling conferences shall not be conducted in any civil action involving Social Security claims, bankruptcy appeals, *habeas corpus*, government collection and prisoner civil rights, unless the Court to whom the case is assigned directs otherwise.

B. Scheduling Orders and Case Management.

1. Initial Scheduling Order. Unless the Court finds good cause for delay, the Court shall issue the initial scheduling order as soon as practicable but no later than at or immediately after the initial scheduling conference. Such conference shall take place within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared. The initial scheduling order shall set forth dates for the following:

a. the topics identified in Fed. R. Civ. P. 16(b)(3)(A);

b. completion of fact discovery;

c. a post-discovery status conference to be held within thirty (30) days after the completion of fact discovery; and

d. designation, if appropriate, of the case for arbitration, mediation, early neutral evaluation, or appointment of a special master or other special procedure;

2. Additional Topics. The initial scheduling order may also address:

a. The topics identified in Fed. R. Civ. P. 16(b)(3)(B)(i)-(vii);

b. Dates for completion of expert discovery, including the dates for expert disclosures required by Fed. R. Civ. P. 26(a)(2) and the dates by which depositions of experts shall be completed;

c. Such limitations on the scope, method or order of discovery as may be warranted by the circumstances of the particular case to avoid duplication, harassment, delay or needless expenditure of costs; and

d. The date to file dispositive motions at an early stage of the proceedings (i.e., before completion of fact discovery or submission of experts' reports).

3. Final Scheduling Order. At the post-discovery status conference or as soon thereafter as practicable, the Court shall enter a final scheduling order that sets forth dates for the following:

a. Filing dispositive motions and responses thereto;

b. Filing motions *in limine* and motions to challenge the qualifications of any proposed expert witness and/or the substance of such expert's testimony;

c. Filing pretrial statements required by LCvR 16.1.C;

d. Further conferences before trial including the final pretrial conference.

4. Additional Topics. The final scheduling order may also include:

a. The presumptive trial date; and

b. Any other matters appropriate in the circumstances of the case.

5. Requirement to Confer; Scheduling Motion Certificate. Before filing a motion to modify any scheduling order, counsel or an unrepresented party shall confer with all other counsel and unrepresented parties in an effort to reach agreement on the proposed modification. Unless a motion to modify the scheduling order is filed jointly by all parties, any motion to modify shall be accompanied by a certificate of the movant denominated a Scheduling Motion Certificate stating that all parties have conferred with regard to the proposed modification and stating whether all parties consent thereto.

C. Pretrial Statements and Final Pretrial Conference.

1. By the date specified in the Court's scheduling order, which generally will be no sooner than 30 days after the close of discovery (including expert discovery), counsel for the plaintiff or an unrepresented plaintiff shall file and serve a pretrial statement. The pretrial statement shall include:

a. a brief narrative statement of the material facts that will be offered at trial;

b. a statement of all damages claimed, including the amount and the method of calculation of all economic damages;

c. the name, address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises, and identifying each witness as a liability and/or damage witness;

d. the designation of those witnesses whose testimony is expected to be presented by means of a deposition and the designation of the portion of each deposition transcript (by page and line number) to be presented if already deposed (and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony);

e. an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those that the party expects to offer and those that the party may offer if the need arises and assigning an exhibit number to those that the party expects to offer;

f. a list of legal issues that the party believes should be addressed at the final pretrial conference;

g. copies of all expert disclosures that the party made pursuant to Fed. R. Civ. P. 26(a)(2) with respect to expert witnesses identified in the pretrial statement pursuant to LCvR 16.1.C.1.c; and

h. copies of all reports containing findings or conclusions of any physician who has treated, examined, or has been consulted in connection with the injuries complained of, and whom a party expects to call as a witness at the trial of the case.

2. Within 30 days of filing of the plaintiff's pretrial statement, counsel for the defendant or an unrepresented defendant shall file a pretrial statement meeting the requirements set forth in LCvR 16.1.C.1, including defenses to the damages claims asserted against the defendant by any party and a statement of all damages claimed by the defendant in connection with a counterclaim, cross-claim or third party claim, including the amount and the method of calculation of all economic damages.

3. Within 30 days of the filing of the defendant's pretrial statement, counsel for any third-party defendant or an unrepresented third-party defendant shall file a pretrial statement meeting the requirements set forth above for plaintiffs and/or for defendants, as appropriate.

4. Before filing a motion *in limine*, counsel or an unrepresented party shall confer with all other counsel and unrepresented parties in an effort to reach agreement on the issue to be raised by the motion. In the event an agreement is not reached, the motion *in limine* shall be accompanied by a certificate of the movant denominated a Motion *in Limine* Certificate stating that all parties made a reasonable effort to reach agreement on the issue raised by the motion.

5. Following the filing of the pretrial statements, counsel and any unrepresented parties shall meet with the Court at a time fixed by the Court for a final pretrial conference. Prior to and in preparation for the conference, counsel and unrepresented parties shall:

a. make available for examination by opposing counsel or opposing unrepresented parties all exhibits identified in the pretrial statement and examine all exhibits made available by opposing counsel or opposing unrepresented parties;

b. confer and determine in a jury case whether counsel and any unrepresented parties can agree that the case shall be tried non-jury. If an agreement is reached, the parties shall report to the Court at the conference. If no agreement is reported, no inquiry shall be made by the Court and no disclosure shall be made by any counsel or unrepresented party identifying the counsel or party who failed to agree; and

c. unless previously filed or otherwise ordered, prepare a motion accompanied by or containing supporting legal authority for presentation at the final pretrial conference on any legal issues that have not been decided.

6. Unless otherwise ordered by the Court, the following shall be done at the final pretrial conference:

a. counsel and any unrepresented party shall indicate on the record whether the exhibits of any other party are agreed to or objected to, and the reason for any objection;

b. motions prepared pursuant to LCvR 16.1.C.5.c shall be presented, accompanied by or containing supporting legal authority;

c. counsel and any unrepresented party shall be prepared to disclose and discuss the evidence to be presented at trial, including (a) any anticipated use of trial technology in the presentation of evidence or in the opening statement or closing argument, and (b) any anticipated presentation of expert testimony and any challenges thereto;

d. counsel and any unrepresented parties shall advise the Court of any depositions for use at trial of experts or unavailable witnesses that they anticipate will or may be taken after the final pretrial conference and the timing of the depositions. Subject to the provisions of Fed. R. Civ. P. 26 and 37 regarding the identification and disclosure of witnesses, absent good cause shown by an objecting party, the deposition shall be permitted on such terms as ordered by the Court. In the event that such deposition will be taken other than by stenographic means, the party taking the deposition shall have the deposition transcribed and the transcript shall be made available for the Court to make rulings on any objections raised during the course of the deposition. Prior to use in the trial, the party offering the testimony shall edit any video recording to reflect the Court's ruling on objections;

e. counsel shall have inquired of their authority to settle and shall have their clients present or available by phone. The Court shall inquire whether counsel have discussed settlement;

f. counsel and any unrepresented party wishing to supplement his or her pretrial statement shall file and serve a motion to do so not

less than seven (7) days before the final pretrial conference, which motion shall be granted in the absence of prejudice to another party;

g. if not previously done, the Court shall schedule the case for trial; and

h. such record shall be made of the conference as the Court orders or as any party may request.

7. Failure to fully disclose in the pretrial statements (or, as permitted by the Court, at or before the final pretrial conference) the substance of the evidence proposed to be offered at trial, may result in the exclusion of that evidence at trial, at a hearing or on a motion unless the parties otherwise agree or the Court orders otherwise. The only exception will be evidence used for impeachment purposes.

8. In the event that the civil action has not been tried within 12 months of the final pretrial conference, the Court upon request of any party shall schedule a status conference to discuss the possibility of settlement and establish a prompt trial date.

D. Procedures Following Disclosure Of Information That May Be Privileged.

1. Unless a party requests otherwise, the following language will be included in the Scheduling Order to aid in the implementation of Fed. R. Evid. 502:

a. The producing party shall promptly notify all receiving parties of the inadvertent production of any material protected by the attorney-client privilege and/or that constitutes trial preparation material as set forth in Fed. R. Civ. P. 26(b)(3). Any receiving party who has reasonable cause to believe that it has received material protected by the attorney-client privilege and/or that constitutes trial preparation material shall promptly notify the producing party.

b. Upon receiving notice of inadvertent production, any receiving party shall immediately retrieve all copies of the inadvertently disclosed material and sequester such material pending a resolution of the producing party's claim either by the Court or by agreement of the parties.

c. If the parties cannot agree as to the resolution of a claim of privilege or a claim of protection as trial preparation material, the producing party may move the Court for a resolution within 30 days of the notice set forth in subparagraph (a). Nothing herein shall be construed to prevent a receiving party from moving the Court for a resolution, but such motion must be made within the 30-day period.

2. As provided in Fed. R. Evid. 502(d), the Court may enter an Order stating that the production of material protected by the attorney-client

privilege and/or that constitutes trial preparation material, regardless of inadvertence, does not result in a waiver of the privilege or protection attaching to said material for purposes of the proceeding pending before the Court or in any other federal or state proceeding. A model Order is located at "Appendix LCvR 16.1.D."

Comment (2016)

Regarding LCvR 16.1.C.1 and LCvR 16.1.C.6, courts that have dealt with the issue have split on whether depositions of witnesses for use at trial may be taken after the passing of the discovery deadline. Compare *RLS Assocs., LLC v. United Bank of Kuwait PLC, 2005 U.S. Dist. LEXIS 3815, 66 Fed. R. Evid. Serv. (CBC) 924 (S.D.N.Y. Mar. 9, 2005)* and *Estenfelder v. Gates Corp.*, 199 F.R.D. 351 (D. Colo. 2001) with *Crawford v. United States,* No. 11-cv-666-JED-PJC, 2013 WL 249360 at 4 (N.D. Okla, Jan 23, 2013) and *Integra Lifesciences I, Ltd. v. Merck KgaA*, 190 F.R.D. 556, 1999 U.S. Dist. LEXIS 21170 (S.D. Cal. 1999). As a general matter, (1) a party should not have to depose its own witnesses during discovery, (2) should not have to spend the money to take for-trial depositions until it became likely that a trial would actually occur, and (3) litigants are entitled to present their relevant and admissible evidence at trial. Accordingly, the Local Rule addresses the issue in the context of the pre-trial conference by requiring the parties and the Court to set a time, after the filing of the pre-trial statements and before trial within which depositions for use at trial may be taken. In addition, assuming the witness was properly disclosed under Fed. R. Civ. P. 26, the Local Rule places the burden on a party opposing the taking of a deposition for use at trial to show good cause why any such deposition should not be permitted.

LCvR 16.2 ALTERNATIVE DISPUTE RESOLUTION

A. Effective Date and Application. LCvR 16.2 shall govern all actions as the Board of Judges shall determine, from time to time, commenced on or after June 1, 2006, with the exception of Social Security cases and cases in which a prisoner is a party. Cases subject to LCvR 16.2 also remain subject to the other Local Rules of the Court.

B. Purpose. The Court recognizes that full, formal litigation of claims can impose large economic burdens on parties and can delay resolution of disputes for considerable periods. The Court also recognizes that an alternative dispute resolution ("ADR ") procedure can improve the quality of justice by improving the parties' understanding of their case and their satisfaction with the process and the result. The Court adopts LCvR 16.2 to make available to litigants a broad range of Court-sponsored ADR processes to provide quicker, less expensive and potentially more satisfying alternatives to continuing litigation without impairing the quality of justice or the right to trial. The Court offers diverse ADR services to enable parties to pursue the ADR process that promises to deliver the greatest benefits to their particular case. In administering these Local ADR Rules and the ADR program, the Court will take appropriate steps to assure that no referral to ADR results in an unfair or unreasonable economic burden on any party.

C. ADR Options. The Court-sponsored ADR options for cases include:

1. Mediation

2. Early Neutral Evaluation
3. Arbitration

D. ADR Designation. At the Rule 26(f) "meet and confer" conference, the parties are required to discuss and, if possible, stipulate to an ADR process for that case. The Rule 26(f) written report shall (1) designate the specific ADR process that the parties have selected, (2) specify the time frame within which the ADR process will be completed, and (3) set forth any other information the parties would like the Court to know regarding their ADR designation. The parties shall use the form provided by the Court. When litigants have not stipulated to an ADR process before the Scheduling Conference contemplated by LCvR 16.1, the assigned Judge will discuss the ADR options with counsel and unrepresented parties at that conference. If the parties cannot agree on a process before the end of the Scheduling Conference, the Judge will make an appropriate determination and/or selection for the parties.

E. ADR Practices and Procedures. The ADR process is governed by the ADR Policies and Procedures, as adopted by the Board of Judges for the United States District Court for the Western District of Pennsylvania, which sets forth specific and more detailed information regarding the ADR process, and which can be accessed either on the Court's official website (www.pawd.uscourts.gov) or from the Clerk of Court.

LCvR 17.1 MINORS OR INCOMPETENT PERSONS -- COMPROMISE SETTLEMENT, DISCONTINUANCE AND DISTRIBUTION

A. Court Approval Required. No action to which a minor is a party shall be compromised, settled, discontinued or dismissed except after approval by the Court pursuant to a petition presented by the guardian of the minor or the natural guardian of the minor, such as the circumstances might require.

B. Contents of Petition. In all such cases, the minor's attorney shall file with the Clerk of Court, as part of the record, a petition containing (1) a statement of the nature of the evidence relied on to show liability, (2) the elements of damage, (3) a statement of the services rendered by counsel, (4) the expenses incurred or to be incurred and (5) the amount of fees requested. The petition shall contain written statements of minor's attending physicians, setting forth the nature of the injuries and the extent of recovery. If required by the Judge, such statements of attending physicians shall be in affidavit form. The petition shall be verified by the affidavit of the minor's counsel. In claims for property damage, the extent of the damage shall be described and the statement shall be supported by the affidavit of the person who appraised the damage or made the repairs.

C. Contents of Court Order. When a compromise or settlement has been so approved by the Court, or when a judgment has been entered upon a verdict or by agreement, the Court, upon petition by the guardian or any party to the action, shall make an order approving or disapproving any agreement entered into by the guardian for the payment of counsel fees and other expenses out of the fund created by the compromise, settlement or judgment; or the Court may make such order as it deems proper fixing counsel fees and other proper expenses. The

Court shall then order the balance of the fund to be paid to the guardian of the estate of the minor qualified to receive the fund except that if the amount payable to the minor does not exceed the sum of one hundred thousand dollars ($100,000.00), the Court may order the monies deposited in a federally insured bank or savings and loan in an account to be marked "not to be withdrawn until majority has been attained or further order of Court." If the amount of anticipated interest would cause the account to exceed $100,000.00, then the Court may order the deposit to be made in two or more savings institutions. If the minor has no guardian of his or her estate and the balance does not exceed ten thousand dollars ($10,000.00), the Court on its own motion or upon petition of any person entitled to apply for the appointment of a guardian for the minor may authorize the amount of the judgment to be paid to the guardian of the person, the natural guardian, the person by whom the minor is maintained, or the minor.

D. Payment of Funds. When a judgment has been entered in favor of a minor plaintiff and no petition has been filed under the provision of Subparagraph C of this rule, the amount of the judgment shall be paid only to a guardian of the estate of the minor qualified to receive the fund. If the minor has no such guardian and the judgment does not exceed ten thousand dollars ($10,000.00), the Court on its own motion or upon petition of any person entitled to apply for the appointment of a guardian for the minor may authorize the amount of the judgment to be paid to the guardian of the person, the natural guardian, the person by whom the minor is maintained, or the minor.

LCvR 17.2 SETTLEMENT PROCEDURE FOR SEAMAN SUITS

A. Court Approval Required. No suit in admiralty or civil action to which a seaman is a party shall be compromised, settled, discontinued or amicably or voluntarily dismissed except after approval by the Court pursuant to a petition presented by the seaman's attorney and upon payment to the Clerk of Court of the filing fee.

B. Contents of Petition. In all such cases, the seaman's attorney shall file with the Clerk of Court, as part of the record, a petition containing:

1. a statement of the essential facts relating to liability;

2. the elements of claimed damage, including a statement of amounts already paid to or on behalf of the seaman;

3. a statement of services rendered by counsel;

4. the expenses incurred or to be incurred by counsel; and

5. the amount of fees and expenses requested by counsel.

The petition shall also include copies of written statements of those physicians who have treated or examined the seaman setting forth the nature of the injuries and the extent of recovery and a copy of the release, if any, signed or to be signed by the seaman. The petition shall be verified by the seaman's attorney.

C. Seaman to Appear. No such compromise, settlement, discontinuance or dismissal shall be approved by the Court unless the seaman appears in open Court before the Judge to whom the petition is presented. At such time, the Court shall examine the seaman under oath in order to insure that the seaman's rights are fully protected and that he or she comprehends the nature of the action being taken by him or her and on his or her behalf before such petition and release shall be approved and order entered thereon.

D. Contents of Court Order. When a compromise or settlement has been so approved by the Court, or when a judgment has been entered on a verdict or by agreement, the Court, upon petition filed by the seaman's counsel, shall make an order approving or disapproving the agreement entered into by the attorney and the seaman for the payment of counsel fees and other expenses out of the fund created by the compromise, settlement or judgment; or the Court may make such order as it deems proper, fixing counsel fees and other proper expenses. The petition to be filed by counsel for the seaman in those instances where a judgment has been entered need only contain a statement of those matters referred to in LCvR 17.2.B.1-.5. The Court shall then order the balance of the fund to be paid to the seaman unless he or she be a minor or an incompetent, in which case the Court shall order the balance of the fund to be paid to a guardian of the estate of the seaman qualified to receive the fund.

LCvR 23 CLASS ACTIONS AND COLLECTIVE ACTIONS

The following procedures will govern class action and collective action proceedings in this district, except as otherwise provided in applicable federal statutes.

A. Class Action Information.

1. The caption of the complaint in any action sought to be maintained as a class action shall include in the legend "Complaint-Class Action."

2. If not included in the Complaint, a statement shall be filed with the Complaint under a separate heading styled "Class Action Statement," which shall contain the following information:

a. the proposed definition of the alleged class; and

b. information relating to the class action, including:

i. the size (or approximate size) of the alleged class;

ii. the alleged questions of law or fact claimed to be common to the class;

iii. the basis upon which the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

iv. the basis upon which the representative parties will fairly and adequately protect the interests of the class.

B. Initial Disclosures. For any action sought to be maintained as a class action, the initial disclosures provided by all parties pursuant to Fed. R. Civ. P. 26(a)(1) shall include disclosures regarding the class certification allegations and any defenses thereto.

C. Matters to be Addressed at Initial Scheduling Conference (hereafter "Pretrial Conference"). In addition to the requirements of Fed. R. Civ. P. 16, with respect to any case in which class claims are alleged, the parties should be prepared to address the following topics at the Pretrial Conference:

1. the timing of the filing of a motion for class certification;

2. the appointment of interim class counsel;

3. the scope of any discovery, including any discovery of Electronically Stored Information consistent with the provisions of LCvR 26.2, necessary for resolution of any class certification motion;

4. the briefing schedule; and

5. the timing of and plan for any methods for alternative dispute resolution to be utilized.

D. Time and Expense Records. Anyone seeking Court approval for payment for legal services rendered or costs advanced in a class action will maintain contemporaneous time and expense records. Upon request of Lead Class Counsel, time and expense records will be provided to that counsel or its designee on a periodic basis. The Court will inform counsel of any specific requirements that it has regarding record keeping at the Pretrial Conference.

E. Joint Report of the Parties. At least seven (7) days prior to the Pretrial Conference, the parties shall submit a "Joint Report of the Parties and Proposed Scheduling and Discovery Order -- Class Action" setting forth their respective positions on the timing and scope of class certification discovery, the filing of a motion for class certification, and the appointment of class counsel. A form "Joint Report of the Parties and Proposed Scheduling and Discovery Order -- Class Action" is available. *See* "Appendix LCvR 23.E." This is in lieu of the Fed. R. Civ. P. 26(f) Report. To the extent appropriate given the facts of the case, the parties are encouraged to stipulate to any facts regarding the approximate size and definition of the class, the qualifications of proposed class counsel, and any other matters relevant to the findings to be made by the Court under Fed. R. Civ. P. 23.

F. Order Following Pretrial Conference. After the Pretrial Conference, the Court will enter an order addressing the matters discussed at the Pretrial Conference. The Court may require the parties to draft a proposed order.

G. Conference Following Class Certification Decision. After resolution of the motion for class certification, the Court will schedule a conference to discuss how the case will proceed in light of the ruling on class certification. At this conference, the parties should be prepared to discuss the following topics:

1. if a party has sought appeal of the decision pursuant to Fed. R. Civ. P. 23(f), whether or not any party will seek a stay of proceedings before the District Court;

2. disclosures not otherwise provided in initial Fed. R. Civ. P. 26(a)(1) disclosure;

3. the completion of any remaining discovery; and

4. if applicable, a plan of notice.

H. Notice to the Class. If a class is certified and notice is required under either Fed. R. Civ. P. 23 or LCvR 100.2, or otherwise directed by the Court, prior to the conference following the class certification decision, the parties shall meet and make efforts to agree on the text of the proposed class notice, the manner of class notice, and the procedures to be used to identify the class. To the extent the parties cannot agree on these matters, they shall file jointly a proposed plan for class notice and the language on which they do agree. On the matters on which they disagree, the parties may provide briefs to supplement their position.

Once the Court approves a plan of class notice and a form of class notice, the Approved Class Notice shall be posted on the Court's website, in addition to any other notice procedures approved by the Court. Notice to be posted on the Court's website shall contain the following disclaimer:

CONTACT COUNSEL IDENTIFIED IN THIS NOTICE IF YOU HAVE ANY QUESTIONS. DO NOT CONTACT THE COURT.

I. Class Settlements. Parties seeking approval of any class settlement, voluntary dismissal, or compromise shall provide the Court with sufficient information for the Court to make findings with respect to the fairness and reasonableness of the settlement to the class.

J. Collective Actions. Civil actions containing Collective Action claims involving a group or groups of multiple plaintiffs who may elect to join or "opt into" the action as plaintiffs, *e.g.*, The Age Discrimination in Employment Act, 29 U.S.C. 621, *et seq.*, or the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*, shall be managed to the extent practicable in accordance with the provisions of LCvR 23, subject to the following:

1. The caption of a Complaint asserting a Collective Action claim shall include in the legend "Complaint -- Collective Action." If not included in the Complaint, a statement shall be filed with the Complaint under a separate

heading styled "Collective Action Statement," which shall contain the following:

a. the proposed definition of the alleged Collective Action;

b. the size (or approximate size) of the alleged Collective Action; and

c. the questions of law or fact claimed to be common to the Collective Action.

2. LCvR 23.H shall not apply to Collective Action claims.

3. If a Complaint seeking class certification of Class Action claims also asserts Collective Action claims, the Class Action claims shall be governed by LCvR 23.

