LOCAL COURT RULES

of

THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF OKLAHOMA

Adopted November 1, 1989

With Amendments through March 18, 1993

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RULE 1

RULES OF PROCEDURE; SCOPE OF RULES

(A) The rules of procedure in any proceeding in this Court shall be as prescribed by the laws of the United States, the Rules of the Supreme Court of the United States, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, any applicable Rules of the United States Court of Appeals for the Tenth Circuit, and these Rules.

(B) Where in any proceeding or in any instance there is no applicable rule of procedure, a judge may prescribe same.

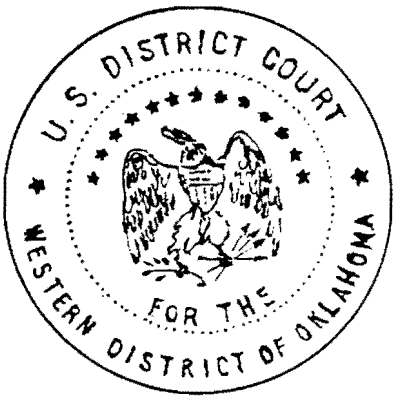
(C) These Rules may be cited as Local Court Rules.

(D) The trial judge, in any civil or criminal case, may in his discretion waive any requirement of these Rules when in his opinion the administration of justice requires such waiver, provided, however, he may not waive any provision of the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure, unless he is so authorized by such Rules.

RULE 2

SEAL

The seal shall be of a circular design within the outer edge of which shall be the words "U. S. District Court, Western District of Oklahoma," arranged as shown by the impression thereof made hereon.



RULE 3

TERMS AND LOCATION OF COURT

(A) This Court shall be in continuous session at Oklahoma City, Oklahoma, for the transaction of judicial business on all business days throughout the year.

(B) All proceedings, both civil and criminal, in which venue lies in this district, shall be commenced at the Clerk's Office in Oklahoma City, Oklahoma, and shall be maintained there unless and until transferred, provided, however, that misdemeanor charges, including petty offenses (as defined in 18 U.S.C. § 1), shall generally be filed with the full or part-time United States Magistrate whose office is located nearest the place where the offense was allegedly committed, unless included in a multicount charge containing felony offense.

(C) All pleadings filed and exhibits introduced, except those mentioned in the preceding subsection hereof, shall be kept in the Office of the Clerk in Oklahoma City. None such shall be removed therefrom except upon order of a judge of this Court and in that event a receipt specifying the record or paper removed shall be given by the party obtaining it. Any party who obtains such order for the removal of a transcript made by the official court reporter in the course of official business, or who makes a copy of same in the Clerk's Office, shall pay to the Clerk of this Court the sum of fifty cents per page for the benefit of the official court reporter.

(D) Whenever in any civil or criminal proceeding the Court finds upon its own motion, or motion of any party, or stipulation, that the convenience of parties or witnesses, in the interest of justice, will be served by transferring the action to Chickasha, Enid, Guthrie, Lawton, Mangum, Pauls Valley, Ponca City, Shawnee or Woodward, the Court may order such transfer.

RULE 4

ATTORNEYS

(A) Roll of Attorneys. The Bar of this Court shall consist of those attorneys heretofore and those hereafter admitted to practice before this Court, who have taken the oath prescribed by the Rules in force at the time they were admitted or the oath prescribed by this Rule, and have signed the roll of attorneys of this judicial district.

(B) Procedure for Admission.

(1) There is hereby constituted a Committee on Admissions and Grievances, consisting of five members of this Bar, appointed by the Court. Every applicant for admission shall file with the Clerk, on a form prescribed by the Court, a written petition for admission, which shall be referred immediately to the Committee on Admissions and Grievances for investigation into the qualifications of the applicant and his fitness to be admitted to the Bar of this Court. The Committee shall report its recommendations in writing to the Clerk of this Court. Upon a favorable report of the Committee, filed with the Clerk, the applicant may be admitted. Twice each year, soon after the Oklahoma State Bar Association swearing-in ceremonies before the Oklahoma Supreme Court, an admission ceremony will be scheduled by this Court.

(2) It is desired that the procedure for admission by the Committee include a federal practice program which is designed to acquaint the applicants with pertinent aspects of practice in this Court, emphasizing the Local Court Rules. It is anticipated that this program would be held in the Ceremonial Courtroom (Courtroom No. 1), and would, if possible, include presentations by court officials and judicial officers, i.e., Bankruptcy Judge, U.S. Magistrate, U. S. Attorney, U. S. Probation Officer and the U.S. Marshal. Except when pro hac vice appearance is permitted by the Court, all applicants will be directed to attend said program, unless excused by the Court and that, if an application has been favorably reported by the Committee, the admission ceremony would be conducted at the conclusion of the program.

(3) Individual judges may, from time to time, in emergent situations