Comment (June 2008)

Counsel should acquaint themselves with the requirements of Fed. R. Civ. P. 23, the accompanying advisory committee notes, and the latest version of the Manual on Complex Litigation with respect to discovery and other practices in class actions.

LCvR 24 NOTICE OF CONSTITUTIONAL QUESTION

A. Notification to Court Required. In any action, suit, or proceeding in which the United States or any agency, officer, or employee thereof is not a party and in which the constitutionality of an Act of Congress affecting the public interest is drawn in question, or in any action, suit or proceeding in which a state or any agency, officer, or employee, thereof is not a party, and in which the constitutionality of any statute of that state affecting the public interest is drawn in question, the party raising the constitutional issue shall notify the Court of the existence of the question either by checking the appropriate box on the civil cover sheet or by stating on the pleading that alleges the unconstitutionality, immediately following the title of that pleading, "Claim of Unconstitutionality" or the equivalent.

B. Failure to Comply Not Waiver. Failure to comply with this rule will not be grounds for waiving the constitutional issue or for waiving any other rights the party may have. Any notice provided under this rule, or lack of notice, will not serve as a substitute for, or as a waiver of, any pleading requirement set forth in the federal rules or statutes.

LCvR 26.1 DISCOVERY MOTIONS

In addition to the general requirements of LCvR 7.1, any discovery motion filed pursuant to Fed. R. Civ. P. 26 through 37 shall comply with the requirements of LCvR 37.1 and 37.2.

LCvR 26.2 DISCOVERY OF ELECTRONICALLY STORED INFORMATION

A. Duty to Investigate. Prior to a Fed. R. Civ. P. 26(f) conference, counsel shall:

1. Investigate the client's Electronically Stored Information ("ESI"), such as email, electronic documents, and metadata, and including computer-based and other digital systems, in order to understand how such ESI is stored; how it has been or can be preserved, accessed, retrieved, and produced; and any other issues to be discussed at the Fed. R. Civ. P. 26(f) conference.

2. Identify a person or persons with knowledge about the client's ESI, with the ability to facilitate, through counsel, preservation and discovery of ESI.

B. Designation of Resource Person. In order to facilitate communication and cooperation between the parties and the Court, each party shall, if deemed necessary by agreement or by the Court, designate a single resource person through whom all issues relating to the preservation and production of ESI should be addressed.

C. Preparation for Meet and Confer. Prior to the Fed. R. Civ. P. 26(f) conference, the parties should refer to both the Checklist for Rule 26(f) Meet and Confer Regarding Electronically Stored Information set forth in "Appendix LCvR 26.2.C-CHECKLIST" to these Rules, and the Guidelines for the Discovery of Electronically Stored Information set forth in "Appendix LCvR 26.2.C-GUIDELINES" to these Rules.

D. Duty to Meet and Confer. At the Fed. R. Civ. P. 26(f) conference, and upon a later request for discovery of ESI, counsel shall meet and confer, and attempt to agree, on the discovery of ESI.

E. Case Management Conference. Prior to the case management conference, the parties shall complete and file a copy of the form Rule 26(f) Report of the Parties set forth in "Appendix LCvR 16.1.A" to these Rules or the form Rule 26(f) Report (Class Actions) set forth in "Appendix LCvR 23.E" to these Rules, as applicable. At the direction of the Court, the parties may be required to submit a draft of the Stipulated Order re: Discovery of Electronically Stored Information for Standard Litigation set forth in "Appendix LCvR 26.2.E-MODEL ORDER" to these Rules. The parties may also choose to file an order under Rule 502(d) such as the model Order set forth in "Appendix LCvR 16.1.D" to these Rules.

Comment (revised 2016)

1. Regarding LCvR 26.2.B, the resource person must have sufficient familiarity with the party's ESI to meaningfully discuss technical issues and provide reliable information relative to the preservation and production of ESI. The resource person is permitted to, and, in fact, encouraged to, involve persons with technical expertise in these discussions, including the client, client's employee, or a third party. The resource person may be an individual party, a

party's employee, a third party, or a party's attorney, and may be the same person referenced in LCvR 26.2.A.2.

2. Regarding LCvR 26.2.D, the parties have an ongoing obligation to supplement their disclosures. *See* Fed. R. Civ. P. 26.

3. Detailed information regarding the Court's Electronic Discovery Mediation and Special Master, along with other ESI resources, can be found on the Court's website at http://www.pawd.uscourts.gov/ed-information.

LCvR 26.3 CERTIFICATION BY SERVING OR FILING ELECTRONIC DOCUMENTS

Unless actual notice to the contrary is given in writing by the serving party, service under these Local Civil Rules of any electronic document containing an electronic representation of the original signature of any person shall constitute a certification by the server that as of the time of service he or she is in possession of the signer's actual original signature on a hard copy of the electronic document served. Service by a party or any counsel under LCvRs 33, 34 or 36 of responses to interrogatories, requests for production or requests for admission ("Written Discovery") shall constitute a certification by the server of such responses that no alteration has been made to the Written Discovery as originally served upon such party or counsel. The filing with the Court for any purpose by any party or counsel of Written Discovery or responses thereto served in electronic form pursuant to LCvRs 33, 34 and 36 shall constitute the certification by such party or counsel that the content of such electronic document so filed is the same as when it was served or received by the filing party.

LCvR 30 VIDEOTAPE DEPOSITIONS

A. Procedures.

1. Witnesses shall be placed under oath on the video-record.

2. Immediately upon the conclusion of the deposition, the operator shall label the recording by deponent's name, caption of the case, and case number.

B. Objections During Deposition.

1. Evidence objected to shall be taken subject to the objections. All objections shall be noted upon an index listing pertinent videotape reel and videotape recorder counter numbered by the operator, which index shall be retained with the videotape recording.

LCvR 31 SERVING NOTICES AND WRITTEN QUESTIONS IN ELECTRONIC FORM

Any party serving any notice or written questions pursuant to the provisions of Rules 31(a)(3), 31(a)(5) or 31(b) of the Fed. R. Civ. P. may serve such notice or written questions in electronic form.

LCvR 33 SERVING AND RESPONDING TO INTERROGATORIES TO PARTIES IN ELECTRONIC FORM

A. Electronic Form. Any party may, pursuant to Rule 33 of the Fed. R. Civ. P., serve upon any other party interrogatories in Writable Electronic Form (as hereinafter defined) and require that written answers to such interrogatories also be provided in electronic form, except that a responding party shall retain the option to produce business records in the form and manner permitted pursuant to Fed. R. Civ. P. 33(d). Upon request by any party, interrogatories must be served upon that party in Writable Electronic Form. Unless the serving party specifically requests that the written answers be provided in hard-copy form, the responding party shall provide the written answers to such interrogatories in electronic form. Any party responding in electronic form to interrogatories may serve such response in a form that may not be altered.

B. Definition of Writable Electronic Form. "Writable Electronic Form" means a format that allows the recipient to copy or transfer the text of the document into the written answer or written response, or permits the written answer or written response to be typed directly into the document, and thus avoids the need to retype the text.

C. Hard Copy Form. In the event that the parties elect not to use the electronic form for interrogatories or written responses thereto, interrogatories shall be prepared in such a fashion that sufficient space for insertion of the written responses thereto is provided after each interrogatory or sub-section thereof. The original and two (2) copies shall be served upon the party to whom such interrogatories is directed. The responding party shall insert answers on the original interrogatories served upon him or her and shall retain the original and be the custodian of it. If there is not sufficient space on the original for insertion of written responses, the responding party may use and attach supplemental pages for the written responses. In lieu of the foregoing procedure, the responding party may retype each interrogatory with the response to such interrogatory appearing immediately thereafter.

LCvR 34 SERVING AND RESPONDING TO REQUESTS FOR PRODUCTION IN ELECTRONIC FORM

A. Electronic Form. Any party may, pursuant to Rule 34 of the Fed. R. Civ. P., serve upon any other party requests for production in Writable Electronic Form (as defined in LCvR 33.B) and require that written responses thereto also be provided in electronic form, except that a party producing documents or electronically stored information shall produce them in the manner and form as may be permitted or required pursuant to Fed. R. Civ. P. 34(b)(2)(E). Upon

request by any party, requests for production must be served upon the requesting party in Writable Electronic Form. Unless the serving party specifically requests that the written responses be provided in hard-copy form, the responding party shall provide the written responses to such requests for production in electronic form. Any party responding in electronic form to requests for production may serve such written response in a form which may not be altered.

B. Hard Copy Form. In the event that the parties elect not to use the electronic form for requests for production or written responses thereto, requests for production shall be prepared in such a fashion that sufficient space for insertion of the written responses thereto is provided after each request or sub-section thereof. The original and two (2) copies shall be served upon the party to whom such request for production is directed. The responding party shall insert written responses on the original request for production served upon him or her and shall retain the original and be the custodian of it. If there is not sufficient space on the original for insertion of written responses, the responding party may use and attach supplemental pages for the written responses. In lieu of the foregoing procedure, the responding party may retype each request with the written response to each such request appearing immediately thereafter.

LCvR 36 SERVING AND RESPONDING TO REQUESTS FOR ADMISSION IN ELECTRONIC FORM

A. Electronic Form. Any party may, pursuant to Rule 36 of the Fed. R. Civ. P., serve upon any other party requests for admission in Writable Electronic Form (as defined in LCvR 33.B) and require that written answers thereto also be provided in electronic form. Upon request by any party, requests for admission must be served upon the requesting party in Writable Electronic Form. Unless the serving party specifically requests that the written answers be provided in hard-copy form, the responding party shall provide the written answers to such requests for admission in electronic form. Any party responding in electronic form to requests for admission may serve such written response in a form which may not be altered.

B. Hard Copy Form. In the event that the parties elect not to use the electronic form for requests for admission or written responses thereto, requests for admission shall be prepared in such a fashion that sufficient space for insertion of the written responses thereto is provided after each request or sub-section thereof. The original and two (2) copies shall be served upon the party to whom such request for admission is directed. The responding party shall insert written answers on the original request for admission served upon him or her and shall retain the original and be the custodian of it. If there is not sufficient space on the original for insertion of written responses, the responding party may use and attach supplemental pages for the written responses. In lieu of the foregoing procedure, the responding party may retype each request with the written response to each such request appearing immediately thereafter.

LCvR 37.1 REFERRAL OF DISCOVERY MOTIONS BY CLERK OF COURT

All discovery motions shall be referred to the member of the Court to whom the case was assigned for disposition, except in cases where such matters may be required to be submitted to the emergency or miscellaneous judge, or the judge to whom matters may be temporarily referred by the judge to whom the case was assigned.

LCvR 37.2 FORM OF DISCOVERY MOTIONS

Any discovery motion filed pursuant to Fed. R. Civ. P. 26 through 37 shall include, in the motion itself or in an attached memorandum, a verbatim recitation of each interrogatory, request, answer, response, and objection which is the subject of the motion or a copy of the actual discovery document which is the subject of the motion.

LCvR 40 ASSIGNMENT OF ACTIONS

A. Civil Action Categories. All civil actions in the Court shall be divided into the following categories:

1. antitrust and securities cases;

2. labor-management relations;

3. *habeas corpus*;

4. civil rights;

5. patent, copyright, and trademark;

6. eminent domain;

7. all other federal question cases;

8. all personal and property damage tort cases, including maritime, F.E.L.A., Jones Act, motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest;

9. insurance, indemnity, contract, and other diversity cases; or

10. government collection cases (includes *inter alia*, Health & Human Services (formerly Health, Education and Welfare) student loans, Veterans Administration overpayment, Social Security overpayment, enlistment overpayment, Housing & Urban Development loans, General Accounting Office loans, mortgage foreclosures, Small Business Administration loans, civil and coal mine penalties, and reclamation fees).

B. Criminal Action Categories. All criminal cases in this district shall be divided into the following categories:

1a. Narcotics and Other Controlled Substances, 1 to 2 Defendants

1b. Narcotics and Other Controlled Substances, 3 to 9 Defendants

1c. Narcotics and Other Controlled Substances, 10 or more Defendants

2a. Fraud and Property Offenses, 1 to 2 Defendants

2b. Fraud and Property Offenses, 3 to 9 Defendants

2c. Fraud and Property Offenses, 10 or more Defendants

3. Crimes of Violence

4. Sex Offenses

5. Firearms and Explosives

6. Immigration

7. All others

For purposes of determining the appropriate category, the number of defendants in related indictments which are returned during the same grand jury session shall be combined.

See also LCrR 57.A.

C. Assignment of Civil Actions. Each civil action shall be assigned to a Judge who shall have charge of the case. The assignment shall be made by the Clerk of Court from a non-sequential list of all Judges arranged in each of the various categories. Sequences of Judges' names within each category shall be kept secret and no person shall directly or indirectly ascertain or divulge or attempt to ascertain or divulge the name of the Judge to whom any case may be assigned before the assignment is made by the Clerk of Court.

D. Related Actions. At the time of filing any civil or criminal action or entry of appearance or filing of the pleading or motion of any nature by defense counsel, as the case may be, counsel shall indicate on an appropriate form whether the action is related to any other pending or previously terminated actions in this Court. Relatedness shall be determined as follows:

1. all criminal actions arising out of the same criminal transaction or series of transactions are deemed related;

2. civil actions are deemed related when an action filed relates to property included in another action, or involves the same issue of fact, or it grows

out of the same transaction as another action, or involves the validity or infringement of a patent involved in another action; and

3. all *habeas corpus* petitions filed by the same individual shall be deemed related. All *pro se* civil rights actions by the same individual shall be deemed related.

E. Assignment of Related Actions.

1. If the fact of relatedness is indicated on the appropriate form at time of filing, the Clerk of Court shall assign the case to the same Judge to whom the lower numbered related case is assigned, who may reject the assignment if the Judge determines that the cases are not related or the assignment does not otherwise promote the convenience of the parties or witnesses or the just and efficient conduct of the action.

2. If the fact of relatedness is not indicated on the appropriate form at time of filing, after a case is assigned, the assigned Judge may transfer the later-filed case to the Judge who is assigned the lower-numbered related case, (i) *sua sponte*, (ii) upon motion of a party, and/or (iii) upon suggestion of any other Judge in this Court, if the Judge assigned the later-filed case(s) determines that the cases are related or the transfer would promote the convenience of the parties or witnesses or the just and efficient conduct of the action.

F. Erie or Johnstown Actions. All actions qualifying for the Erie or Johnstown calendars shall be assigned to Judges designated by the Court to hear such actions.

G. No Transfer of Actions. Except in the case of death, disability, recusal required or permitted by law or other exceptional circumstances approved by the Chief Judge, no civil action shall be transferred from one Judge to another where:

1. the action has already been transferred from one Judge to another;

2. the action has been pending for more than two years; or

3. there are dispositive motions pending.

LCvR 47 *VOIR DIRE* OF JURORS

A. Examination of Jurors Before Trial. During the examination of jurors before trial, the Clerk of Court, or the representative of the Clerk of Court conducting such examination, shall state the following to the jurors collectively:

1. the name and county of residence of each of the parties;

2. the nature of the suit; and

3. the caption of the action.

B. Required Questions to Jurors Collectively. The following questions shall be posed to the jurors collectively:

1. Do you know any of the parties?

2. Do you know any of the attorneys in the case? Have they or their firms ever represented you or any members of your immediate family?

3. Do you know anything about this case?

4. Are you, or any member of your immediate family, employees, former employees, or stockholders in any of the corporate parties?

C. Required Questions to Each Juror. The following questions, to the extent the trial judge deems appropriate, shall, *inter alia*, be put to each juror individually:

1. How old are you?

2. Where do you live? How long have you lived there?

3. What is your educational background?

4. What is your present occupation? (If retired, what was your occupation?)

5. Who is your employer? (If retired, who was your employer?)

6. Are you married? If so, what is your spouse's occupation and who is your spouse's employer? (If your spouse is retired, what was his or her occupation and who was his or her employer?)

7. Do you have any (adult) children? If so, how old are they? For whom do they work, and what do they do?

8. Do you own your own home?

9. Do you drive a car?

10. Have you ever been a party to a lawsuit?

11. Any other question, which in the judgment of the trial Judge or the Judge in charge of miscellaneous matters after application being made, shall be deemed proper.

D. Jury List. Members of the bar of this Court shall be permitted to have a copy of each jury list on condition that a receipt be signed with the Clerk of Court at the date of delivery thereof which shall contain as the substance the following certification:

"I hereby certify that I and/or my firm or associates have litigation pending and in connection therewith, I will require a list of jurors. I further acknowledge to have received a copy of said list of jurors from the Clerk of Court and hereby agree that I will not, nor will I permit any person or agency, to call or contact any juror identified on said list at his or her home or any other place, nor will I call or contact any immediate member of said juror's family, which includes his or her spouse, children, mother, father, brother, or sister, in an effort to determine the background of any member of said jury panel for acceptance or rejection of said juror.

/s/_____

Date: _____"

LCvR 52 FINDINGS BY THE COURT

In all non-jury cases, civil or criminal, the Court may direct suggested findings of fact and conclusions of law to be filed, and require the parties and their counsel to set forth the pages of the record and the exhibit number with specific reference to that part of the exhibit or record which it is contended supports the findings or conclusions.

LCvR 54 COSTS

A. Jury Cost Assessment.

1. Whenever the Court finds, after 14 days notice and a reasonable opportunity to be heard, that any party or lawyer in any civil case before the Court has acted in bad faith, abused the judicial process, or has failed to exercise reasonable diligence in effecting the settlement of such case at the earliest practicable time, the Court may impose upon such party or lawyer the jury costs, including mileage and per diem, resulting therefrom.

2. The Court shall issue a rule to show cause and conduct a hearing of record to inquire into the facts prior to imposing any sanction.

B. Taxation of Costs.

1. Absent extenuating circumstances, the Clerk of Court will tax costs for a prevailing party only after the time for filing an appeal has expired. Generally, costs will not be taxed while an appeal is pending because of the possibility that the judgment may be reversed. However, if a party believes there is a reason why there should be an immediate taxation in a particular case, that party may make a written request for taxation prior to resolution of the appeal.

2. While there is no strict deadline for filing a bill of costs with the Court, a bill of costs must be filed within a reasonable period of time, which should

be no later than 45 days after a final judgment is entered by the District Court. However, if an appeal has been filed, counsel may defer filing a bill of costs until 30 days after the mandate has been filed in the District Court, or after an appeal has been withdrawn.

3. Upon receipt of a bill of costs, the Clerk of Court will issue a schedule for objections and responses.

4. If after a bill of costs is filed the parties resolve the matter between themselves, the parties must immediately notify the Clerk of Court in writing that the bill of costs is being withdrawn or has been resolved.

LCvR 56 MOTION FOR SUMMARY JUDGMENT

A. Application. The procedures that follow shall govern all motions for summary judgment made in civil actions unless the Court, on its own motion, directs otherwise, based on the particular facts and circumstances of the individual action.

B. Motion Requirements. The motion for summary judgment must set forth succinctly, but without argument, the specific grounds upon which the judgment is sought and must be accompanied by the following:

1. A Concise Statement of Material Facts. A separately filed concise statement setting forth the facts essential for the Court to decide the motion for summary judgment, which the moving party contends are **undisputed and material,** including any facts which for purposes of the summary judgment motion only are assumed to be true. The facts set forth in any party's Concise Statement shall be stated in separately numbered paragraphs. A party must cite to a particular pleading, deposition, answer to interrogatory, admission on file or other part of the record supporting the party's statement, acceptance, or denial of the material fact;

2. Memorandum in Support. The supporting memorandum must address applicable law and explain why there are no genuine issues of material fact to be tried and why the moving party is entitled to judgment as a matter of law; and

3. Appendix. Documents referenced in the Concise Statement shall be included in an appendix. Such documents need not be filed in their entirety. Instead, the filing party may extract and highlight the relevant portions of each referenced document. Photocopies of extracted pages, with appropriate identification and highlighting, will be adequate.

C. Opposition Requirements. Within 30 days of service of the motion for summary judgment, the opposing party shall file:

1. A Responsive Concise Statement. A separately filed concise statement, which responds to each numbered paragraph in the moving party's Concise Statement of Material Facts by:

a. admitting or denying whether each fact contained in the moving party's Concise Statement of Material Facts is undisputed and/or material;

b. setting forth the basis for the denial if any fact contained in the moving party's Concise Statement of Material Facts is not admitted in its entirety (as to whether it is undisputed or material), with appropriate reference to the record (See LCvR 56.B.1 for instructions regarding format and annotation); and

c. setting forth in separately numbered paragraphs any other material facts that are allegedly at issue, and/or that the opposing party asserts are necessary for the Court to determine the motion for summary judgment;

2. Memorandum in Opposition. The memorandum of law in opposition to the motion for summary judgment must address applicable law and explain why there are genuine issues of material fact to be tried and/or why the moving party is not entitled to judgment as a matter of law; and

3. Appendix. Documents referenced in the Responsive Concise Statement shall be included in an appendix. (See LCvR 56.B.3 for instructions regarding the appendix).

D. Moving Party's Reply to Opposing Party's Submission. Within 14 days of service of the opposing party's submission in opposition to the motion for summary judgment, the moving party may reply to the opposing party's submission in the same manner as set forth in LCvR 56.C.

E. Admission of Material Facts. Alleged material facts set forth in the moving party's Concise Statement of Material Facts or in the opposing party's Responsive Concise Statement, which are claimed to be undisputed, will for the purpose of deciding the motion for summary judgment be deemed admitted unless specifically denied or otherwise controverted by a separate concise statement of the opposing party.

LCvR 66 RECEIVERS

A. Rule as Exercise of Vested Authority. In the exercise of the authority vested in the District Courts by Fed. R. Civ. P. 66, this rule is promulgated for the administration of estates by receivers, appointed by the Court, in civil actions.

B. Inventories. Unless the Court otherwise orders, a receiver, as soon as practicable after his or her appointment and not later than thirty (30) days after he or she has taken possession of the estate, shall file an inventory of all the property and assets in his or her possession or in the possession of others who

hold possession as his or her agent, and in a separate schedule an inventory of the property and assets of the estate not reduced to possession by him or her but claimed and held by others.

C. Reports. Within three (3) months after the filing of the inventory, and at regular intervals of three (3) months thereafter until discharged, or at such other times as the Court may direct, the receiver shall file reports of his or her receipts and expenditures and of his or her acts and transactions in an official capacity.

D. Compensation of Receivers and Attorneys. No compensation for services of receivers and attorneys in connection with the administration of an estate shall be ascertained and awarded by the Court until after notice to such persons in interest as the Court may direct. The notice shall state the amount claimed by each applicant.

LCvR 67.1 BONDS AND OTHER SURETIES

A. By Non-Resident. In every action filed by a plaintiff who is not a resident of this district, the defendant, after answer to the complaint, may by petition and for good cause shown, have a rule upon the plaintiff to enter security for costs in such sum, in such manner and within such period of time as shall be determined by order of the Court upon hearing on the rule, all proceedings to stay meanwhile. If security for costs is not entered as ordered, the Court shall dismiss the action.

B. By Other Parties. The Court, on motion, may order any party to file an original bond for costs or additional costs in such an amount and so conditioned as the Court by its order may designate.

C. Qualifications of Surety. Every bond for costs under this rule must have as surety either (1) a cash deposit equal to the amount of the bond or (2) a corporation authorized to act as surety on official bond under 31 U.S.C. § 9304.

D. Persons Who May Not Be Sureties. No clerk, marshal, member of the bar, or other officer of this Court will be accepted as surety on any bond or undertaking in any action or proceeding in this Court.

LCvR 67.2 DEPOSIT IN COURT

A. Investment of Funds by Clerk of Court. The Clerk of Court will invest funds under Fed. R. Civ. P. 67 as soon as the business of his or her office allows.

B. Administrative Fee. All registry invested accounts are subject to an administrative handling fee at a rate established by the Judicial Conference of the United States. The fee will be assessed and funds will be withdrawn from

each invested account in accordance with Judicial Conference directives and this may be accomplished by the authority herein and without further order of Court.

C. Motion Required for Deposit Into Interest Account. The posting party must move the Court to have registry funds deposited into an interest-bearing account, the Court Registry Investment System ("CRIS"), which is administered by the Administrative Office of the United States Courts under 28 U.S.C. § 2045, and shall be the only investment mechanism authorized. The proposed investment order should be reviewed by the Clerk of Court or his or her financial deputy to insure that all of the required investment information is included. It is the responsibility of the posting party to serve the Clerk of Court or his or her financial deputy with a copy of the signed investment order. In most instances, the office of the Clerk of Court can provide a standard investment order that would satisfy the requirements of the federal rules and these Local Rules.

D. Court Registry Investment System. CRIS is the designated depository for the Court. The Clerk of Court shall, upon an order from the Court, deposit funds subject to Fed. R. Civ. P. 67 into CRIS.

E. Petition Required for Investment. If the attorney for the party on whose behalf the deposit is made desires to invest funds in a manner other than at the designated depository of the Court, and if the investment is in accordance with the requirements of the federal rules, and specifically Fed. R. Civ. P. 67, a petition and proposed order may be presented for the Court's consideration.

F. IRS Regulations Applicable. Registry deposits involving designated or qualified settlement funds may be subject to IRS Regulations that require the appointment of an administrator outside of the Court to handle fiduciary and tax matters. A registry account may be a designated or qualified settlement fund 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 is of a kind described in 26 U.S.C. § 468B or 26 C.F.R. § 1.468B-1(c).

It is the responsibility of the depositing party to identify any registry deposit intended to be a designated or qualified settlement fund. Depositors should contact the office of the Clerk of Court prior to the deposit of settlement fund monies to insure that proper procedures are followed for the reporting of interest income and the payment of income tax on registry accounts.

LCvR 67.3 WITHDRAWAL OF A DEPOSIT PURSUANT TO FED. R. CIV. P. 67

The Court's order for disbursement of invested registry funds must include the name and address of the payee(s) in addition to the total amount of the principal and interest (if the interest is not known, the order may read "plus interest") which will be disbursed to each payee. In order for the Clerk of Court to comply with

the Internal Revenue Code and the rules thereunder, payees receiving earned interest must provide a W-9 Taxpayer Identification and Certification form to the office of the Clerk of Court prior to disbursement from the invested account. The disbursement order should be reviewed by the Clerk of Court or the financial deputy prior to being signed by the Judge in order to insure that the necessary information is provided.

LCvR 71.A CONDEMNATION OF PROPERTY

When the United States files separate land condemnation actions and concurrently files a single declaration of taking relating to those separate actions, the Clerk of Court is authorized to establish a master file so designated. If a master file is established, the declaration of taking shall be filed, and the filing of the declaration of taking therein shall constitute a filing of the same in each of the actions to which it relates when reference is made thereto in the separate actions.

LCvR 72 MAGISTRATE JUDGES

A. Duties under 28 U.S.C. §§ 636(a)(1) and (2). Each Magistrate Judge appointed by this Court is authorized to perform the duties prescribed by 28 U.S.C. § 636(a)(1) and (2) and may:

1. exercise all the powers and duties conferred or imposed upon United States commissioners or Magistrate Judges by law or the Federal Rules of Criminal Procedure;

2. administer oaths and affirmations, impose conditions of release under 18 U.S.C. § 3142 and take acknowledgments, affidavits, and depositions;
3. conduct removal proceedings and issue warrants of removal in accordance with Fed. R. Crim. P. 40;

4. conduct extradition proceedings, in accordance with 18 U.S.C. § 3184; and

5. supervise proceedings conducted pursuant to letters rogatory, in accordance with 28 U.S.C. § 1782.

B. Disposition of Misdemeanor Cases -- 28 U.S.C. § 636(a)(3).

1. A Magistrate Judge may, upon the express consent of the defendant:

a. try persons accused of, and sentence persons convicted of, misdemeanors committed within this district in accordance with 18 U.S.C. § 3401; and

b. dismiss or quash a misdemeanor indictment or information, decide a motion to suppress evidence; and

c. direct the probation service of the Court to conduct a presentence investigation in any misdemeanor case.

2. A Magistrate Judge shall:

a. file the record of proceedings and all other official papers with the Clerk of Court within twenty-one (21) days after disposing of a misdemeanor or, in other cases, after completing his or her assigned duties;

b. transmit immediately to the Clerk of Court all fines collected or collateral forfeited.

3. An appeal from a judgment of a Magistrate Judge having been certified to the Court in accordance with the Rules of Procedure for Trials before Magistrate Judges (18 U.S.C. § 3402), the appellant shall, within fourteen (14) days, serve and submit a brief. The United States Attorney shall serve and submit a reply brief within fourteen (14) days after receipt of a copy of the appellant's brief;

4. In a case involving a petty offense as defined in 18 U.S.C. § 1(3), payment of a fixed sum may be accepted in lieu of appearance and as authorizing the termination of the proceeding;

5. There shall be maintained at the office of the Clerk of Court a list of those petty offenses for which collateral forfeiture may apply and the amounts of said collateral forfeiture. The list shall enumerate those offenses for which collateral forfeiture shall not apply and for which appearance shall be mandatory;

6. Nothing contained in this rule shall prohibit a law enforcement officer from arresting a person for the commission of any offense, including those for which collateral may be posted and forfeited, and requiring the person charged to appear before a Magistrate Judge or, upon arrest, taking him or her immediately before a Magistrate Judge;

C. Nondispositive Pretrial Matters.

1. In accordance with 28 U.S.C. § 636(b)(1)(A), a Magistrate Judge may hear and determine any pretrial motion or other pretrial matter, other than those motions specified in Rule 4 of the Rules Governing Section 2254 and Section 2255 Proceedings.

2. Objections to Magistrate Judge's Determination. Any party may object to a Magistrate Judge's determination made under this rule within fourteen (14) days after the date of service of the Magistrate Judge's order, unless a different time is prescribed by the Magistrate Judge or District Judge. Such party shall file with the Clerk of Court, and serve on all parties, written objections which shall specifically designate the order or part thereof objected to and the basis for objection thereto. The opposing party shall be allowed fourteen (14) days after date of service to respond

to the objections. The District Judge assigned to the case shall consider the objections and set aside any portion of the Magistrate Judge's order found to be clearly erroneous or contrary to law. The District Judge may also reconsider any matter *sua sponte*.

D. Dispositive Pretrial Motions and Prisoner Cases.

1. In accordance with 28 U.S.C. § 636(b)(1)(B) and (C), a Magistrate Judge may hear, conduct such evidentiary hearings as are necessary or appropriate, and submit to a District Judge proposed findings of fact and recommendations for the disposition of:

a. applications for post-trial relief made by individuals convicted of criminal offenses;

b. prisoner petitions challenging conditions of confinement; and

c. motions for injunctive relief (including temporary restraining orders and preliminary injunctions), for judgment on the pleadings, for summary judgment, to dismiss or permit the maintenance of a class action, to dismiss for failure to state a claim upon which relief may be granted, to involuntarily dismiss an action, for judicial review of administrative determinations, and for review of default judgments.

2. Objections to Magistrate Judge's Proposed Findings. Any party may object to the Magistrate Judge's proposed findings, recommendations or report under this rule within fourteen (14) days after date of service. Such party shall file with the Clerk of Court, and serve on all parties, written objections which shall specifically identify the portions of the proposed, recommendations or report to which objection is made and the basis for such objections. Such party may be ordered to file with the Clerk of Court a transcript of the specific portions of any evidentiary proceedings to which objection is made. The opposing party shall be allowed fourteen (14) days after date of service to respond to the objections. A District Judge shall make a *de novo* determination of those portions to which objection is made and may accept, reject or modify in whole or in part, the findings and recommendations made by the Magistrate Judge. The District Judge, however, need not conduct a new hearing and may consider the record developed before the Magistrate Judge, making his or her own determination on the basis of that record, or recommit the matter to the Magistrate Judge with instructions.

E. Special Master References and Trials by Consent.

1. A Magistrate Judge may serve as a special master subject to the procedures and limitations of 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53.

2. Where the parties consent, a Magistrate Judge may serve as a special master in any civil case without regard to the provisions of Fed. R. Civ. P. 53(b).

3. The Magistrate Judges may, upon consent of the parties, conduct any and all proceedings in a jury or non-jury civil matter and order the entry of judgment in accordance with 28 U.S.C. § 636(c).

F. Other Duties. A Magistrate Judge is also authorized to:

1. exercise general supervision of the civil and criminal calendars of the Court, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the Judges;

2. conduct pretrial conferences, settlement conferences, omnibus hearings and related pretrial proceedings;

3. conduct arraignments in cases not triable by the Magistrate Judge to the extent of taking a not guilty plea or noting a defendant's intention to plead guilty or *nolo contendere* and ordering a presentence report in appropriate cases;

4. receive grand jury returns in accordance with Fed. R. Crim. P. 6(f), issue bench warrants and enter orders sealing the record in accordance with Fed. R. Crim. P. 6(e), 6(f) and 9(a);

5. conduct *voir dire* and select petit juries for the Court;

6. accept petit jury verdicts in civil cases in the absence of a District Judge;

7. conduct necessary proceedings leading to the potential revocation of probation;

8. issue subpoenas, writs of *habeas corpus ad testificandum* or *habeas corpus ad prosequendum*, or other orders necessary to obtain the presence of parties or witnesses or evidence needed for Court proceedings;

9. order the exoneration or forfeiture of bonds;

10. conduct proceedings for the collection of civil penalties of not more than $200 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. § 484(d);

11. conduct examinations of judgment debtors in accordance with Fed. R. Civ. P. 69;

12. review petitions in civil commitment proceedings under Title III of the Narcotic Addict Rehabilitation Act;

13. approve deferred prosecution agreements in felony cases pending before the Magistrate Judge in which no indictment or information has been filed;

14. issue administrative inspection warrants and other compulsory process sought by administrative agencies of the United States; and

15. perform any additional duty as is not inconsistent with the Constitution and laws of the United States.

G. Assignment of Duties of Magistrate Judges. The Clerk of Court will assign each non-prisoner civil action to a District Judge or a Magistrate Judge by automated random selection such that a Magistrate Judge will be assigned a case, in the first instance, approximately one-third of the time. All prisoner civil cases and non-death penalty habeas cases will be assigned only to a Magistrate Judge.

In the event the action is assigned to a Magistrate Judge, each party shall execute and file within 21 days of its appearance a form, either consenting to the jurisdiction of the Magistrate Judge or electing to have the case randomly assigned to a District Judge. If a party elects to have the case assigned to a District Judge, the Magistrate Judge shall continue to manage the case by deciding non-dispositive motions and submitting reports and recommendations on dispositive motions, unless otherwise directed by the District Judge. If all parties do not consent to Magistrate Judge jurisdiction, a District Judge shall be assigned and the Magistrate Judge shall continue to manage the case consistent with 28 U.S.C. § 636.

H. Forfeiture of Collateral in Lieu of Appearance.

1. Pursuant to paragraph G(2) of the order of this Court of March 9, 1971, adopting rules for United States Magistrate Judges (LCvR 72.A), this list is established setting forth those petty offenses for which trial appearance shall be mandatory and the amounts of collateral forfeiture which may be acceptable in lieu of appearance.

2. Petty offenses for which trial appearance shall be mandatory:

a. traffic offenses:

i. indictable offenses;

ii. offenses resulting in an accident where one of the following conditions are met:

(a) two or more vehicles are involved;

(b) personal injury has resulted; or

(c) property damage in excess of $200 has resulted.

iii. operation of a motor vehicle while under the influence of intoxicating liquor or a narcotic or habit producing drug, or permitting another person who is under the influence of

intoxicating liquor or a narcotic or habit producing drug to operate a motor vehicle owned by the defendant or in his or her custody or control;

iv. reckless driving;

v. leaving the scene of an accident;

vi. driving while under suspension or revocation of a driver's license;

vii. driving without being licensed to drive;

viii. exceeding the speed limit by more than 15 miles per hour; or

ix. a second moving traffic offense within a 12-month period, as indicated by a notation on a driver's license.

b. non-traffic offenses:

i. drunkenness; or

ii. disorderly conduct.

3. In all other petty offenses collateral forfeitures may be accepted by the duly authorized representative of the agency in an amount not greater than 25% of the maximum fine established by law for each offense, but in no event less than ten dollars ($10.00); provided, however, that the enforcing agencies shall file with the Clerk of Court a schedule of collateral forfeitures approved by the Chief Judge. However, in those petty offenses for which the maximum fine established by law is less than ten dollars ($10.00), collateral forfeitures may be accepted in an amount equal to the maximum fine.

LCvR 77 SESSIONS OF COURT

Sessions of the Court shall be held at Pittsburgh, Erie and Johnstown at such times as may be required to expedite the business of the Court. The Clerk of Court shall post and make available to interested members of the bar, each Judge's tentative schedule of trials, both jury and non-jury, from time to time.

LCvR 83.1 FREE PRESS -- FAIR TRIAL PROVISIONS

A. Release of Information in Civil Actions. A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if there is a substantial likelihood that such extrajudicial statement would materially prejudice such civil action and relates to:

1. evidence regarding the occurrence or transaction involved;

2. the character, credibility, or criminal record of a party, witness, or prospective witness;

3. the performance or results of any examinations or tests or the refusal or failure of a party to submit to such;

4. his or her opinion as to the merits of the claims or defenses of a party except as required by law or administrative rule; or

5. any other matter substantially likely to materially prejudice such civil action.

B. Matters on Which Extrajudicial Statements Are Not Precluded. Nothing in this rule is intended to preclude the issuance of extrajudicial statements made in connection with hearings or the lawful issuance of reports by legislative, administrative or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him or her.

C. Photography, Recording and Broadcasting.

1. Except as hereafter provided, all forms, means and manner of taking photographs, recording, broadcasting and televising are prohibited in any hearing room, corridor or stairway leading thereto, on any floor occupied entirely or in part by the United States District Court for the Western District of Pennsylvania, in any United States Courthouse or federal facility, or any other building designated by the United States District Court for the Western District of Pennsylvania as a place for holding Court or other judicial proceeding, whether or not Court is in session.

2. Exceptions:

a. Photographs may be taken and radio and television may be transmitted with the voluntary consent of the individual involved in and from the press rooms set aside for the use of members of the press and other communications media.

b. Subject to the approval of the presiding Judge, the broadcasting, televising, recording or photographing of investitive, ceremonial or naturalization proceedings in the Courtrooms of this district will be permitted under the following conditions:

i. available light is to be used;

ii. only one camera is to be used. The station owning that camera must make a tape available to all stations requesting one;

iii. the camera must remain in one position throughout. It must be in position before the opening of Court and remain there until the Court has recessed;

iv. microphones must be placed in fixed positions and remain there throughout; and

v. camera and microphone personnel shall not move about the Courtroom during the proceeding.

Comment (June 2008)

1. The amended Rule conforms to the standard set forth in *United States v. Wecht*, 484 F.3d 194, 205 (3d Cir. 2007) (exercising "supervisory authority to require that District Courts apply LCvR 83.1 to prohibit only speech that is substantially likely to materially prejudice ongoing criminal proceedings") and to the governing law of professional conduct. Former LCvR 83.1.A-E, governing free press and fair trial issues relating to criminal proceedings, has been moved to the Local Criminal Rules.

2. LCvR 83.1.C includes in the Local Rules the provisions of the standing order dated May 21, 1968.

LCvR 83.2 ADMISSION TO PRACTICE AND APPEARANCE OF ATTORNEYS AND STUDENTS

A. Admission to Practice -- Generally.

1. Roll of Attorneys. The bar of this Court consists of those heretofore and those hereafter admitted to practice before this Court, who have taken the oath prescribed by the rules in force when they were admitted or prescribed by this rule.

2. Eligibility; Member in Good Standing. Any person who is eligible to become a member of the Bar of the Supreme Court of Pennsylvania or who is a member in good standing of the bar of the Supreme Court of Pennsylvania, or a member in good standing of the Supreme Court of the United States, or a member in good standing of any United States District Court, may be admitted to practice before the bar of this Court.

3. Procedure For Admission. No person shall be admitted to practice in this Court as an attorney except on oral motion of a member of the bar of this Court, who shall submit a Certification in the form set forth at "Appendix LCvR/LCrR 83.2.A Certification". He or she shall, if required, offer satisfactory evidence of his or her moral and professional character, and shall provide the same information set forth in subsection B, below. He or she shall take the following oath or affirmation:

"I DO SOLEMNLY SWEAR (OR AFFIRM) THAT I WILL CONDUCT MYSELF AS AN ATTORNEY AND COUNSELOR OF THIS COURT, UPRIGHTLY AND ACCORDING TO LAW; AND THAT I

WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES. SO HELP ME GOD."

If admitted, the applicant shall, under the direction of the Clerk of Court, sign the roll of attorneys and pay such fee as shall have been prescribed by the Judicial Conference and by the Court.

4. Agreements of Attorneys. All agreements of attorneys relating to the business of the Court shall be in writing; otherwise, if disputed, they will be considered of no validity.

5. Practice in Criminal Branch Prohibited. No attorney shall be permitted to practice in the criminal branch of the federal law as counsel for any person accused of crime in the United States District Court for the Western District of Pennsylvania where said attorney is serving by appointment or election in any of the following categories in either the state of Pennsylvania or for the United States of America:

a. district attorney of any county in the Commonwealth of Pennsylvania;

b. assistant, deputy or special advisor of any district attorney of any county in the Commonwealth of Pennsylvania;

c. Attorney General of the Commonwealth of Pennsylvania;

d. assistant, deputy or special advisor of the Attorney General of the Commonwealth of Pennsylvania;

e. legal counsel for and any assistant or deputy of any agency of the United States government; or

f. magistrates or justices of the peace of any city, county or state.

B. Pro Hac Vice Admissions. All motions for admission *pro hac vice* must be accompanied by the filing fee. A motion for admission *pro hac vice* must be made by the attorney seeking to be admitted and must be accompanied by an affidavit from the attorney seeking to be admitted *pro hac vice* (the "affiant"). The affidavit must include the affiant's name, law firm affiliation (if any), business address, and bar identification number. The affiant must attest in the affidavit that the affiant is a registered user of ECF in the United States District Court for the Western District of Pennsylvania, that the affiant has read, knows, and understands the Local Rules of Court for the United States District Court for the Western District of Pennsylvania, and that the affiant is a member in good standing of the bar of any state or of any United States District Court. The affidavit must list the bars of any state or of any United States court of which the affiant is a member in good standing. The affiant must attach to the affidavit one current certificate of good standing from the bar or the court in which the affiant primarily practices. The affidavit also must list and explain any previous disciplinary proceedings concerning the affiant's practice of law that resulted in a

non-confidential negative finding or sanction by the disciplinary authority of the bar of any state or any United States court. The Court will not rule on a motion for admission *pro hac vice* that does not include an affidavit containing the information and attestations required by this rule. The forms of the motion for admission *pro hac vice* and accompanying affidavit are set forth in "Appendix LCvR/LCrR 83.2.B-MOTION," and "Appendix LCvR/LCrR 83.2.B-AFFIDAVIT."

Comment (February 2013)

The Local Rules of Court for the United States District Court for the Western District of Pennsylvania and instructions for becoming a registered user of ECF in the United States District Court for the Western District of Pennsylvania are available on the Court's website. ***"A Declaration pursuant to 28 U.S.C. §1746 in lieu of an affidavit shall be sufficient to comply with the requirements of this Rule."***

C. Appearances and Withdrawals of Appearance.

1. Appearance -- How entered. In all criminal cases involving privately retained counsel, a notice of appearance of counsel shall be filed at or before the first appearance of counsel.

2. Attorney Identification Number. Any appearance by a Pennsylvania attorney shall contain a Pennsylvania attorney identification number.

3. Separate Praecipe Unnecessary. In a civil action, no separate praecipe for appearance need be filed by an attorney for an original party or for an intervenor. The endorsement of names of attorneys appearing on the first pleading or motion filed by a party shall constitute the entry of appearance of such attorneys. Appearance by other attorneys shall be by praecipe filed with the Clerk of Court.

4. Withdrawal of Appearance. In any civil proceeding, no attorney whose appearance has been entered shall withdraw his or her appearance except upon filing a written motion. The motion must specify the reasons requiring withdrawal and provide the name and address of the succeeding attorney. If the succeeding attorney is not known, the motion must set forth the name, address, and telephone number of the client and either bear the client's signature approving withdrawal or state specifically why, after due diligence, the attorney was unable to obtain the client's signature.

Comment (February 2013)

A motion for withdrawal of counsel's appearance that sets forth the basis for withdrawal should disclose that basis only in a manner consistent with the applicable provisions of the Pennsylvania Rules of Professional Conduct. See Pa. R. Prof. Conduct 1.16, comment 3.

D. Student Practice Rule.

1. Purpose. This rule is designed to provide law students with clinical instruction in federal litigation, and thereby enhance the competence of lawyers practicing before the United States District Courts.

2. Student Requirements. An eligible student must:

a. be duly enrolled in a law school accredited by the American Bar Association:

b. have completed a least three semesters of legal studies, or the equivalent;

c. be enrolled for credit in a law school clinical program that has been approved by this Court;

d. be certified by the Dean of the law school, or the Dean's designee, as being of good character, and having sufficient legal ability to fulfill the responsibilities of a legal intern to both the client and this Court;

e. be certified by this Court to practice pursuant to this rule; and

f. not accept personal compensation from a client or other source for legal services provided pursuant to this rule.

3. Program Requirements. A law school clinical practice program:

a. must provide the student with academic and practice advocacy training, utilizing law school faculty or adjunct faculty, including federal government attorneys or private practitioners, for practice supervision;

b. must grant the student academic credit for satisfactory participation therein;

c. must be certified by this Court;

d. must be conducted in such a manner as not to conflict with normal Court schedules;

e. may accept compensation other than from a client; and

f. must secure and maintain professional liability insurance for it activities.

4. Supervisor Requirements. A supervisor must:

a. have faculty or adjunct faculty status at the law school offering the clinical practice program, and must be certified by the Dean of the law school as being of good character, and having sufficient legal ability and adequate training to fulfill the responsibilities of a supervisor;

b. be admitted to practice before this Court;

c. be present with the student at all times during Court appearance, and at all other proceedings, including depositions in which testimony is taken;

d. co-sign all pleadings or other documents filed with this Court;

e. assume full professional responsibility for the student's guidance in, and for the quality of, any work undertaken by the student pursuant to this rule;

f. be available for consultation with represented clients;

g. assist and counsel the student in all activities conducted pursuant to this rule, and review such activities with the student so as to assure the proper practical training of the student and the effective representation of the client; and

h. be responsible for supplementing oral or written work of the student, where necessary, to ensure the effective representation of the client.

5. Certification of Student, Program and Supervisor.

a. Students.

(1) Certification by the law school Dean and approval by this Court shall be filed with the Clerk of Court, and unless it is sooner withdrawn, shall remain in effect until expiration of 18 months.

(2) Certification to appear in a particular case may be withdrawn at any time, in the discretion of the Court, and without any showing of cause.

b. Program.

(1) Certification of a program by this Court shall be filed with the Clerk of Court and shall remain in effect indefinitely unless withdrawn by the Court.

(2) Certification of a program may be withdrawn by this Court at any time.

c. Supervisor.

(1) Certification of a supervisor must be filed with the Clerk of Court, and shall remain in effect indefinitely unless withdrawn by this Court.

(2) Certification of a supervisor may be withdrawn by the Court at any time.

(3) Certification of a supervisor may be withdrawn by the Dean by mailing notice of such withdrawal to the Clerk of Court.

6. Activities. A certified student, under the personal supervision of the supervisor, as set forth in LCvR 83.2.C.4, may:

a. represent any client including federal, state or local governmental bodies, in any civil or administrative matter, if the supervising lawyer and the client on whose behalf the student is appearing have consented in writing to that appearance; or

b. engage in all activities on behalf of the clients that a licensed attorney may engage in.

7. Limitation of Activities. The Court retains the power to limit a student's participation in a particular case to such activities as the Court deems consistent with the appropriate administration of justice.

Comment (June 2008)

The amended Rule adds headings, modifies the numbering and clarifies and modernizes language in the Rule. More substantively, the amended Rule adds a section on *pro hac vice* admissions. In addition, it permits students to practice before the Court after completing three (as opposed to four) semesters of legal study.

LCvR 83.3 RULES OF DISCIPLINARY ENFORCEMENT FOR ATTORNEYS

A. Introduction.

1. Responsibility of Court. The United States District Court for the Western District of Pennsylvania, in furtherance of its inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it, or admitted for the purpose of a particular proceeding (*pro hac vice*), promulgates the following rules of Disciplinary Enforcement superseding all of its rules pertaining to disciplinary enforcement heretofore promulgated.

2. Adoption of Rules of Professional Conduct. Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with others, that violate the rules of 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. The rules of professional conduct adopted by this Court are the rules of professional conduct adopted by the Supreme Court of Pennsylvania, as amended from time to time, except that Rule 3.10 has been specifically deleted as a rule of this Court, and as otherwise provided by specific order of this Court.

3. Sanctions for Misconduct. For misconduct defined in these rules, any attorney admitted to practice before this Court may be disbarred, suspended from practice before this Court, reprimanded or subjected to such other disciplinary action as the circumstances may warrant.

4. Admission to Practice as Conferring Disciplinary Jurisdiction. Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (*pro hac vice*), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

B. Disciplinary Proceeding.

1. Reference to Counsel. When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a District Judge or Magistrate Judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these rules, or in the event a petition for reinstatement has been filed by a disciplined attorney, the Chief Judge shall in his or her discretion and with prior agreement of the Disciplinary Board of the Supreme Court of Pennsylvania appoint as counsel attorneys serving in the Office of Disciplinary Counsel of the Disciplinary Board or one or more members of the bar of this Court to investigate allegations of misconduct or to prosecute disciplinary proceedings under these rules or in conjunction with such a reinstatement petition, provided, however, that the respondent-attorney may move to disqualify an attorney so appointed who is or has been engaged as an adversary of the respondent-attorney in any matter. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

2. Recommendation of Counsel. Should such 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 pending another proceeding 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 this Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise setting forth the reasons therefor.

3. Order to Show Cause. Should such counsel conclude after investigation and review that a formal disciplinary proceeding should be initiated, counsel shall obtain an order of this Court upon a showing of probable cause requiring the respondent-attorney to show cause within thirty (30) days after service of that order upon that attorney, personally or by mail, why the attorney should not be disciplined.

4. Hearings. Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation, the Chief Judge 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 other Judges of this Court appointed by the Chief Judge, or if there are fewer than three Judges eligible to serve or the Chief Judge is the complainant, by the Chief Judge of the Court of Appeals. Where a Judge merely refers a matter and is not involved in the proceeding, he or she shall not be considered a complainant.

All such proceedings shall be conducted by counsel appointed pursuant to LCvR 83.3.B.1 or such other counsel as the Court may appoint for such purpose.

The Judge or Judges to whom a disciplinary proceeding is assigned by the Chief Judge may conduct a further hearing, and/or otherwise take additional testimony, or hear or receive oral or written argument, and shall make a recommendation based thereon to the Board of Judges. The Board, after consideration of the recommendation, shall enter such order as it shall determine by a majority vote of the active Judges in service at the next meeting of the board to be appropriate, including dismissal of the charges, reprimand, suspension for a period of time, disbarment, or such action as may be proper.

C. Attorneys Convicted of Crimes.

1. Immediate Suspension. Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before this Court has been convicted in any Court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States, of a serious crime as hereinafter defined, the Chief Judge 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 a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the Chief Judge may set aside such order when it appears in the interest of justice so to do upon concurrence of a majority of active Judges in service.

2. Definition of Serious Crime. 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 false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

3. Certified Copy of Conviction as Evidence. 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.

4. Mandatory Reference for Disciplinary Proceeding. Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Court shall refer the matter for the institution of a disciplinary proceeding in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

5. Discretionary Reference for Disciplinary Proceedings. 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 counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding provided, however, that the Court may in its discretion make no reference with respect to convictions for minor offenses.

6. Reinstatement Upon Reversal. 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. Discipline Imposed by Other Courts.

1. Notice by Attorney of Public Discipline. 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.

2. Proceedings after Notice of Discipline. Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been disciplined by another Court, this Court shall forthwith issue a notice directed to the attorney containing:

a. A copy of the judgment or order from the other Court; and

b. 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 LCvR 83.3.D.4 that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.

3. Stay of Discipline in Other Jurisdiction. 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.

4. Reciprocal Discipline. Upon the expiration of thirty (30) days from service of the notice issued pursuant to the provisions of LCvR 83.3.D.2, 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 that:

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

b. 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;

c. the imposition of the same discipline by this Court would result in grave injustice; or

d. the misconduct established is deemed by this Court to warrant substantially different discipline.

In the event that an attorney files a timely answer alleging one or more of the elements set forth in LCvR 83.3.D.4, the Chief Judge shall set the matter for prompt hearing before one or more Judges of this Court who may order and conduct a further hearing, or take testimony or hear argument, and make a recommendation to the Board of Judges. The Board, after consideration of the recommendation, shall enter such order, as it shall determine by a majority vote of the active Judges in service at the next meeting of the Board, including dismissal of the charges, reprimand, suspension for a period of time, disbarment, or such action as may be proper.

5. Conclusive Evidence of Final Adjudication. In all other respects, a final adjudication in another Court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for the purposes of a disciplinary proceeding in this Court.

6. Appointment of Counsel. This Court may at any stage appoint counsel to prosecute the disciplinary proceedings, pursuant to LCvR 83.3.B.I.

E. Disbarment on Consent or Resignation.

1. Automatic Cessation of Right to Practice. 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.

2. Attorney to Notify Clerk of Disbarment. 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, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

F. Disbarment on Consent While under Disciplinary Investigation or Prosecution.

1. Consent to Disbarment. 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:

a. 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;

b. the attorney is aware that there is 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;

c. the attorney acknowledges that the material facts so alleged are true; and

d. the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself or herself.

2. Consent Order. Upon receipt of the required affidavit, this Court shall enter an order disbarring the attorney.

3. Public Record. 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.

G. Reinstatement.

1. 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. An attorney suspended for more than three (3) months or disbarred may not resume practice until reinstated by order of this Court.

2. 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 this disbarment.

3. Hearing on Application. Petitions for reinstatement by a disbarred or suspended attorney under this rule shall be filed with the Chief Judge of this Court. Upon receipt of the petition, the Chief Judge shall refer the petition to counsel for investigation and recommendation, and shall assign the matter for a hearing, or other appropriate action, 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 a panel of three (3) other Judges of this Court appointed by the Chief Judge, or, if there are fewer than three (3) Judges eligible to serve or the Chief Judge was the complainant, by the Chief Judge of the Court of Appeals. The Judge or Judges assigned to the matter shall schedule a hearing, if necessary, at which the petitioner shall have the burden of demonstrating 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.

The Judge or Judges shall make a recommendation to the Board of Judges and the Board shall enter an appropriate order, as determined by a majority vote of the active Judges in service at the next meeting of the Board.

4. Duty of 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.

5. 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.

6. 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.

7. 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.

H. Service of Papers and Other Notices. Service of an order to show cause instituting a formal disciplinary proceeding or other papers or notices required by these rules shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at the address most recently registered by him or her with the Clerk of Court. 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 address most recently registered with the Clerk of Court; or to counsel or respondent's attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding under these rules.

I. Duties of the Clerk of Court.

1. Filing Certificate of Conviction. 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.

2. Filing Disciplinary Judgment. 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 of Court shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this Court.

3. Filing Consent Order. Upon being informed that an attorney admitted to practice before this Court has been disbarred on consent or resigned in another jurisdiction while an investigation into allegations of misconduct was pending, the Clerk of this Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order striking the attorney's name from the rolls of those admitted to practice has been filed

with the Court, and, if not, shall promptly obtain a certified or exemplified copy of such judgment or order and file it with the Court.

4. Transmittal of Record to Other Courts. 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 disciplinary authority in such other jurisdiction, or for such other court, a certificate of the conviction or a certified or 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.

5. National Discipline Data Bank. The Clerk of Court shall promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this Court.

J. Retention of Control. 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 of the United States Code or under Fed. R. Crim. P. 42.

K. Confidentiality. All investigations of allegations of misconduct, and disciplinary proceedings authorized by these rules shall be kept confidential until or unless:

1. the Judge or Judges to whom the matter is assigned determine otherwise;

2. the respondent-attorney requests in writing that the matter be public;

3. the investigation or proceeding is predicated on a conviction of the respondent-attorney for a crime; or

4. the Court determines that discipline is appropriate in accordance with LCvR 83.3.B.4.

This rule shall not prohibit counsel, appointed pursuant to LCvR 83.3.B.I or any member of this Court, from reporting to law enforcement authorities the suspected commission of any criminal offense.

Comment (June 2008)

The amended Rule adds headings, modifies the numbering and clarifies and modernizes language in the Rule. The amendment reorganizes the Rule and clarifies the process whereby allegations of attorney misconduct are investigated and, if appropriate, prosecuted. The amended Rule clarifies that the word "Counsel" refers to a member of the bar of the Court appointed by the Chief Judge to perform the investigation and/or prosecution.

LCvR 100.1 TRANSFER OF MULTIDISTRICT LITIGATION

A. Composite Number Assigned. Whenever the Court consents to the transfer of a group of actions to this district in order to hold coordinated or consolidated pretrial proceedings as set forth in Title 28 U.S.C. § 1407, the group of actions shall be given the composite number previously assigned by the Judicial Panel on Multidistrict Litigation. Individual actions within the group shall be given specific civil action numbers.

B. Clerk of Court to Maintain Multidistrict Docket Sheet. The Clerk of Court shall maintain a multidistrict litigation docket sheet for the group of actions compositely numbered, as well as an individual docket sheet for each separate action. All pleadings, papers, depositions, interrogatories, and other documents or material, relating to two or more actions shall be entered only on the multidistrict litigation docket sheet. If such pleading or document relates to a single action only, it shall be entered on the individual action docket sheet.

C. No Separate Appearance Required. Counsel who entered an appearance in the transferor court prior to the transfer need not enter a separate appearance before this Court.

D. Notification of Representing Counsel. Upon receipt of an order of transfer, attorneys representing litigants in transferred cases shall notify the Clerk of this Court of the names, addresses and telephone numbers of attorneys of record. No litigant may list more than one attorney as its legal representative for the purpose of service.

E. Liaison Counsel to be Designated. Prior to the first pretrial conference, counsel for plaintiffs and for defendants shall designate, subject to the approval of the Court, liaison counsel. Liaison counsel shall be authorized to receive notices on behalf of the parties by whom they have been designated. They shall be responsible for the preparation and transmittal of copies of such notices as they may receive as liaison counsel to each of the attorneys included on the list prepared in accordance with the preceding paragraph.

F. Only Original Documents to be Filed. Unless the Judicial Panel on Multidistrict Litigation or this Court by order specifically otherwise directs for a specific case or group of cases, only the original of all documents shall be filed with the Clerk of this Court; provided, however, upon remand, it shall be the responsibility of the attorneys who filed a given document to furnish an adequate number of copies for transmittal to the transferor Court. The Clerk of Court shall notify counsel of the number of copies needed. The copies shall be furnished within thirty (30) days from the date of notification of remand. Upon receipt of an order of the Judicial Panel transferring or remanding cases, without further order of this Court, the Clerk of Court shall assemble the files, together with their documentation, and forward the files as directed by the Judicial Panel.

LCvR 100.2 PUBLICATION OF NOTICE OR ADVERTISEMENTS

Any notice or advertisement required by law or rule of Court to be published in any newspaper shall be a short analysis, setting forth the general purpose of such notice or advertisement, and shall also be published in the Pittsburgh Legal Journal, Erie County Law Journal, and/or Cambria County Legal Journal which are also designated as the official newspapers for this District or other publications ordered by the Court.

LCvR 2241 ACTIONS UNDER 28 U.S.C. § 2241

A. Scope. These rules shall apply in the United States District Court, Western District of Pennsylvania, in all proceedings initiated by federal prisoners under 28 U.S.C. § 2241. In filings submitted to this Court, these Local Rules shall be cited as "LCvR 2241.__." In addition to these rules, all parties also should consult the applicable provisions of the federal *habeas corpus* statute at 28 U.S.C. §§ 2241-2266, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), P.L. 104-132, effective April 24, 1996.

B. The Petition.

1. Naming the Respondent. If the petitioner is currently serving a sentence imposed by a federal Court and he or she is challenging the execution of his or her sentence, petitioner must name as respondent the warden or custodian of the prison or correctional facility were petitioner is incarcerated.

2. Form.

a. Form of Petitions Required. A petitioner who files a petition seeking relief pursuant to 28 U.S.C. § 2241 may submit his or her petition on the standard form supplied by this Court. If the petitioner does not use the standard form, the petition must substantially follow the standard form supplied by this Court. Petitions that do not utilize the standard form shall contain all of the information required by the standard form. If the petitioner is represented by counsel, Electronic Case Filing (ECF) procedures apply.

b. Content. The petitioner is to state all grounds for relief, provide specific facts supporting each argument, and identify the relief requested. An accompanying memorandum of law is not required but will be accepted by the Clerk of Court at the time the petition is filed.

c. Where to Get the Standard Form. The standard form supplied by this Court for 28 U.S.C. § 2241 petitions can be obtained free of charge from the following sources: (i) this Court's website (www.pawd.uscourts.gov) (FORMS/MANUALS); (ii) this Court's Office of the Clerk of Court upon request; (iii) the Federal Public

Defender's website (http://paw.fd.org); or (iv) the Federal Public Defender's Office upon request.

d. Requirements Concerning Filing Format. All filings in 28 U.S.C. § 2241 proceedings must by typed, word-processed or neatly written in ink. All filings must be submitted on paper sized 8½ by 11 inches. No writing or typing shall be made on the back of any filing.

e. Return of Petitions that Do Not Substantially Comply With Local Form Rules. If the form or other initial filing submitted by a *pro se* petitioner does not substantially comply with these Local Rules, the filing may be returned to the *pro se* petitioner with a copy of the Court's standard form, a statement of reasons for its return, and a directive that the petitioner resubmit the claims outlined in the original filing on the Court's form. A petitioner will be given 21 days or as directed by the Court to return his or her filing on the form supplied by this Court. A petitioner may seek leave of Court for an extension of time to return the form.

f. Certificate Required in Death Penalty Case. A petitioner challenging the execution of a sentence of death pursuant to a federal Court judgment shall file with the Clerk of Court a copy of the "Certificate of Death Penalty Case" required by the Third Circuit L.A.R. Misc. 111.2(a). The certificate will include the following information: names, addresses, and telephone numbers of parties and counsel; if set, the proposed date of execution of the sentence; and the emergency nature of the proceedings. Upon docketing, the Clerk of Court will transmit a copy of the certificate, together with a copy of the relevant documents, to the Clerk of the Court of Appeals as required by Third Circuit L.A.R. Misc. 111.2(a).

C. Filing the Petition. The original Section 2241 petition shall be filed with the Clerk of Court. Section 2241 petitions must be accompanied by the applicable filing fee or a motion requesting leave to proceed *in forma pauperis*.

D. The Answer and the Reply.

1. The Answer.

a. When Required. Upon undertaking preliminary review of the motion for relief under 28 U.S.C. § 2241, if the Court finds that there is no basis for dismissal, the Court must enter an order directing the respondent to file an Answer within the time frame permitted by the Court. The respondent is not required to file a Response to the petition unless a Judge so orders. An extension may be granted only for good cause shown.

b. Contents. The Response must address the allegations in the petition. All relevant documents should be attached to the Response as exhibits. In addition, the Response must state

whether any claim in the petition is barred by a failure to exhaust administrative remedies, a procedural bar, or non-retroactivity.

2. The Reply. Although not required, the petitioner may file a Reply (also known as "a Traverse") within 30 days of the date the respondent files its Response. If the petitioner wishes to file a Reply after 30 days have passed, he or she must file a motion requesting to do so and an extension may be granted only for good cause shown.

E. Powers of a Magistrate Judge. Within 21 days of commencement of a Section 2241 proceeding in the Erie or Pittsburgh Divisions, the petitioner shall execute and file a "CONSENT TO JURISDICTION BY UNITED STATES MAGISTRATE JUDGE" form, either consenting to the jurisdiction of the Magistrate Judge or electing to have the case randomly assigned to a District Judge. Respondent shall execute and file within 21 days of its appearance a form either consenting to the jurisdiction of the Magistrate Judge or electing to have the case randomly assigned to a District Judge. If all parties do not consent to Magistrate Judge jurisdiction, a District Judge shall be assigned and the Magistrate Judge shall continue to manage the case consistent with 28 U.S.C. § 636.

The "CONSENT TO JURISDICTION BY UNITED STATES MAGISTRATE JUDGE" form is available on this Court's website (www.pawd.uscourts.gov) (CASE ASSIGNMENT SYSTEM). If a party elects to have the case assigned to a District Judge, the Magistrate Judge shall continue to manage the case by deciding non-dispositive motions and submitting reports and recommendations on the petition and on dispositive motions, unless otherwise directed by the District Judge.

F. Applicability of the Federal Rules of Civil Procedure. The Federal Rules of Civil Procedure may be applied to a proceeding under these rules.

G. Appeals.

1. Upon entry of a final decision decided pursuant to 28 U.S.C. § 2241, the Court shall set forth the judgment on a separate document and enter the judgment on the civil docket as required under Fed. R. Civ. P. 58(a)(1).

2. The time for filing a notice of appeal is governed by Fed. R. App. P. 4(a) and such time commences when the Court enters the judgment as described in said Rule.

H. The Appointment of Counsel. There is no constitutional right to counsel in proceedings brought pursuant to 28 U.S.C. § 2241. Financially eligible petitioners may, however, request that counsel be appointed at any time. *See* 18 U.S.C. § 3006A. The Court may appoint counsel for a petitioner who qualifies to have counsel appointed under 18 U.S.C. § 3006A. This Local Rule is not intended to alter or limit the appointment of counsel available pursuant to 18 U.S.C. § 3006A.

Comment (June 2008)

All Section 2241 *habeas* cases in the Erie and Pittsburgh Divisions are assigned to a Magistrate Judge only.

LCvR 2254 ACTIONS UNDER 28 U.S.C. § 2254

A. Scope.

1. These rules shall apply in the United States District Court, Western District of Pennsylvania, in all proceedings initiated under 28 U.S.C. § 2254. In addition to these rules, all parties also should consult 28 U.S.C. § 2254 and the applicable provisions of the federal *habeas corpus* statute at 28 U.S.C. §§ 2241-2266, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), P.L. 104-132, effective April 24, 1996.

2. These Local Rules are intended to supplement, when necessary, the corresponding rules promulgated by the United States Supreme Court that are entitled "Rules Governing Section 2254 Proceedings for the United States District Courts." Those rules are cited herein as "the Federal 2254 Rules," and a specific Federal 2254 Rule is cited as "Federal 2254 Rule ___." All parties should consult the Federal 2254 Rules at the commencement of litigation to ensure compliance with the Federal 2254 Rules, as supplemented by these Local Rules. In filings submitted to this Court, these Local Rules shall be cited as "LCvR 2254.__."

B. The Petition.

1. Naming the Respondent. If the petitioner is currently under a state Court judgment and he or she is challenging the state Court conviction/sentence, he or she must name as respondent the state officer who has custody (i.e., the warden or superintendent). The petitioner must also name as respondent the District Attorney of the county in which he or she was convicted and sentenced. If a petitioner is challenging parole proceedings, he or she must name as respondent the Pennsylvania Board of Probation and Parole.

2. Form.

a. Form of Petitions Required. A petitioner who files a petition seeking relief pursuant to 28 U.S.C. § 2254 may submit his or her petition on the standard form supplied by this Court. If the petitioner does not use the standard form, the petition must substantially follow the standard form supplied by this Court or the form attached to the Federal 2254 Rules. Petitions that do not utilize the standard forms shall contain all of the information required by the standard forms. If the petitioner is represented by counsel, the Electronic Case Filing (ECF) procedures apply.

b. Content. The petitioner is to state *all* grounds for relief, provide specific facts supporting each argument, and identify the relief requested. An accompanying memorandum of law is not required but will be accepted by the Clerk of Court at the time the petition is filed.

c. Where to Get the Standard Form. The standard form supplied by this Court for 28 U.S.C. § 2254 petitions can be obtained free of charge from the following sources: (i) this Court's website (www.pawd.uscourts.gov) (FORMS/MANUALS); (ii) this Court's Office of the Clerk of Court upon request; (iii) the Federal Public Defender's website (http://paw.fd.org); or (iv) the Federal Public Defender's Office upon request.

d. Requirements Concerning Filing Format. All filings in 28 U.S.C. § 2254 proceedings must by typed, word-processed or neatly written in ink. All filings must be submitted on paper sized 8½ by 11 inches. No writing or typing shall be made on the back of any filing.

e. Return of Petitions that Do Not Substantially Comply With Local Form Rules. If the form or other initial filing submitted by a *pro se* petitioner does not substantially comply with Federal 2254 Rule 2, as supplemented by these Local Rules, the Clerk of Court will accept the petition and file it for the sole purpose of preserving the timeliness. If the Court so directs, the filing may be returned to a *pro se* petitioner with a copy of the Court's standard form, a statement of reasons for its return, and a directive that the petitioner resubmit the claims outlined in the original filing on the Court's form. A petitioner will be given 21 days to return his or her filing on the form supplied by this Court. A petitioner may seek leave of Court for an extension of time to return the form.

f. Certificate Required in Death Penalty Case. A petitioner challenging the imposition of a sentence of death pursuant to a state Court judgment shall file with the Clerk of Court a copy of the "Certificate of Death Penalty Case" required by the Third Circuit L.A.R. Misc. 111.2(a). The certificate will include the following information: names, addresses, and telephone numbers of parties and counsel; if set, the proposed date of execution of the sentence; and the emergency nature of the proceedings. Upon docketing, the Clerk of Court will transmit a copy of the certificate, together with a copy of the relevant documents, to the Clerk of the Court of Appeals as required by Third Circuit L.A.R. Misc. 111.2(a).

C. Filing the Petition. The original Section 2254 petition shall be filed with the Clerk of Court. Section 2254 petitions must be accompanied by the applicable filing fee or for leave to proceed *in forma pauperis.*

D. Preliminary Review. These Local Rules provide no supplement to Federal 2254 Rule 4. Please consult that rule regarding preliminary review.

E. The Answer and the Reply.

1. The Answer.

a. When Required. Upon the directive of the Court, the respondent shall file an Answer to the petition in a form consistent with LCvR 2254.E.1.b-f.

The Respondent may, within the time frame permitted by the Court for the filing of the Answer, file a motion to dismiss if the respondent believes that there is a clear procedural bar to the action, such as the failure to exhaust, statute of limitations, abuse of the writ, and/or successive petitions. A motion to dismiss need not be in a form consistent with LCvR 2254.E.1.b-f. However, such a motion must be accompanied by a certified copy of all relevant state Court records.

b. Contents. The Answer is more than just a responsive pleading that simply admits or denies the allegations contained in the petition. In *habeas* petitions challenging a state conviction/sentence, the Answer shall contain a discussion of the relevant procedural and factual history of all state proceedings, including the state Court trial, direct appeal, and post-conviction proceedings. In *habeas* petitions challenging state parole proceedings, the Answer shall contain the relevant procedural and factual history of the parole proceedings and any state Court proceedings which related to the parole proceedings.

The Answer also shall address procedural issues, the merits of the petition, and shall contain accompanying legal argument and citation to appropriate authorities. All assertions of historical or procedural facts shall be accompanied by citations to the state Court record and shall appear in a style comporting with the designations employed in the index of materials prepared in accordance with LCvR 2254.E.1.d.

c. The respondent must also provide the Court with a certified copy of all relevant transcripts of the state trial and post-conviction proceedings; relevant documentary evidence admitted at those proceedings; briefs submitted by either party to any state Court relating to the matter; opinions and dispositive orders of the state Court or agency; other relevant state Court/agency records; and a certified copy of the docket sheets of all the state Courts/agencies involved. Care should be taken so that all items are photocopied accurately, legibly, and in full.

d. The respondent shall also submit an index of all material described in LCvR 2254.E.1.c. The pages of the records must be sequentially numbered so that citations to those records will identify the exact location where the information appears.

e. If any item identified in LCvR 2254.E.1.c is not available at the time the respondent submits an answer, the respondent shall notify the Court that the item is unavailable. Once the item becomes available, the respondent shall provide a supplemental lodging of the item and index within 21 days of its availability.

f. As set forth in this Court's "Electronic Case Filing Policies and Procedures," in addition to the items that must be filed electronically with the Answer, a respondent shall also submit the original state Court records, or a certified complete copy of those records. The records shall be submitted in the traditional manner on paper. The Clerk of Court shall note on the docket that the original state Court records have been received. State Court records are not part of this Court's permanent case file and will be returned to the appropriate state Court upon final disposition, including appeals.

2. The Reply. Although not required, the petitioner may file a Reply (also known as "a Traverse") within 30 days of the date the respondent files its Answer. If the petitioner wishes to file a Reply after 30 days have passed, he or she must file a motion requesting leave to do so. An extension may be granted only for good cause shown.

F. Discovery. These Local Rules provide no supplement to Federal 2254 Rule 6. Please consult that rule regarding discovery.

G. Expanding the Record. If either party intends to rely on any document(s) that are not a part of the state Court record, such party must include those documents in a separate appendix attached to the pleading by which those documents are being submitted. In addition, that party should address, in its documents filed with the Court, why reliance on those documents is proper under the federal *habeas* statute and Federal 2254 Rule 7.

H. Evidentiary Hearing. These Local Rules provide no supplement to Federal 2254 Rule 8. Please consult that rule regarding evidentiary hearings.

I. Second or Successive Petitions. These Local Rules provide no supplement to Federal 2254 Rule 9. Please consult that rule regarding second or successive petitions.

J. Powers of a Magistrate Judge. Within 21 days of commencement of a Section 2254 proceeding in the Erie or Pittsburgh Divisions, the petitioner shall execute and file a "CONSENT TO JURISDICTION BY UNITED STATES MAGISTRATE JUDGE" form, either consenting to the jurisdiction of the Magistrate Judge or electing to have the case randomly assigned to a District Judge. Respondent shall execute and file within 21 days of its appearance a form either consenting to the jurisdiction of the Magistrate Judge or electing to have the case randomly assigned to a District Judge. If all parties do not consent to Magistrate Judge jurisdiction, a District Judge shall be assigned and the Magistrate Judge shall continue to manage the case consistent with 28 U.S.C. § 636.

The "CONSENT TO JURISDICTION BY UNITED STATES MAGISTRATE JUDGE" form is available on this Court's website (www.pawd.uscourts.gov) (CASE ASSIGNMENT SYSTEM). If a party elects to have the case assigned to a District Judge, the Magistrate Judge shall continue to manage the case by deciding non-dispositive motions and submitting reports and recommendations on the petition and on dispositive motions, unless otherwise directed by the District Judge.

K. Applicability of the Federal Rules of Civil Procedure. These Local Rules provide no supplement to Federal 2254 Rule 11. Please consult that rule regarding applicability of the Federal Rules of Civil Procedure.

L. Appeals.

1. Upon entry of a final decision decided pursuant to 28 U.S.C. § 2254, the Court shall set forth the judgment on a separate document and enter the judgment on the civil docket as required under Fed. R. Civ. P. 58(a)(1).

2. The time for filing a notice of appeal is governed by Fed. R. App. P. 4(a) and such time commences when the Court enters the judgment as described above in said Rule.

M. The Appointment of Counsel. There is no constitutional right to counsel in proceedings brought pursuant to 28 U.S.C. § 2254. Financially eligible petitioners may, however, request that counsel be appointed at any time. *See* 18 U.S.C. § 3006A. Pursuant to Federal 2254 Rule 6(a), the Court may, if necessary for effective discovery, appoint counsel for a petitioner who qualifies to have counsel appointed under 18 U.S.C. § 3006A. Pursuant to Federal 2254 Rule 8(c), if an evidentiary hearing is warranted, the Court must appoint counsel to represent a moving party who qualifies to have counsel appointed under 18 U.S.C. § 3006A. This Local Rule is not intended to alter or limit the appointment of counsel available pursuant to Federal 2254 Rule 6(a), Federal 2254 Rule 8(c), or 18 U.S.C. § 3006A

Comment (June 2008)

All non-death penalty Section 2254 *habeas* cases in the Erie and Pittsburgh Divisions are assigned to a Magistrate Judge only. (Death penalty Section 2254 *habeas* cases continue to be assigned to District Judges only.)

LCvR 2255 ACTIONS UNDER 28 U.S.C. § 2255

A. Scope.

1. These rules shall apply in the United States District Court, Western District of Pennsylvania, in all proceedings initiated under 28 U.S.C. § 2255. In addition to these rules, all parties also should consult 28 U.S.C. § 2255 and the applicable provisions of the federal *habeas corpus* statute, 28 U.S.C. §§ 2241-2266, as amended by the Antiterrorism and Effective

Death Penalty Act of 1996 ("AEDPA"), P.L. 104-132, effective April 24, 1996.

2. These Local Rules are intended to supplement, when necessary, the corresponding rules promulgated by the United States Supreme Court that are entitled "Rules Governing Section 2255 Proceedings for the United States District Courts." Those rules are cited herein as "the Federal 2255 Rules," and a specific Federal 2255 Rule is cited as "Federal 2255 Rule ___." All parties should consult the Federal 2255 Rules at the commencement of litigation to ensure compliance with the Federal 2255 Rules, as supplemented by these Local Rules. In filings submitted to this Court, these Local Rules shall be cited as "LCvR 2255.__."

B. The Motion.

1. Form.

a. Form of Motions Required. Motions seeking relief under 28 U.S.C. § 2255 filed with this Court may be submitted on the standard form supplied by this Court. If the movant does not use the standard form, the motion must substantially follow the standard form supplied by this Court or the form attached to the Federal 2255 Rules. Motions that do not utilize the standard forms shall contain all of the information required by the standard forms.

b. Content. In the § 2255 motion, the movant is to state *all* grounds for relief, provide specific facts supporting each argument, and identify the relief requested. An accompanying memorandum of law is not required but will be accepted by the Clerk of Court at the time the motion is filed.

c. Where to Get the Standard Form. The standard form supplied by this Court for 28 U.S.C. § 2255 motions can be obtained free of charge from the following sources: (i) this Court's website (www.pawd.uscourts.gov); (ii) this Court's Office of the Clerk of Court upon request; (iii) the Federal Public Defender's website (http://paw.fd.org); or (iv) the Federal Public Defender's Office upon request.

d. Requirements Concerning Filing Format. All filings in Section 2255 proceedings must by typed, word-processed or neatly written in ink. All filings must be submitted on paper sized 8½ by 11 inches. No writing or typing shall be made on the back of any filing.

e. Return of Motions that Do Not Substantially Comply With Local Form Rules. If the form or other initial filing submitted by a *pro se* movant does not substantially comply with Federal 2255 Rule 2, as supplemented by these Local Rules, the Clerk of Court will accept the motion and file it for the sole purpose of preserving the timeliness. If the Court so directs, the filing may be returned to a *pro se* movant with a copy of the Court's standard form, a statement

of reasons for its return, and a directive that the movant resubmit the claims outlined in the original filing on the Court's form. A movant will be given 21 days to return his or her filing on the form supplied by this Court. A party may seek leave of Court for an extension of time to return the form.

f. Certificate Required in Death Penalty Case. A movant challenging the imposition of a sentence of death pursuant to a federal Court judgment shall file with the Clerk of Court a copy of the "Certificate of Death Penalty Case" required by the Third Circuit L.A.R. Misc. 111.2(a). The certificate will include the following information: names, addresses, and telephone numbers of parties and counsel; if set, the proposed date of execution of the sentence; and the emergency nature of the proceedings. Upon docketing, the Clerk of Court will transmit a copy of the certificate, together with a copy of the relevant documents, to the Clerk of the Court of Appeals as required by Third Circuit L.A.R. Misc. 111.2(a).

C. Filing and Serving the Motion.

1. The original Section 2255 motion shall be filed with the Office of the Clerk of Court.

2. Upon receiving the filing, the Clerk of Court will docket it at two places. The Clerk of Court will assign a civil case number for the motion, open that civil case, and enter the motion at that civil case number. At the same time, the Clerk of Court will file and docket the motion at the movant's related criminal case number. All filings related to the motion thereafter will be filed and docketed at the criminal case number only, with the exception of the final judgment order. The final judgment order will be filed and docketed at the civil case number only. If the movant is represented by counsel, Electronic Case Filing (ECF) procedures apply.

3. Following docketing of the filing, the Clerk of Court will deliver a copy of the filing to the United States Attorney by way of a Notice of Electronic Filing (NEF) or by hard copy. Although the United States Attorney has no obligation to do so, he or she may elect to respond to the motion prior to receipt of a District Court order directing that a response be filed.

D. Preliminary Review.

These Local Rules provide no supplement to Federal 2255 Rule 4. Please consult that rule regarding preliminary review.

E. The Answer and the Reply.

1. Order Directing Response. Upon undertaking preliminary review of the motion for relief under 28 U.S.C. § 2255 (and the United States Attorney's initial response, if any), if the Court finds that there is no basis for dismissal, the Court must enter an order directing the United States Attorney to respond by way of an Answer, motion or other form of

response within 45 days. An extension may be granted only for good cause shown.

2. The Reply. Although not required, the movant may file a Reply within 30 days of the date the United States Attorney files its Answer or other form of response. If the movant wishes to file a Reply after 30 days have passed, he or she must file a motion requesting leave to do so. An extension may be granted only for good cause shown.

F. Discovery. These Local Rules provide no supplement to Federal 2255 Rule 6. Please consult that rule regarding discovery.

G. Expanding the Record. These Local Rules provide no supplement to Federal 2255 Rule 7. Please consult that rule regarding expanding the record.

H. Evidentiary Hearing. Local Rules of Criminal Procedure [insert Local Rule here when that Rule is finalized] apply at a hearing under Federal 2255 Rule 8(d).

I. Second or Successive Motions. These Local Rules provide no supplement to Federal 2255 Rule 9. Please consult that rule regarding second or successive motions.

J. Powers of a Magistrate Judge. Motions filed under 28 U.S.C. § 2255 shall be assigned to District Judges only.

K. Appeals.

1. Upon entry of a final decision on a motion decided pursuant to 28 U.S.C. § 2255, the Court shall set forth the judgment on a separate document and enter the judgment on the civil docket as required under Fed. R. Civ. P. 58(a)(1).

2. The time for filing a notice of appeal is governed by Fed. R. App. P. 4(a) and such time commences when the Court enters the judgment as described above in subsection (a).

L. Applicability of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure. These Local Rules provide no supplement to Federal 2255 Rule 12. Please consult that rule regarding the applicability of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

M. The Appointment of Counsel. There is no constitutional right to counsel in proceedings brought under 28 U.S.C. § 2255. Financially eligible movants may, however, request that counsel be appointed at any time. *See* 18 U.S.C. § 3006A. Pursuant to Federal 2255 Rule 6(a), the Court may, if necessary for effective discovery, appoint counsel for a movant who qualifies to have counsel appointed under 18 U.S.C. § 3006A. Pursuant to Federal 2255 Rule 8(c), if an evidentiary hearing is warranted, the Court must appoint counsel to represent a moving party who qualifies to have counsel appointed under 18 U.S.C. § 3006A. This Local Rule is not intended to alter or limit the appointment of counsel

available pursuant to Federal 2255 Rule 6(a), Federal 2255 Rule 8(c), or 18 U.S.C. § 3006A.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LOCAL CRIMINAL RULES OF COURT

LOCAL CRIMINAL RULES OF COURT

LCrR 1 CITATION AND APPLICABILITY TO *PRO SE* DEFENDANTS

These rules may be cited as "LCrR." Where the defendant is proceeding *pro se*, references in these rules to defense counsel shall be taken to include the *pro se* defendant.

LCrR 5 INITIAL APPEARANCE BEFORE MAGISTRATE JUDGE

A. Opportunity to Consult With Counsel. A defendant shall be given an opportunity to consult with counsel at his or her Initial Appearance and before an initial interview with Pretrial Service Officers. The Federal Public Defender, or an attorney from the CJA Panel if the Federal Public Defender has a conflict, as directed by the Court, will provide advice of rights to defendants before their interview with Pretrial Services. Notwithstanding the foregoing, the Court may establish a separate protocol or procedure for situations involving the substantially contemporaneous arrests of ten or more individuals.

B. Notification of Counsel. It is the responsibility of the Magistrate Judge assigned to criminal duty to notify the Federal Public Defender, or the defendant's retained counsel if known, before the Initial Appearance.

C. Eligibility for Appointed Counsel. When a defendant requests appointment of counsel, and the Court determines that the defendant is eligible for appointed counsel, the Court will appoint counsel under the Criminal Justice Act at the time of the Initial Appearance.

D. Entry of Appearance. In all criminal cases involving privately retained counsel, a notice of appearance of counsel shall be filed at or before the first appearance of counsel. *See also* LCvR 83.2.C.1.

E. Withdrawal of Appearance. In any criminal proceeding, no attorney whose appearance has been entered shall withdraw his or her appearance except upon filing a written petition stating reasons for withdrawal, and only with leave of Court and upon reasonable notice to the client. *See also* LCvR 83.2.C.4.

LCrR 10 ARRAIGNMENTS

Arraignments may be conducted by the Magistrate Judge in cases triable by the Magistrate Judge and in other cases to the extent of taking a not guilty plea or noting a defendant's intention to plead guilty or *nolo contendere* and ordering a presentence report in appropriate cases. Upon the request of the defendant, the government shall provide available Fed. R. Crim. P. 16 material to the defendant at the time of the arraignment, and the Fed. R. Crim. P. 16 receipt shall be filed with the Court. Upon written request by the defendant, the Magistrate Judge

may set a date for the filing of pretrial motions up to 45 days from the date of the arraignment, and order that the period of the extension shall be excluded from the time within which the trial of the case shall commence under the Speedy Trial Act, as necessary to provide the defendant with adequate time for investigation and preparation of motions. Any other motions for extension of time shall be filed with the District Judge.

Comment (February 2013)

Forms for Motions to Extend Time to File Pretrial Motions will be available to counsel at the time of the arraignment and may be approved by Order of the Magistrate Judge. The 45 day period will be excluded from the Speedy Trial Act 18 U.S.C. § 3161 et seq.

LCrR 12 PRETRIAL MOTIONS

A. Timing. Motions that must be made before trial under Fed. R. Crim. P.12, those made under Rule 41, and a motion for a bill of particulars under Fed. R. Crim. P. 7 shall be made within fourteen days after arraignment, unless the court extends the time at arraignment, or upon written application made within the said fourteen day period. The court, in its discretion, may, however, for good cause shown, permit a motion to be made and heard at a later date.

B. Requirements. All such motions shall contain a short and plain description of the requested relief and incorporate or be accompanied by a memorandum or brief setting forth the reasons and legal support for the granting of the requested relief.

C. Response. Any party opposing a motion may file and serve a response within fourteen days after service of the motion, unless the time period is otherwise extended by the Court. Every response shall incorporate or be accompanied by a memorandum or brief setting forth the reasons and legal support for the respondent's position.

D. Reply Memorandum. The movant may file and serve a reply memorandum within fourteen days after service of the response, unless the time period is otherwise extended by the Court.

E. Motion to Extend Time. Any motion to extend the time limits set forth above shall set forth the grounds upon which it is made and whether the continuance sought shall constitute, in whole or in part, excludable time as defined by 18 U.S.C. § 3161(h). Said motion to extend time shall be accompanied by a proposed form of Order that, if adopted, will state fully and with particularity the reasons for granting the motion as well as the proposed findings of the Court as to excludable time. Extensions of the time limits set forth above shall be excludable to the extent authorized by 18 U.S.C. § 3161(h). Extensions shall be granted by the Court where warranted by the ends of justice in accordance with the list of factors set forth in § 3161(h)(7)(B). The Court may consider good faith scheduling conflicts, additional time needed for reasonable preparation, the interests of the defendant and the government in maintaining continuity of

counsel, and other unavoidable problems, such as emergencies and illness. This list is illustrative and not exclusive.

LCrR 16 DISCOVERY AND INSPECTION

A. Compliance With Fed. R. Crim. P. 16. The parties shall comply with Fed. R. Crim. P. 16, including the reciprocal discovery provisions of Fed. R. Crim. P. 16(b).

B. Timing. Upon a defendant's request, the government shall make available the Rule 16 material at the time of the arraignment. If discovery is not requested by the defendant at the time of the arraignment, the government shall disclose such material within seven (7) days of a defendant's request. The government shall file a receipt with the Court which sets forth the general categories of information subject to disclosure under Rule 16, as well as any exculpatory evidence, and the items provided under each category.

C. Exculpatory Evidence. At the time of arraignment, and subject to a continuing duty of disclosure thereafter, the government shall notify the defendant of the existence of exculpatory evidence, and permit its inspection and copying by the defendant.

D. Voluntary Disclosure. Nothing in this rule shall be construed to prevent the government from voluntarily disclosing material to the defendant at an earlier time than that required by Fed. R. Crim. P. 16, Fed. R. Crim. P. 26.2 and 18 U.S.C. § 3500.

E. Obligation to Confer. Counsel shall confer and attempt to resolve issues regarding additional discovery before a motion to produce is filed with the Court.

F. Status Conference. The Court shall hold a status conference with counsel approximately 30 days after Arraignment, on a date certain to be set by the Court. Counsel must be prepared to discuss case scheduling matters, including the timing of disclosures required by law or by rule of Court, as well as the progress of discovery to date. The attendance of the defendant shall be at the discretion of the Court.

LCrR 23 LAW ENFORCEMENT EVIDENCE

In all cases where money, firearms, narcotics, controlled substances or any matter of contraband is introduced into evidence, such evidence shall be maintained for safekeeping by law enforcement during all times when court is not in session, and at the conclusion of the case. The law enforcement agent will be responsible for its custody if the evidence is required for any purpose thereafter. *See also* LCvR 5.1.J.

LCrR 24.1 JURY LIST

Members of the bar of this court shall be permitted to have a copy of each jury list on condition that a receipt be signed with the Clerk of Court at the date of delivery thereof which shall contain as the substance the following certification: "I hereby certify that I and/or my firm or associates have litigation pending and in connection therewith, I will require a list of jurors. I further acknowledge to have received a copy of said list of jurors from the Clerk of Court and hereby agree that I will not, nor will I permit any person or agency, to call or contact any juror identified on said list at his or her home or any other place, nor will I call or contact any immediate member of said juror's family, which includes his or her spouse, children, mother, father, brother, or sister, in an effort to determine the background of any member of said jury panel for acceptance or rejection of said juror.

/s/_____

Date: _____"

LCrR 24.2 EXAMINATION OF JURORS BEFORE TRIAL

Jury selection in a criminal case shall be governed by Fed. R. Crim. P. 23 and 24 and by such procedures established by the trial judge. In its discretion, the Court may require potential jurors to complete a questionnaire before the formal voir dire process commences.

A. Examination of Jurors Before Trial. During the examination of jurors before trial, the Judge or a representative of the Clerk of Court conducting such examination, shall state the following to the jurors collectively:

1. The name of each of the defendants and the names of the attorneys for the parties; and

2. The nature of the case and the offenses charged.

B. Required Questions. The examination of jurors shall contain the following questions, or questions substantially similar thereto:

1. Do you know any of the defendants?

2. Do you know any of the attorneys in the case? Have they or their firms ever represented you or any members of your immediate family?

3. Do you know anything about this case?

4. (If appropriate) Are you or any member of your immediate family, employees, former employees or stockholders in any of the corporations or businesses involved in this case? The names of corporations and businesses involved in this case are:

5. Are you or any member of your immediate family employed by the federal government (with the exception of military service)? What do they do?

6. Are you or any member of your immediate family employed by any law enforcement agency?

C. Questions to Individual Jurors. The following questions, where appropriate, shall, *inter alia*, be put to each juror individually:

1. What is your present occupation?

2. Who is you employer?

3. If you are retired, who was your last employer and what was your occupation?

4. Are you married? If so, what is your spouse's occupation and who is your spouse's employer?

5. Do you have any children? Do any of them work in the Western District of Pennsylvania? For whom do they work and what do they do?

6. Have you ever been a witness or defendant in a criminal case?

7. Have you ever been the victim of a crime?

8. Any other question which in the judgment of the Court shall be deemed proper.

LCrR 24.3 COMMUNICATION WITH A TRIAL JUROR

A. During Trial. During the trial, no party, attorney for a party, or person acting on behalf of a party or attorney, shall communicate directly or indirectly with any of the following: (1) a juror, (2) an excused juror, (3) an alternate juror or (4) a family member or person living within the same household as a juror, excused juror or alternate juror.

B. After Trial. After a verdict is rendered or a mistrial is declared, the Court shall inform the jury that no juror is required to speak to anyone, but that a juror may do so if the juror wishes.

LCrR 24.4 JUROR NOTE TAKING

Jurors may be permitted to take notes in the discretion of the Court. If jurors are permitted to take notes, the Court will provide jurors with the necessary materials, and shall retain custody of the notes when Court is not in session or

the jury is not deliberating. After the jury is discharged by the Court, the notes shall be destroyed.

LCrR 28 INTERPRETERS

A court certified interpreter will be provided by the Court and present for all proceedings involving defendants who are not proficient in English.

LCrR 32 PROCEDURE FOR GUIDELINE SENTENCING

The following procedures hereby are established to govern sentencing proceedings in this Court, in addition to the requirements of Fed. R. Crim. P. 32; the Sentencing Reform Act of 1984, 18 U.S.C. § 3551 *et seq.*; and the advisory United States Sentencing Guidelines ("U.S.S.G."), as promulgated under that Act and by the Sentencing Commission Act, 28 U.S.C. § 991 *et seq.*

A. Timing of Sentencing. Unless the Court orders otherwise, sentencing proceedings shall be scheduled no earlier than 14 weeks following the entry of a plea of guilty or *nolo contendere*, or the entry of a verdict of guilty.

B. Presentence Investigation and Report. Counsel is directed to the requirements of Fed. R. Crim. P. 32(c) and Fed. R. Crim. P. 32(d) regarding Presentence Investigations and Reports.

C. Presentence Procedures. No later than 7 weeks prior to the date set for sentencing, the United States Probation Office ("USPO") shall disclose the tentative Presentence Investigation Report ("PSR") to only the defendant, the defendant's attorney, and the attorney for the government. *See* Fed. R. Crim. P. 32(e)(2) and § 6A1.2(a) of the U.S.S.G.

1. Confidentiality. The PSR is a confidential court document. No copies or dissemination of the PSR shall be made without the express permission or Order of this Court, except that, pursuant to Third Circuit Local Appellate Rule 30.3(c), copies may be made for the United States Court of Appeals in any appeal from the sentence. The unauthorized copying or disclosure of the PSR may be treated as a contempt of court and be punished accordingly.

2. Administrative Resolution. If a party disputes facts or factors material to sentencing contained in the PSR, or seeks the inclusion of additional facts or factors material to sentencing, that party shall have the obligation to pursue the administrative resolution of that matter through informal presentence conferences with opposing counsel and the USPO.

a. The party seeking administrative resolution of such facts and factors shall do so within 2 weeks from the disclosure of the tentative PSR.

b. No later than 2 weeks after the disclosure of the tentative PSR, following any good faith efforts to resolve disputed, or include additional, material facts or factors described above, the USPO shall notify the attorneys for the government and the defendant of those matters that have, or have not, been administratively resolved.

3. Disclosure of PSR to Court. Following the 2 week time period for administrative resolution, and no later than 5 weeks before sentencing, pursuant to Fed. R. Crim. P. 32(g), the USPO shall disclose the PSR, as may be amended, to the Court, the defendant, the attorney for the defendant, and the attorney for the government.

4. Objections; Positions of the Parties. No later than 4 weeks before sentencing, the parties each shall file with the court a pleading entitled "Position of [Defendant or Government, as appropriate] With Respect to Sentencing Factors," pursuant to Fed. R. Crim. P. 32(f) and § 6A1.2(b) of the U.S.S.G. This pleading shall set forth any objections to the PSR and any anticipated grounds for: (a) departure from the advisory guideline sentencing range; or, (b) a sentence outside of the advisory guideline sentencing range, pursuant to the provisions of 18 U.S.C. § 3553(a). The party's Position With Respect to Sentencing shall be accompanied by a written statement certifying that filing counsel has conferred with opposing counsel and with the USPO in a good faith effort to resolve any disputed matters.

5. Responses to Objections and Positions. A party may file a response to the opposing party's Position With Respect to Sentencing Factors no later than 3 weeks prior to the sentencing.

6. Action on Objections; Addendum. After receiving counsel's objections and any responses thereto, the USPO shall conduct such further investigation as appropriate. The USPO may meet or otherwise confer with counsel to discuss unresolved factual or legal issues.

a. No later than 2 weeks before sentencing, the USPO shall serve an addendum which shall set forth any unresolved objections to the PSR, the grounds for those objections, the responses thereto, and the USPO's comments thereon.

b. The USPO shall certify that the PSR, together with any revision thereof and any addendum thereto, have been disclosed to the defendant and all counsel of record, and that the addendum fairly sets forth any remaining objections and responses.

7. Court's Tentative Findings and Rulings. Prior to the sentencing hearing, the Court shall notify the parties and the USPO of the Court's tentative findings and rulings, to the extent practicable, concerning disputed facts or factors. Reasonable opportunity shall be provided to the parties, prior to the imposition of sentence, for the submission of oral or written objections to the Court's tentative findings and rulings.

8. Supplemental Information and Memoranda. No later than 1 week before sentencing, a party may file supplemental information or a memorandum with respect to sentencing of the defendant, and shall serve the same upon the USPO. If counsel for the defendant intends to submit letters to the Court for consideration at sentencing, said letters should be electronically filed at least seven calendar days before sentencing. Opposing counsel may file a response to any supplemental information or memorandum no later than three days before sentencing.

9. Additional Information and Memoranda. For good cause shown, the Court may allow additional information and memoranda, and the responses thereto, to be raised at any time prior to the imposition of sentence.

10. Introducing Evidence. When any fact or factor material to the sentencing determination is reasonably in dispute, the parties shall be given an adequate opportunity to introduce evidence and to present information to the Court regarding that fact or factor, in accordance with § 6A1.3(a) of the U.S.S.G.

11. Court Determinations. Except with respect to any objection made pursuant to Fed. R. Crim. P. 32(f) and LCrR 32.C.5, above, the Court may accept as accurate any undisputed portion of the PSR as a finding of fact. However, with respect to disputed portions of the PSR, the Court shall make determinations pursuant to Fed. R. Crim. P. 32(i)(3) and § 6A1.3 of the U.S.S.G.

D. Judicial Modifications. For good cause shown, the time limits set forth in LCrR 32 may be modified by the Court.

E. Pre-Plea Presentence Investigations and Reports. Under appropriate circumstances, and with the written consent of the defendant pursuant to Fed. R. Crim. P. 32(e)(1), the Court may order the USPO to conduct a Presentence Investigation and prepare a PSR for a defendant prior to the entry of a plea of guilty or *nolo contendere*. The scope of any pre-plea PSR shall be determined by the Court.

F. Revocation of Probation and Supervised Release. In every case where revocation of probation or supervised release is sought, the United States Probation Office shall prepare and disclose to the defendant's attorney and the attorney for the government a Violation Work Sheet outlining the terms and class of the original conviction, the grading of each alleged violation and the advisory guideline range of sanctions for the alleged violation, if applicable.

G. Nondisclosure of Probation Office's Sentencing Recommendation. The specific sentencing recommendation of the United States Probation Office, which is submitted to the Court, shall not be disclosed to the parties or their counsel.

LCrR 41 INSPECTION AND COPYING OF SEIZED PROPERTY

Under appropriate circumstances, upon the filing of a motion and a showing of good cause by the party seeking relief, the Court may enter an order which permits such party (1) to have reasonable access to seized property, including documents, for inspection; or (2) to obtain copies of seized documents or property other than contraband. The moving party shall bear the cost of copying, unless otherwise ordered by the Court for good cause shown. In fashioning an order for relief under this Rule, the Court shall consider, among other things, the burden of compliance with the order upon the government, as well as the needs of the party seeking relief. Nothing herein is intended to limit any remedies which may be available under Fed. R. Crim. P. 41(g).

LCrR 46 TYPES OF BAIL IN CRIMINAL CASES

Provided that a bond in the form available at the office of the Clerk of Court is executed, any of the following may be accepted as security:

A. United States currency, or a certificate of deposit of a federally insured bank or savings and loan association, or federal, state or local government securities or bonds, or corporate securities or bonds of companies listed on the New York Stock Exchange, or a combination thereof, in the face amount of the bail, provided that the instruments are payable on demand, and provided further that, if the instruments are payable to one or more persons, the Clerk of Court or the appropriate judicial officer is satisfied that the endorsements of all owners have been secured as obligers.

B. Real property in the Commonwealth of Pennsylvania, including realty in which the defendant has an interest, in which the market value of the property after subtracting the current value of all mortgages, liens and judgments, equals the amount of the bond. *See also* Fed. R. Crim. P. 46(e).
The Clerk of Court shall maintain in its office and on its official website the procedures and requirements for posting of property bonds.

C. A surety company or corporation authorized by the Secretary of Treasury of the United States to act as surety on official bonds under the Act of August 13, 1894 (28 Stat. 279, as amended, U.S.C. Title 6, 1-13).

D. Such other property as the court deems sufficient pursuant to the Bail Reform Act of 1984, 18 U.S.C. § 3142(c)(2)(K).

LCrR 49 ELECTRONIC CASE FILING; SEALING OF DOCUMENTS

A. Electronic Case Filing Policies and Procedures. Counsel must comply with the Electronic Case Filing Policies and Procedures promulgated by the Court which govern all criminal cases and matters. All documents must comply with the privacy protection provisions set forth in Fed. R. Crim. P. 49.1 and LCvR 5.2.D.

B. Filing by Electronic Means. Documents may be filed, signed and verified by electronic means to the extent and in the manner authorized by the Court's Standing Order regarding Electronic Case Filing Policies and Procedures and the ECF User Manual. A document filed by electronic means in compliance with this Local Rule constitutes a written document for the purposes of applying these Local Rules, the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure. *See also* LCvR 5.5.

C. Service by Electronic Means. Documents may be served through the Court's transmission facilities by electronic means to the extent and in the manner authorized by the Standing Order regarding Electronic Case Filing Policies and Procedures and the ECF User Manual. Transmission of the Notice of Electronic Filing constitutes service of the filed document upon each party in the case who is registered as a Filing User. Any other party or parties shall be served documents according to these Local Rules, the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure. *See also* LCvR 5.6.

D. Filing Under Seal. The following documents shall be accepted by the Clerk for filing under seal without the necessity of a separate sealing order: (1) Motions setting forth the substantial assistance of a defendant in the investigation or prosecution of another person pursuant to U.S.S.G. § 5K1.1 or Fed. R. Crim. P. 35; (2) Motions for writs to produce incarcerated witnesses for testimony; (3) Motions for subpoenas for witnesses; (4) Motions by counsel seeking authorization for the expenditure of funds under the Criminal Justice Act, or seeking reimbursement for expenses incurred or attorney's fees. Such documents should be presented to the Clerk in hard copy for scanning and docketing under seal.

E. Provision of Sealed Documents to Opposing Party. Counsel of record may exchange copies of sealed documents, without obtaining leave of court, if the document is provided in an ongoing criminal case.

LCrR 57 ASSIGNMENT OF CASES

A. Criminal Action Categories. All criminal cases in this district shall be divided into the following categories:

1a. Narcotics and Other Controlled Substances, 1 to 2 Defendants

1b. Narcotics and Other Controlled Substances, 3 to 9 Defendants

1c. Narcotics and Other Controlled Substances, 10 or more Defendants

2a. Fraud and Property Offenses, 1 to 2 Defendants

2b. Fraud and Property Offenses, 3 to 9 Defendants

2c. Fraud and Property Offenses, 10 or more Defendants

3. Crimes of Violence

4. Sex Offenses

5. Firearms and Explosives

6. Immigration

7. All Others.

For purposes of determining the appropriate category, the number of defendants in related indictments which are returned during the same grand jury session shall be combined.

See also LCvR 40.B.

B. Assignment of Criminal Cases to District Judges. All criminal cases shall be assigned by the Clerk of Court at the earlier of (1) the time of filing of the indictment or information; (2) when any appeal is taken from a Magistrate Judge's decision on bail; (3) upon the filing of a motion for return of seized property; (4) upon the filing of a motion to quash a subpoena; (5) upon the filing of a motion to dismiss the complaint; (6) upon the filing of any motions of a similar nature that a Magistrate Judge concludes must be handled by a District Judge; or, (7) at the time of filing any motion in a case at the magisterial stage for a competency determination.

C. Related Actions. At the time of filing any criminal action or entry of appearance or any initial pleading or motion by defense counsel, as the case may be, counsel shall indicate on an appropriate form whether the action is related to any other pending or previously terminated actions in this Court. For the purpose of completing the form, all criminal actions arising out of the same criminal transaction or series of transactions are deemed related.

LCrR 58 PROCEDURES FOR MISDEMEANORS AND OTHER PETTY OFFENSES

See LCvR 72.

LCrR 83 FREE PRESS -- FAIR TRIAL PROVISIONS

A. Release of Information in Criminal Litigation. A lawyer or law firm shall not release or authorize the release of information or opinion that a reasonable person would expect to be disseminated by means of public communication, in connection with pending or imminent criminal litigation with which he or she or the firm is associated, if there is a substantial likelihood that such release would materially prejudice ongoing criminal proceedings.

B. Release Beyond Public Record. With respect to a pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement that a reasonable person

would expect to be disseminated by means of public communication, that goes beyond the public record, if there is a substantial likelihood that such statement would materially prejudice such pending investigation.

C. Subjects Likely to Be Materially Prejudicial. 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, extrajudicial statements by a lawyer or law firm associated with the prosecution or defense that a reasonable person would expect to be disseminated by means of public communication relating to the following subjects are substantially likely to be considered materially prejudicial to ongoing criminal proceedings:

1. the prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his or her apprehension or to warn the public of any dangers he or she may present;

2. the existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

3. the performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

4. the identity, testimony or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;

5. the possibility of a plea of guilty to the offense charged or a lesser offense; or

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, except that counsel may announce without further comment that the accused asserts innocence or denies the charges made against him or her.

Unless otherwise prohibited by law, the foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of his or her or its official or professional obligations, from announcing the fact, time and place of arrest, the identity of the investigating and arresting officer or agency, and the length of the investigation; 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 asserts innocence or denies the charges made against him or her.

LCrR 83.2 PRO HAC VICE ADMISSIONS

Pro Hac Vice Admissions. A motion for admission *pro hac vice* must be made by the attorney seeking to be admitted and must be accompanied by an affidavit from the attorney seeking to be admitted *pro hac vice* (the "affiant"). The affidavit must include the affiant's name, law firm affiliation (if any), business address, and bar identification number. The affiant must attest in the affidavit that the affiant is a registered user of ECF in the United States District Court for the Western District of Pennsylvania, that the affiant has read, knows, and understands the Local Rules of Court for the United States District Court for the Western District of Pennsylvania, and that the affiant is a member in good standing of the bar of any state or of any United States District Court. The affidavit must list the bars of any state or of any United States court of which the affiant is a member in good standing. The affiant must attach to the affidavit one current certificate of good standing from the bar or the court in which the affiant primarily practices. The affidavit also must list and explain any previous disciplinary proceedings concerning the affiant's practice of law that resulted in a non-confidential negative finding or sanction by the disciplinary authority of the bar of any state or any United States court. The Court will not rule on a motion for admission *pro hac vice* that does not include an affidavit containing the information and attestations required by this rule. The forms of the motion for admission *pro hac vice* and accompanying affidavit are set forth in "Appendix LCvR/LCrR 83.2.B-MOTION," and "Appendix LCvR/LCrR 83.2,B-AFFIDAVIT."

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LOCAL BANKRUPTCY APPELLATE RULES OF COURT

LOCAL BANKRUPTCY APPELLATE RULES OF COURT

LBR 8007-2 APPEAL TO THE DISTRICT COURT FROM THE BANKRUPTCY COURT

A. Appeals to the United States District Court from the United States Bankruptcy Court for the Western District of Pennsylvania pursuant to 28 U.S.C. § 158, shall be taken in the manner prescribed in Part VIII of the Federal Rules of Bankruptcy Procedure (hereinafter Fed. R. Bankr. P.), Rule 8001, *et seq.*

B. Where, after a notice of appeal to the United States District Court has been filed in the Bankruptcy Court, the appellant fails to designate the contents of the record on appeal or fails to file a statement of issues on appeal within the time required by Fed. R. Bankr. P. 8006, or fails to provide, when appropriate, evidence that a transcript has been ordered and that payment therefor has been arranged, or fails to take any other action to enable the bankruptcy clerk to assemble and transmit the record:

1. the bankruptcy clerk shall provide fourteen (14) days notice to the appellant and appellee of an intention to transmit a partial record consistent with Subsection B.2. of this rule;

2. after the 14 day notice period required by subsection B.1. of this rule has expired, the clerk of the bankruptcy court shall thereafter promptly forward to the clerk of the United States District Court a partial record consisting of a copy of the order or judgment appealed from, any opinion, findings of fact, and conclusions of law by the court, the notice of appeal, a copy of the docket entries, any documents filed as part of the appeal, and any copies of the record which have been designated by the parties pursuant to Fed. R. Bankr. P. 8006; the record as transmitted shall be deemed to be the complete record for purposes of the appeal; and

3. the district court may dismiss said appeal for failure to comply with Fed. R. Bankr. P. 8006 upon its own motion, or upon motion filed in the district court by any party in interest or the United States trustee.

C. Notwithstanding any counter designation of the record or statement of issues filed by the appellee, if the appellee fails to provide, where appropriate, evidence that a transcript has been ordered and that payment therefore has been arranged, or the appellee fails to take any other action to enable the bankruptcy clerk to assemble and transmit the record pursuant to Fed. R. Bankr. P. 8006, the bankruptcy clerk shall transmit the copies of the record designated by the parties and this shall be deemed to be the complete record on appeal.

LBR 9015-1 JURY TRIAL IN BANKRUPTCY COURT

A. In accordance with 28 U.S.C. § 157(e), the Bankruptcy Judges of this Court are specially designated to conduct jury trials where the right to a jury applies. This jurisdiction is subject to the express consent of all parties.
B. The jurors will be drawn from the same qualified jury wheels, consisting of the same counties, that are used in this Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

APPENDICES TO RULES

APPENDIX LCvR 7.1.A

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

_____	)	
	)	Civil Action No. _____
	)	
vs.	)	or
	)	
	)	Criminal Action No. _____
_____	)	

DISCLOSURE STATEMENT

Pursuant to LCvR 7.1 of the Western District of Pennsylvania and to enable Judges and Magistrate Judges to evaluate possible disqualification or recusal, the undersigned counsel for _____,in the above captioned action, certifies that the following are parents, subsidiaries and/or affiliates of said party that have issued shares or debt securities to the public:

or

Pursuant to LCvR 7.1 of the Western District of Pennsylvania and to enable Judges and Magistrate Judges to evaluate possible disqualification or recusal, the undersigned counsel for _____, in the above captioned action, certifies that there are no parents, subsidiaries and/or affiliates of said party that have issued shares or debt securities to the public.

_____ _____

Date Signature of Attorney or Litigant

APPENDIX LCvR 7.1.B

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

_____)
)
)
vs.) Civil Action No. _____
)
)
_____)

RICO CASE STATEMENT

Pursuant to LCvR 7.1.B, any party filing a civil action under 18 U.S.C. §§ 1961-1968 shall set forth those facts upon which such party relied to initiate the RICO claim as a result of the "reasonable inquiry" required by Fed. R. Civ. P. 11. The statement shall be in paragraph form corresponding by number and letter to the paragraphs and subparagraphs appearing below and shall provide in detail and with specificity the information required herein.

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

2. List each defendant and state the alleged misconduct and basis of liability of each defendant.

3. List alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each.

4. List the alleged victims and state how each victim has been allegedly injured.

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

a. A list of the alleged predicate acts and the specific statutes which were allegedly violated;

b. The date of each predicate act, the participants in each such predicate act and the relevant facts surrounding each such predicate act;

c. The time, place and contents of each alleged misrepresentation, the identity of persons by whom and to whom such alleged misrepresentation was made and if the

predicate act was an offense of wire fraud, mail fraud or fraud in the sale of securities. The "circumstances constituting fraud or mistake" shall be stated with particularity as provided by Fed. R. Civ. P. 9(b);

d. Whether there has been a criminal conviction for violation of any predicate act and, if so, a description of each such act;

e. Whether civil litigation has resulted in a judgment in regard to any predicate act and, if so, a description of each such act;

f. A description of how the predicate acts form a "pattern of racketeering activity."

6. State whether the alleged predicate acts referred to above relate to each other as part of a common plan, and, if so, describe in detail the alleged enterprise for each RICO claim. A description of the enterprise shall include the following information:

a. The names of each individual partnership, corporation, association or other legal entity which allegedly constitute the enterprise;

b. A description of the structure, purpose, function and course of conduct of the enterprise;

c. Whether each defendant is an employee, officer or director of the alleged enterprise;

d. Whether each defendant is associated with the alleged enterprise;

e. Whether it is alleged that each defendant is an individual or entity separate from the alleged enterprise, or that such defendant is the enterprise itself, or a member of the enterprise; and

f. If any defendant is alleged to be the enterprise itself, or a member of the enterprise, an explanation whether each such defendant is a perpetrator, passive instrument or victim of the alleged racketeering activity.

7. State and describe in detail whether it is alleged that the pattern of racketeering activity and the enterprise are separate or have merged into one entity.

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

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

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

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

a. The recipient of the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and

b. A description of the use or investment of such income.

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

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

a. The identity of each person or entity employed by, or associated with, the enterprise and

b. Whether the same entity is both the liable "person" and the "enterprise" under § 1962(c).

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

15. Describe the alleged injury to business or property.

16. Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.

17. List the damages sustained by each plaintiff for which each defendant is allegedly liable.

18. List all other federal causes of action, if any, and provide the relevant statute numbers.

19. List all pendent state claims, if any.

20. Provide any additional relevant information that would be helpful to the court in processing the RICO claim.

APPENDIX LCvR 16.1.A

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF PENNSYLVANIA

[CAPTION]

[JUDICIAL OFFICER(S)]

Fed. R. Civ. P. 26(f) REPORT OF THE PARTIES

Counsel for the parties and unrepresented parties shall confer regarding the matters identified herein and prepare a signed report in the following form to be filed at least 21 days before the Initial LCvR 16.1 Scheduling Conference or at such other time as ordered by the court. This report form may be downloaded from the Court's website as a word-processing document and the information filled in as requested on the downloaded form. The dates to be provided in the report are suggested dates and may be accepted or modified by the Court.

1. **Identification of counsel and unrepresented parties**. Set forth the names, addresses, telephone and fax numbers and e-mail addresses of each unrepresented party and of each counsel and identify the parties whom such counsel represent:

2. **Set forth the general nature of the case** (patent, civil rights, anti-trust, class action, etc.):

3. **Date Rule 26(f) Conference was held, the identification of those participating therein and the identification of any party who may not yet have been served or entered an appearance as of the date of said Conference:**

4. **Date of Rule 16 Initial Scheduling Conference as scheduled by the Court**: (Lead Trial Counsel and unrepresented parties shall attend the Rule 16 Initial Scheduling Conference with their calendars in hand for the purpose of scheduling other pre-trial events and procedures, including a Post-Discovery Status Conference; Counsel and unrepresented parties shall attend the Rule 16 Initial Scheduling Conference prepared to discuss the anticipated number of depositions and identities of potential deponents and the anticipated dates by which interrogatories, requests for production of documents and requests for admissions will be served):

5. **Identify any party who has filed or anticipates filing a dispositive motion pursuant to Fed. R. Civ. P. 12 and the date(s) by which any such anticipated motion may be filed:**

6. **Designate the specific Alternative Dispute Resolution (ADR) process the parties have discussed and selected, if any, and specify the anticipated time frame for completion of the ADR process. Set forth any other information the parties wish to communicate to the court regarding the ADR designation:**

7. **Set forth any change that any party proposes to be made in the timing, form or requirements of Fed. R. Civ. P. Rule 26(a) disclosures, whether such change is opposed by any other party, whether any party has filed a motion seeking such change and whether any such motion has been ruled on by the Court**:

8. **Subjects on which fact discovery may be needed**. (By executing this report, no party shall be deemed to (1) have waived the right to conduct discovery on subjects not listed herein or (2) be required to first seek the permission of the Court to conduct discovery with regard to subjects not listed herein):

9. **Set forth suggested dates for the following** (The parties may elect by agreement to schedule a Post-Discovery Status Conference, as identified in Paragraph 12, below, at the conclusion of Fact-Discovery rather than at the conclusion of Expert Discovery. In that event, the parties should provide suggested dates only for the events identified in sub-paragraphs 9.a through 9.e, below. The parties shall provide such information even if dispositive motions pursuant to Fed. R. Civ. P. 12 have been or are anticipated to be filed. If there are dates on which the parties have been unable to agree, set forth the date each party proposes and a brief statement in support of each such party's proposed date. Attach to this report form a proposed Court Order setting forth all dates agreed to below and leaving a blank for the insertion of a date by the Court for any date not agreed to):

   a. **Date(s) on which disclosures required by Fed. R. Civ. P. 26(a) have been or will be made:**

   b. **Date by which any additional parties shall be joined:**

   c. **Date by which the pleadings shall be amended:**

   d. **Date by which fact discovery should be completed:**

   e. **If the parties agree that discovery should be conducted in phases or limited to or focused on particular issues, identify the proposed phases or issues and the dates by which discovery as to each phase or issue should be completed:**

   f. **Date by which plaintiff's expert reports should be filed:**

   g. **Date by which depositions of plaintiff's expert(s) should be completed:**

   h. **Date by which defendant's expert reports should be filed:**

   i. **Date by which depositions of defendant's expert(s) should be completed:**

   j. **Date by which third party expert's reports should be filed:**

   k. **Date by which depositions of third party's expert(s) should be completed:**

10. If the parties agree that changes should be made to the limitations on discovery imposed by the Federal Rules of Civil Procedure or Local Rule or that any other limitations should be imposed on discovery, set forth such changes or limitations:

11. Please answer the following questions in regard to the discovery of electronically stored information ("ESI"):

a. **ESI.** Is either party seeking the discovery of ESI in this case?
□ Yes □ No [If "No," skip to sub-part (e) below.]

b. **ESI Discovery Plan.** The parties have reviewed and discussed the Court's Checklist for Rule 26(f) Meet and Confer Regarding Electronically Stored Information set forth in "Appendix LCvR 26.2.C-CHECKLIST" to the Local Rules and:

□ Have agreed that, in light of the facts and issues in this case, there is no need to complete an ESI discovery plan, and will conduct ESI discovery by _____
_____
_____
_____.

□ Have developed an ESI discovery plan (as attached).
□ Will have an ESI discovery plan completed by _____.

NOTE: At the direction of the Court, parties may be required to submit a draft of the Stipulated Order re: Discovery of Electronically Stored Information for Standard Litigation set forth in "Appendix LCvR 26.2.E-MODEL ORDER" to the Local Rules, to address specific issues relative to the parties' exchange of electronic discovery and ESI. If the parties are unable to do so, they should advise the Court promptly.

c. **Preservation.** Have the parties agreed on any protocol for the preservation of electronic data and/or potentially relevant ESI?
□ Yes □ No

d. **ADR.** Does any party believe that the exchange of ESI is necessary prior to conducting meaningful Alternative Dispute Resolution ("ADR") in this case?
□ Yes □ No

e. **Clawback Agreement.** The parties have reviewed F.R.C.P. 26(b)(5), F.R.E. 502 and LCvR 16.1.D, Procedures Following Inadvertent Disclosure, and:

□ Request the Court enter an Order implementing Federal Rule of Evidence 502(d) such as the model Order set forth in "Appendix LCvR 16.1.D" to the Local Rules and filed with this Report.
□ Have agreed on alternate non-waiver language, which either is or will be incorporated within the ESI discovery plan.
□ Are unable to agree on appropriate non-waiver language.

f. **EDSM and E-Mediator.** Does any party believe that the appointment of an

E-Discovery Special Master ("EDSM") or E-Mediator would help resolve ESI discovery issues in this case? For further information, see the Court's official website at http://www.pawd.uscourts.gov.
□ Yes □ No

g. **Other**. Identify all outstanding disputes concerning any ESI issues:

_____

_____

_____

12. Set forth whether the parties have elected to schedule the Post-Discovery Status Conference following the completion of Fact Discovery or Expert Discovery; in either event the parties shall be prepared at the Post-Discovery Status Conference to discuss and/or schedule the following: (The parties are *not* required during their Rule 26(f) Conference to consider or propose dates for the items identified below. Those dates will be determined, if necessary, at the Post-Discovery Status Conference. Lead trial counsel for each party and each unrepresented party are required to attend the Post-Discovery Status Conference with their calendars in hand to discuss those items listed below that require scheduling. In addition, a representative with settlement authority of each party shall be required to attend; representatives with settlement authority of any insurance company providing any coverage shall be available throughout the Conference by telephone):

a. Settlement and/or transfer to an ADR procedure;

b. Dates for the filing of expert reports and the completion of expert discovery as itemized in sub-paragraphs 9.f. through 9.k., above, if the parties elected to defer such discovery until after the Post-Discovery Status Conference;

c. Dates by which dispositive motions pursuant to Fed. R. Civ. P. 56, replies thereto and responses to replies should be filed;

d. Dates by which parties' pre-trial statements should be filed;

e. Dates by which *in limine* and *Daubert* motions and responses thereto should be filed;

f. Dates on which motions *in limine* and *Daubert* motions shall be heard;

g. Dates proposed for final pre-trial conference;

h. Presumptive and final trial dates.

13. Set forth any other order(s) that the parties agree should be entered by the court pursuant to Fed. R. Civ. P. 16(b) or 26(c):

14. Set forth whether the parties anticipate that the court may have to appoint a special master to deal with any matter and if so, specify the proposed role of any such master and any special qualifications that such master may require to perform such role:

15. If the parties have failed to agree with regard to any subject for which a report is required as set forth above, except for proposed dates required in paragraph 9, above, briefly set forth the position of each party with regard to each matter on which agreement has not been reached:

16. Set forth whether the parties have considered the possibility of settlement of the action and describe briefly the nature of that consideration:

Respectfully submitted,

_____

_____

_____

_____

_____

(Signatures of counsel and unrepresented parties)

Appendix LCvR 16.1.D

Order implementing Federal Rule of Evidence 502(d)

1. **No Waiver by Disclosure.** This Order is entered pursuant to Rule 502(d) of the Federal Rules of Evidence. Subject to the provisions of this Order, if a party (the "Producing Party") discloses information in connection with the pending litigation, that the Producing Party thereafter claims to be protected by the attorney-client privilege and/or trial preparation material protection ("Protected Information"), the disclosure of that Protected Information will not constitute or be deemed a waiver or forfeiture—in this or any other federal, state, arbitration, or any other proceeding—of any claim of privilege or protection as trial preparation material that the Producing Party would otherwise be entitled to assert with respect to the Protected Information and its subject matter.

2. **Notification Requirements; Best Efforts of Receiving Party.** A Producing Party must promptly notify the party receiving the Protected Information (the "Receiving Party"), in writing that it has disclosed the Protected Information without intending a waiver by the disclosure. The notification by the Producing Party shall include as specific an explanation as possible why the Protected Information is covered by the attorney-client privilege and/or constitutes trial preparation material. Upon such notification, the Receiving Party must—unless it contests the claim of attorney-client privilege or protection as trial preparation material in accordance with paragraph (3)—promptly (a) notify the Producing Party that it will make best efforts to identify and return, sequester or destroy (or in the case of electronically stored information, delete) the Protected Information and any reasonably accessible copies it has and (b) provide a certification that it will cease further review, dissemination and use of the Protected Information. [For purposes of this Order, Protected Information that has been stored on a source of electronically stored information that is not reasonably accessible, such as backup storage media, is sequestered. If such data is retrieved, the Receiving Party must promptly take steps to delete or sequester the restored Protected Information.]

3. **Contesting Claims of Privilege or Protection as Trial Preparation Material.** If the Receiving Party contests the claim of attorney-client privilege or protection as trial preparation material, the Receiving Party must—within 30 days of receipt of the notification referenced in Paragraph (2)—move the Court for an Order finding that the material referenced in the notification does not constitute Protected Information. This Motion must be filed (with Court approval) under seal and cannot assert the fact or circumstance of the disclosure as a ground for determining that the material does not constitute Protected Information. Pending resolution of the Motion, the Receiving Party must not use the challenged information in any way or disclose it to any person other than as required by law to be served with a copy of the sealed Motion.

4. **Stipulated Time Periods.** The parties may stipulate to extend the time periods set forth in subparagraphs (2) and (3).

5. **Burden of Proving Privilege or Protection as Trial Preparation Material.** The Disclosing Party retains the burden—upon challenge pursuant to Paragraph (3)—of establishing the privileged or protected nature of the Protected Information.

6. ***In Camera* Review.** Nothing in this Order limits the right of any party to petition the Court for an *in camera* review of the Protected Information.

7. **Voluntary and Subject Matter Waiver.** This Order does not preclude a party from voluntarily waiving the attorney-client privilege or trial preparation material protection. The provisions of Federal Rule of Evidence 502(a) apply when the Disclosing Party uses or indicates that it may use information produced under this Order to support a claim or defense.

8. **Rule 502(b)(2).** The failure to take reasonable steps to prevent the disclosure shall not give rise to a waiver of the privilege.

9. **Other Clawback and Confidentiality Obligations.** This Order does not affect or rescind any Clawback Agreement or Order governing protection of confidential information to which the parties have otherwise agreed.

10. **Severability.** The invalidity or unenforceability of any provisions of this Order shall not affect the validity or enforceability of any other provision of this Order, which shall remain in full force and effect.

Note

The Court has adopted this Model Order to implement fully the protections of Federal Rule of Evidence 502(d) if the parties believe a Rule 502(d) order is in the best interests of their clients. The fact that the parties enter into a Rule 502(d) order to streamline discovery and avoid privilege waiver, however, does not affect in any way their right to review documents, ESI, and information before production.

The parties are free to opt against requesting a Rule 502(d) order, to request that Court not enter such an Order, or to request that the court enter a modified version of the Model Order. For example, the parties could narrow the scope of their 502(d) order by limiting it to a certain universe of documents, permitting privilege waiver if the producing party did so intentionally or did not take reasonable steps to prevent disclosure, or applying privilege waiver to the documents produced but not to other documents governing the same subject matter. The parties could also expand the protection against waiver to privileges other than the attorney-client privilege or as to trial preparation material. The Court takes no position on the advisability of a Rule 502(d) order in a particular case.

APPENDIX LCvR 23.E

Fed. R. Civ. P. 26(f) JOINT REPORT OF THE PARTIES (CLASS ACTION)

1. **Identification of counsel and unrepresented parties.**

2. **Set forth the general nature of the case** (anti-trust, consumer finance, securities, employment, etc):

3. **Date Rule 26(f) Conference was held, the identification of those participating therein and the identification of any party who may not yet have been served or entered an appearance as of the date of said Conference:**

4. **Date of Rule 16 Initial Scheduling Conference as scheduled by the Court:** *(Lead Trial Counsel and unrepresented parties shall attend the Rule 16 Initial Scheduling Conference with their calendars in hand for the purpose of scheduling other pre-trial events and procedures, including a Post-Discovery Status Conference; Counsel and unrepresented parties shall attend the Rule 16 Initial Scheduling Conference prepared to discuss the anticipated number of depositions and identities of potential deponents and the anticipated dates by which interrogatories, requests for production of documents and requests for admissions will be served):*

5. **Identify any party who has filed or anticipates filing a dispositive motion pursuant to Fed. R. Civ. P. 12 and the date(s) by which any such anticipated motion may be filed:**

6. **Designate the specific Alternative Dispute Resolution (ADR) process the parties have discussed and selected, if any, and specify the anticipated time frame for completion of the ADR process. Set forth any other information the parties wish to communicate to the court regarding the ADR designation:**

7. **Set forth any change that any party proposes to be made in the timing, form or requirements of Fed. R. Civ. P. Rule 26(a) disclosures, whether such change is opposed by any other party, whether any party has filed a motion seeking such change and whether any such motion has been ruled on by the Court:**

8. **Discovery prior to Class Certification must be sufficient to permit the Court to determine whether the requirements of Fed. R. Civ. P. Rule 23 are satisfied, including a preliminary inquiry into the merits of the case to ensure appropriate management of the case as a Class Action. However, in order to ensure that a class certification decision be issued at an early practicable time, priority shall be given to discovery on class issues. Once Class Certification is decided, the Court may, upon motion of a party, enter a second scheduling and discovery order, if necessary.**

9. **Subjects on which class certification discovery may be needed. (By executing this report, no party shall be deemed to (1) have waived the right to conduct discovery on subjects not listed herein or (2) be required to first seek the**

permission of the Court to conduct discovery with regard to subjects not listed herein):

10. **Set forth suggested dates for the following** *(The parties shall provide such information even if dispositive motions pursuant to Fed. R. Civ. P. 12 have been or are anticipated to be filed, except to the extent discovery and other proceedings have been or will be stayed under the Private Securities Litigation Reform Act or otherwise. If there are dates on which the parties have been unable to agree, set forth the date each party proposes and a brief statement in support of each such party's proposed date. Attach to this report form a proposed Court Order setting forth all dates agreed to below and leaving a blank for the insertion of a date by the Court for any date not agreed to):*

    a. **Date(s) on which disclosures required by Fed. R. Civ. P. 26(a) have been or will be made:**

    b. **Date by which any additional parties shall be joined:**

    c. **Date by which the pleadings shall be amended:**

    d. **Date by which class certification discovery shall be completed:**

    e. **Date by which plaintiffs' expert reports as to class certification shall be filed:**

    f. **Date by which defendants' expert reports as to class certification shall be filed:**

    g. **Date by which depositions of class certification experts must be completed:**

    h. **Plaintiffs' Motion for Class Certification, Memorandum in Support, and all supporting evidence shall be filed by _____:**

    i. **Defendants' Memorandum in Opposition to Class Certification and all supporting evidence shall be filed by _____:**

    j. **Plaintiffs' Reply Memorandum in support of class certification, if any, shall be filed by _____:**

    k. **The Class Certification hearing shall be as scheduled by the Court.**

11. **After the resolution of the motion for class certification, the Court shall hold a Post-Certification Determination Conference to discuss how the case shall proceed in light of the disposition of the Class motion. If the parties wish to establish a schedule for post-Class Certification pretrial matters at this time, set forth suggested dates for the following:**

    a. **Date by which fact discovery should be completed:**

    b. **Date by which plaintiff's expert reports should be filed:**

c. **Date by which depositions of plaintiff's expert(s) should be completed:**

d. **Date by which defendant's expert reports should be filed:**

e. **Date by which depositions of defendant's expert(s) should be completed:**

g. **Date by which third party expert's reports should be filed:**

h. **Date by which depositions of third party's experts should be completed.**

12. **If the parties agree that changes should be made to the limitations on discovery imposed by the Federal Rules of Civil Procedure or Local Rule or that any other limitations should be imposed on discovery, set forth such changes or limitations:**

13. **Please answer the following questions in regard to the discovery of electronically stored information ("ESI"):**

a. **ESI. Is either party seeking the discovery of ESI in this case?**
□ **Yes** □ **No [If "No," skip to sub-part (e) below.]**

b. **ESI Discovery Plan. The parties have reviewed and discussed the Court's Checklist for Rule 26(f) Meet and Confer Regarding Electronically Stored Information set forth in "Appendix LCvR 26.2.C-CHECKLIST" to the Local Rules and:**

□ **Have agreed that, in light of the facts and issues in this case, there is no need to complete an ESI discovery plan, and will conduct e-discovery by**
_____.

□ **Have developed an ESI discovery plan (as attached).**

□ **Will have an ESI discovery plan completed by**
_____.

NOTE: At the direction of the court, parties may be required to submit a draft of the Stipulated Order re: Discovery of Electronically Stored Information for Standard Litigation set forth in "Appendix LCvR 26.2.E-MODEL ORDER" to the Local Rules, to address specific issues relative to the parties' exchange of electronic discovery and ESI. If the parties are unable to do so, they should advise the Court promptly.

c. **Preservation. Have the parties agreed on any protocol for the preservation of electronic data and/or potentially relevant ESI?**
□ **Yes** □ **No**

d. **ADR. Does any party believe that the exchange of ESI is necessary prior to conducting meaningful Alternative Dispute Resolution (ADR) in this case?**
□ **Yes** □ **No**

e. **Clawback Agreement. The parties have reviewed F.R.C.P. 26(b)(5), F.R.E. 502 and LCvR 16.1.D., Procedures Following Inadvertent Disclosure, and:**

□ **Request the Court enter an Order implementing Federal Rule of Evidence 502(d) such as the model Order set forth in "Appendix LCvR 16.1.D" to the Local Rules and filed with this Report.**

□ **Have agreed on alternative non-waiver language, which either is or will be incorporated within the ESI discovery plan.**

□ **Are unable to agree on appropriate non-waiver language.**

f. **EDSM and E-Mediator. Does any party believe that the appointment of an E-Discovery Special Master ("EDSM") or E-Mediator (http://www.pawd.uscourts.gov/ed-information) would help resolve ESI discovery issues in this case?**

□ **Yes** □ **No**

g. **Other. Identify all outstanding disputes concerning any ESI issues:**

_____

_____

_____

14. **Set forth whether the parties have elected to schedule the Post-Discovery Status Conference following the completion of Fact Discovery or Expert Discovery; in either event the parties shall be prepared at the Post-Discovery Status Conference to discuss and/or schedule the following:** *(The parties are not required during their Rule 26(f) Conference to consider or propose dates for the items identified below. Those dates will be determined, if necessary, at the Post-Discovery Status Conference. Lead trial counsel for each party and each unrepresented party are required to attend the Post-Discovery Status Conference with their calendars in hand to discuss those items listed below that require scheduling. In addition, a representative with settlement authority of each party shall be required to attend; representatives with settlement authority of any insurance company providing any coverage shall be available throughout the Conference by telephone):*

a. **Settlement and/or transfer to an ADR procedure;**

b. **Dates for the filing of expert reports and the completion of expert discovery as itemized in sub-paragraphs 11.b. through 11.h., above, if the parties elected to defer such discovery until after the Post-Discovery Status Conference;**

c. **Dates by which dispositive motions pursuant to Fed. R. Civ. P. 56, replies thereto and responses to replies should be filed;**

d. **Dates by which parties' pre-trial statements should be filed;**

e. **Dates by which *in limine* and *Daubert* motions and responses thereto should be filed;**

f. **Dates on which motions *in limine* and *Daubert* motions shall be heard;**

g. Dates proposed for final pre-trial conference;

h. Presumptive and final trial dates.

15. Set forth any other order(s) that the parties agree should be entered by the court pursuant to Fed. R. Civ. P. 16(b) or 26(c):

16. Set forth whether the parties anticipate that the court may have to appoint a special master to deal with any matter and if so, specify the proposed role of any such master and any special qualifications that such master may require to perform such role:

17. If the parties have failed to agree with regard to any subject for which a report is required as set forth above, except for proposed dates required in paragraph 10 and/or 11, above, briefly set forth the position of each party with regard to each matter on which agreement has not been reached:

18. Set forth whether the parties have considered the possibility of settlement of the action and describe briefly the nature of that consideration:

Respectfully submitted,

Appendix LCvR 26.2.C-CHECKLIST

United States District Court
Western District of Pennsylvania

CHECKLIST FOR RULE 26(f) MEET AND CONFER
REGARDING ELECTRONICALLY STORED INFORMATION

In cases where electronically stored information will be exchanged between the parties, the Court encourages the parties to engage in on-going meet and confer discussions and use the following Checklist to guide those discussions. These discussions should be framed in the context of the specific claims and defenses involved. The usefulness of particular topics on the checklist, and the timing of discussion about these topics, may depend on the nature and complexity of the matter. Parties may obtain discovery of such materials, and on such terms, as permitted by the Federal Rules of Civil Procedure, the Local Rules of Court, and the applicable Orders of Court.

I. Preservation

- ☐ The ranges of creation, last modified, last accessed, or receipt dates for any known ESI to be preserved.
- ☐ The description of data from sources that are not reasonably accessible and that will not be reviewed for responsiveness or produced, but that will be preserved pursuant to Federal Rule of Civil Procedure 26(b)(2)(B).
- ☐ The description of data (including source and volume) from sources that (a) the party believes could contain relevant information but (b) has determined, under the proportionality factors, should not be preserved.
- ☐ Whether or not to continue any interdiction of any document destruction program, such as ongoing erasures of e-mails, voicemails, and other electronically-recorded material and/or any ongoing preservation requirements (i.e., "evergreen").
- ☐ The names and/or general job titles or descriptions of custodians for whom ESI will be preserved (e.g., "HR head," "scientist," "marketing manager," etc.).
- ☐ The number of custodians for whom ESI will be preserved.
- ☐ The list of systems, if any, that contain ESI not associated with individual custodians and that will be preserved, such as enterprise databases, legacy data, and human resource records.
- ☐ Any disputes related to scope or manner of preservation.
- ☐ Any non-party to consult regarding ESI, including entities over which a party has control.

II. Resource Person

- ☐ The identity of each party's e-discovery resource person(s).

III. Informal Discovery About Locations of Data and Types of Systems

- ☐ Identification of systems from which discovery will be prioritized (e.g., email, structured databases, database types, and unstructured data).
- ☐ Description of systems in which potentially discoverable information is stored.
- ☐ Location of systems in which potentially discoverable information is stored.
- ☐ How potentially discoverable information is stored.
- ☐ How discoverable information can be collected from systems and media in which it is stored.
- ☐ Whether there are known relevant file paths or data locations.

IV. Proportionality and Costs

- ☐ The amount and nature of the claims being made by either party.
- ☐ The nature and scope of burdens associated with the proposed preservation and discovery of ESI.
- ☐ The likely benefit of the proposed discovery.
- ☐ Costs that the parties will share to reduce overall discovery expenses, such as the use of a common electronic discovery vendor or a shared document repository, or other cost-saving measures.
- ☐ Limits on the scope of preservation or other cost-saving measures.
- ☐ Whether there is potentially discoverable ESI that will not be preserved consistent with proportionality concerns.

V. Search

- ☐ The search method(s), including specific words or phrases or other methodology (cluster technology/predictive coding), that will be used to identify discoverable ESI and filter out ESI that is not subject to discovery.
- ☐ The quality control method(s) the producing party will use to evaluate whether a production is missing relevant ESI or contains substantial amounts of irrelevant ESI.

VI. Phasing

- ☐ Whether it is appropriate to conduct discovery of ESI in a phased or iterative approach (e.g., by issue, timeframe, custodians, databases, liability v. damages):
- ☐ Sources of ESI most likely to contain discoverable information and that will be included in the first phases of Fed. R. Civ. P. 34 document discovery. (i.e., known relevant file paths, email between specific parties during a given period of time).
- ☐ Sources of ESI less likely to contain discoverable information from which discovery will be postponed or avoided.
- ☐ Custodians (by name or role) most likely to have discoverable information and whose ESI will be included in the first phases of document discovery.
- ☐ Custodians (by name or role) less likely to have discoverable information and from whom discovery of ESI will be postponed or avoided.
- ☐ The time period during which discoverable information was most likely to have been created or received.

☐ The issues that are relevant to any party's claim or defense.

VII. Production

☐ The formats in which structured ESI (database, collaboration sites, etc.) will be produced.

☐ The formats in which unstructured ESI (email, presentations, word processing, etc.) will be produced.

☐ The extent, if any, to which metadata will be produced and the fields of metadata to be produced.

☐ The production format(s) that ensure(s) that any inherent searchability of ESI is not degraded when produced.

VIII. Privilege

☐ How any production of privileged information or trial preparation material will be handled.

☐ Whether the parties can agree upon alternative ways to identify documents withheld on the grounds of privilege or protection of trial preparation material to reduce the burdens of such identification.

☐ Whether the parties will enter into a Fed. R. Evid. 502(d) Stipulation and Order that addresses inadvertent or agreed production, and if so, the form and content of such Order.

IX. E-Discovery Special Masters and/or E-Mediators

☐ Would it be helpful to the parties for the Court to appoint an E-Discovery Special Master and/or E-Mediator? For further information, see the Court's official website at http://www.pawd.uscourts.gov/ed-information.

X. Expedited or Limited Discovery

☐ Are the parties willing to engage in limited discovery or an expedited discovery schedule?_____

Appendix LCvR 26.2.C-GUIDELINES

United States District Court
Western District of Pennsylvania

GUIDELINES FOR THE DISCOVERY OF
ELECTRONICALLY STORED INFORMATION

GENERAL GUIDELINES

Guideline 1.01 (Purpose)

Discovery often now includes the review and production of electronic information. The discovery of electronically stored information "ESI" provides many benefits such as the ability to search, organize, and target the ESI using the text and associated data. At the same time, the Court is aware that the discovery of ESI is a potential source of cost, burden, and delay. These Guidelines should assist the parties as they engage in electronic discovery. The purpose of these Guidelines is to encourage reasonable electronic discovery with the goal of limiting the cost, burden and time spent, while ensuring that information subject to discovery is preserved and produced to allow for fair adjudication of the merits. At all times, the discovery of ESI should be handled consistently with Fed. R. Civ. P. 1 to "secure the just, speedy, and inexpensive determination of every action and proceeding."

These Guidelines also promote, when ripe, the early resolution of disputes regarding the discovery of ESI without Court intervention. These guidelines are a supplement to LCvR 26.2.

Guideline 1.02 (Cooperation)

The Court expects cooperation on issues relating to the preservation, collection, search, review, and production of ESI. The Court notes that an attorney's representation of a client is not compromised by conducting discovery in a cooperative manner. Cooperation in reasonably limiting ESI discovery requests on the one hand, and in reasonably responding to ESI discovery requests on the other hand, tends to reduce litigation costs and delay. The Court emphasizes the particular importance of cooperative exchanges of information at the earliest possible stage of discovery, including during the parties' Fed. R. Civ. P. 26(f) conference.

Guideline 1.03 (Discovery Proportionality)

The proportionality standard set forth in Fed. R. Civ. P. 26(b)(1) and 26(g)(1)(B)(iii) should be applied to the discovery plan and its elements, including the preservation, collection, search, review, and production of ESI between parties.[1] To assure reasonableness and proportionality in discovery, parties should consider factors that include the importance of the issues at stake in the litigation, the burden or expense of the proposed discovery compared to its likely benefit, the amount in controversy, the parties' resources, the parties' relative access to relevant information, and the importance of the discovery in adjudicating the merits of the case. To further the application of the proportionality standard, discovery requests for production of ESI and related responses should be reasonably targeted, clear, and as specific as practicable.

[1] Fed. R. Civ. P. 45(c)(2)(B) outlines a different standard with regard to non-parties through its direction to courts to protect, through measures that include fee-shifting, such non-parties from significant discovery expenses.

ESI DISCOVERY GUIDELINES

Guideline 2.01 (Preservation)

(a) At the outset of a case, or sooner if feasible, counsel for the parties should discuss preservation. Such discussions should continue to occur periodically as the case and issues evolve.

(b) In determining what ESI to preserve, parties should apply the proportionality standard referenced in Guideline 1.03. The parties should strive to define a scope of preservation that is proportionate and reasonable and not disproportionately broad, expensive, or burdensome.

(c) The Parties should be directed in their discussions concerning preservation by the Checklist for Rule 26(f) Meet and Confer Regarding Electronically Stored Information set forth in "Appendix LCvR 26.2.C-CHECKLIST" to the Local Rules. At the direction of the Court, or at the request of a party or the parties, a Court Order concerning preservation may be submitted for Court approval, with the Stipulated Order re: Discovery of Electronically Stored Information for Standard Litigation set forth in "Appendix LCvR 26.2.E-Model Order" to the Local Rules providing a framework for applicable provisions.

Guideline 2.02 (Rule 26(f) Meet and Confer)

At the required Rule 26(f) meet and confer conference, when a case involves electronic discovery, the topics that the parties should consider discussing include: 1) preservation; 2) systems that contain discoverable ESI; 3) search and production; 4) phasing of discovery; 5) protective orders (including application of LCvR 16.1.D and Fed. R. Evid. 502); and 6) opportunities to reduce costs and increase efficiency. In order to be meaningful, the meet and confer should involve direct communications between counsel (preferably, in person and/or by telephone), and be as sufficiently detailed on these topics as is appropriate in light of the specific claims and defenses at issue in the case. The topics to discuss include those set forth in Question 11 of the Rule 26(f) report set forth in "Appendix LCvR 16.1.A" to the Local Rules and Question 13 the Rule 26(f) report for Class Actions set forth in "Appendix LCvR 23.E" to the Local Rules, as applicable. In addition, some or all of the details set forth in LCvR 26.2 and the Checklist for Rule 26(f) Meet and Confer Regarding Electronically Stored Information set forth in "Appendix LCvR 26.2.C-CHECKLIST" to the Local Rules may be useful to discuss, especially in cases where the discovery of ESI is likely to be a significant cost or burden. The Court encourages the parties to address any agreements or disagreements related to the above matters in the joint case management statement required by LCvR 26.2. At the direction of the Court, the parties may be required to submit a draft of a Stipulated Order re: Discovery of Electronically Stored Information for Standard Litigation such as the model Order set forth in "Appendix LCvR 26.2.E-MODEL ORDER" to the Local Rules.

Guideline 2.03 (Informal Discovery Regarding ESI)

Consistent with Guideline 1.02, the Court strongly encourages an informal discussion about the discovery of ESI (rather than deposition) at the earliest reasonable stage of the discovery process. Counsel, or others knowledgeable about the parties' electronic systems, including how potentially relevant data is stored and retrieved, should be involved or made available as necessary. Such a discussion will help the parties be more efficient in framing and responding

to ESI discovery issues, reduce costs, and assist the parties and the Court in the event of a dispute involving ESI issues.

Guideline 2.04 (Disputes Regarding ESI Issues)

Disputes regarding ESI that counsel for the parties are unable to resolve shall be presented to the Court at the earliest possible opportunity, such as at the initial Case Management Conference. The Court may require additional meet and confer discussions, if appropriate. The Court may appoint and/or the Parties may seek the appointment of an E-Discovery Special Master or E-Discovery Mediator (http://www.pawd.uscourts.gov/ed-information) to assist the Court in resolving ESI disputes.

EDUCATION GUIDELINES

Guideline 3.01 (Judicial Expectations of Counsel)

It is expected that counsel for the parties, including all counsel who have appeared, as well as all others responsible for making representations to the Court or opposing counsel (whether or not they make an appearance), will be familiar with the following in each litigation matter:

(a) The electronic discovery provisions of the Federal Rules of Civil Procedure, including Rules 26, 33, 34, 37, and 45, and Fed. R. Evid. 502 (including applicable Advisory Committee Reports); and

(b) LCvR 26.2, these Guidelines, and this Court's Checklist for Rule 26(f) Meet and Confer Regarding ESI set forth in "Appendix LCvR 26.2-CHECKLIST" and Stipulated E-Discovery Order for Standard Litigation set forth in "Appendix LCvR 26.2.E-MODEL ORDER" to the Local Rules.

APPENDIX LCvR 26.2.E-MODEL ORDER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

Plaintiff(s),	Case Number: C xx-xxxx
vs.	MODEL STIPULATED ORDER RE: DISCOVERY OF ELECTRONICALLY STORED INFORMATION FOR STANDARD LITIGATION
Defendant(s).	

1. PURPOSE

This Order will govern discovery of electronically stored information ("ESI") (including scanned hard-copy documents) in this case as a supplement to the Federal Rules of Civil Procedure, this Court's Guidelines for the Discovery of Electronically Stored Information, and any other applicable orders and rules.

2. COOPERATION

The parties are aware of the importance the Court places on cooperation and commit to cooperate in good faith throughout the matter consistent with this Court's Guidelines for the Discovery of ESI.

3. RESOURCE PERSON

The parties have identified to each other the resource persons who are and will be knowledgeable about and responsible for discussing their respective ESI. Each ESI resource person will be, or have access to those who are, knowledgeable about the technical aspects of ESI, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The parties will rely on the resource persons, as needed, to

confer about ESI and to help resolve disputes without court intervention. The resource person is not necessarily the person who would be designated to testify related to a person or entity's preservation efforts, document retention policies, collection efforts, or other related matters.

4. PRESERVATION

The parties have discussed their preservation obligations and needs and agree that preservation of potentially relevant ESI (e.g., email, text ESI, voicemail, spreadsheets, databases, etc.) will be reasonable and proportionate. To reduce the costs and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

a) Only ESI accessed, modified, created or received between [the dates] _____and _____ relating to the above-captioned matter will be preserved[1];

b) Based upon their investigation to date, the parties have exchanged a list of the types of ESI they believe should be preserved and the custodians, or general job titles or descriptions of custodians, for whom they believe ESI should be preserved. The parties shall add or remove custodians as reasonably necessary;

c) The parties have agreed/will agree on the number of custodians per party for whom ESI will be preserved;

d) The following data sources are not reasonably accessible, and the parties agree not to preserve the following: [e.g., backup media created before _____ , ESI in foreign jurisdictions, data in slack space, digital voicemail, instant messaging, automatically saved versions of ESI];

e) The following data sources will be preserved but not searched, reviewed, or produced: [e.g., backup media of [named] system, systems no longer in use that cannot be accessed, etc.];

f) In addition to the agreements above, the parties agree that data from the following sources (a) could contain relevant information but (b) under the proportionality factors, should not be preserved: [the following databases that by their nature change as new information is added to them, accessed and modified dates, etc.]: _____;

g) In terms of preservation, the parties agree/disagree that there is no need for forensic images of servers, databases, computers, cell phones, etc. [except for the following data sources: _____][2]

[1] The parties may estimate or agree to the volume of data to be produced (i.e., number of documents, files, or GB of data).

5. SEARCH AND IDENTIFICATION

The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if appropriate, they will meet and confer about methods to search ESI in order to identify ESI that is subject to production in discovery and filter out ESI that is likely not subject to discovery. The parties are permitted to use reasonable search methods to narrow down the ESI to be reviewed for production in discovery (e.g., search terms, technology assisted review, deduplication, elimination of correspondence with attorneys, client self-collection efforts, etc.); however, the parties must be prepared to discuss the reasonableness of such efforts.

6. PRODUCTION FORMATS

The parties agree to produce ESI in (check all that apply) TIFF, native, PDF, and/or paper or a combination thereof (check all that apply) file formats.[3] If particular ESI warrants a different format, the parties will cooperate to arrange for the mutually acceptable production of such ESI.[4] The parties agree not to degrade the searchability of ESI as part of the document production process, and have discussed the necessary level of resolution to permit the effective use of produced ESI. Additionally, the parties agree to discuss appropriate load files, if any.

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[2] To the extent the parties disagree, cost-shifting may occur to the extent a party is required to expend resources on imaging which the Court determines to be unnecessary or not proportional.

[3] To the extent production is not in native format, the parties should consider agreement on metadata fields to be produced.

[4] By way of example, the parties could agree to produce excel ESI in native format while providing other ESI in TIFF format with conventional production numbering (PI 00001) and load files.

7. PHASING

When the parties require some discovery prior to ADR/mediation, the parties agree to phase the production of ESI. The initial production will be from the following sources and custodians:_____.

This agreement will not limit the parties' discovery if ADR/mediation is unsuccessful. However, the parties will continue to explore appropriate and proportional phasing of discovery throughout the discovery process.

When a party propounds discovery requests pursuant to Fed. R. Civ. P. 34, the parties agree to phase the production of ESI and the initial production will be from the following sources and custodians:_____.[5]

Following the initial production, the parties will continue to prioritize the order of subsequent productions.

8. ESI PROTECTED FROM DISCOVERY OR PUBLIC DISCLOSURE

a) Pursuant to Fed. R. Evid. 502(b) and (d), the production of ESI which is privileged or is protected trial preparation material is not a waiver of privilege or protection from discovery in this case or in any other federal, state, arbitration or other proceeding so long as it was: [the parties may include their stipulated agreement, if any as to waiver of privilege, in this order or in a separate order as set forth in the Order implementing Federal Rule of Evidence 502(d) set forth in "Appendix LCvR 16.1.D" to the Local Rules].[6]

b) The parties may agree upon a "quick peek" process, without waiver of privilege or protection as trial preparation material, pursuant to Fed. R. Civ. P. 26(b)(5).

c) Communications involving trial counsel that post-date the filing of the complaint need not be placed on a privilege log.

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[5] A phased or iterative approach may be used to conduct the ESI (e.g., by issue, timeframe, custodians, databases, issue, liability, or damages).

[6] This Paragraph 8 can be modified to limit (or entirely eliminate) the situations in which a producing party (or non-party) could be found to have failed to take (i) reasonable steps to prevent the disclosure of privileged or trial preparation material ESI, and/or (ii) prompt and reasonable steps to rectify this error, as provided under Fed. R. Civ. P. 502(b)(2)-(3). This paragraph can also be modified to address different types of produced materials to different standards than those outlined in Fed. R. Evid. 502(b).

d) Communications may be identified on a privilege log by category, rather than individually, if agreed upon by the parties or ordered by the Court.

e) The parties have/have not agreed to use the Form Inadvertent Production Provision of LCvR 16.1.D (The Clawback Agreement), and its terms are incorporated herein.

f) The parties have/have not agreed to use the Form Protective Order (add hyperlink) (App. LPR 2.2) for protection of Confidential Information, such as trade secrets, and its terms are incorporated herein.

9. MODIFICATION

This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court for good cause shown.

IT IS SO STIPULATED, through Counsel of Record.

Dated: _____
Counsel for Plaintiff

Dated: _____
Counsel for Defendant

IT IS SO ORDERED that the foregoing Agreement is approved.

Dated: _____
UNITED STATES DISTRICT/MAGISTRATE
JUDGE

APPENDIX LCvR/LCrR 83.2.A CERTIFICATION

CERTIFICATION FOR BAR ADMISSION FOR THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

I, _____, do certify as follows:

1. I am a member in good standing of the Bar of:
   a. The Supreme Court of Pennsylvania _____, Bar #_____
   b. The United States District Court for the _____
   c. The Supreme Court of the United States _____
2. I am a member in good standing of the following state Bars/Bars of United States District Courts (also note Bar identification numbers):

   _____
   _____
3. I am affiliated with the law firm of _____

   or

   I am in the sole practice of law _____
4. My business address, telephone number and email address are:

   _____
   _____
5. I am a registered user of the CM/ECF electronic docketing system of this Court.
6. I have read, know and understand the Local Rules of this Court.
7. The following is a listing and description any prior disciplinary proceedings against me that resulted in a non-confidential negative finding or sanction against me (if none, so state):

   _____
   _____
8. Attached is a certificate of good standing from the Bar of _____ that is current within the prior twelve (12) months.

I DECLARE UNDER THE PENALTIES FOR PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED BY ME ON _____.

SIGNATURE: _____

STATEMENT OF MOVING ATTORNEY

I, _____, A MEMBER IN GOOD STANDING OF THE BAR OF THIS COURT, DO HEREBY CERTIFY THAT I BELIEVE THE ABOVE CANDIDATE FOR ADMISSION TO THE BAR OF THIS COURT IS OF GOOD MORAL AND PROFESSIONAL CHARACTER AND, TO THE BEST OF MY KNOWLEDGE, IS ELIGIBLE FOR ADMISSION TO THE BAR OF THIS COURT.

NAME: _____
DATE: _____

APPENDIX LCvR/LCrR 83.2.B-MOTION

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

_____	)	
	)	
vs.	)	Civil Action No. _____
	)	
_____	)	
	)	

MOTION FOR ADMISSION *PRO HAC VICE* OF _____

[Affiant], undersigned counsel for [Plaintiff/Defendant] _____, hereby moves that [Affiant] be admitted to appear and practice in this Court in the above-captioned matter as counsel pro hac vice for [Plaintiff/Defendant] _____ in the above-captioned matter pursuant to LCvR 83.2 and LCvR 83.3, LCrR 83.2 and this Court's Standing Order Regarding Pro Hac Vice Admissions dated May 31, 2006 (Misc. No. 06-151).

In support of this motion, undersigned counsel attaches the Affidavit for Admission Pro Hac Vice of [Affiant] filed herewith, which, it is averred, satisfies the requirements of the foregoing Local Rules and Standing Order.

Respectfully submitted,

Dated: _____

_____
[Affiant's name] (Bar. ID NO. _____)
[Affiant's Address/Contact Details]

Counsel for [Plaintiff/Defendant]

APPENDIX LCvR/LCrR 83.2.B-AFFIDAVIT

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

_____	)	
	)	
vs.	)	Civil Action No. _____
	)	
_____	)	
	)	

AFFIDAVIT OF _____ IN SUPPORT OF MOTION FOR ADMISSION *PRO HAC VICE*

I, _____, make this affidavit in support of the motion for my admission to appear and practice in this Court in the above-captioned matter as counsel pro hac vice for [Plaintiff/Defendant]_____ in the above-captioned matter pursuant to LCvR 83.2 and LCvR 83.3, LCrR 83.2 and this Court's Standing Order Regarding Pro Hac Vice Admissions dated May 31, 2006 (Misc. No. 06-151).

I, _____, being duly sworn, do hereby depose and say as follows:

1. I am a [Lawyer/Partner/Associate] of the law firm [_____].

2. My business address is _____.

3. I am a member in good standing of the bar[s] of _____.

4. My bar identification number(s) [is/are] _____.

5. A current certificate of good standing from _____is attached to this Affidavit as Exhibit ___.

6. [if applicable] The following are a complete list of any previous disciplinary proceedings concerning my practice of law that resulted in a non-confidential negative finding or sanction by the disciplinary authority of the bar of any state or any United States court:_____: [Insert additional explanation as appropriate.]

7. I attest that I am a registered user of ECF in the United States District Court for the Western District of Pennsylvania.

8. I attest that I have read, know and understand the Local Rules of Court for the United States District Court for the Western District of Pennsylvania

9. Based upon the foregoing, I respectfully request that I be granted pro hac vice admission in this matter.

I certify and attest that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.

Dated: _____

_____
[Affiant]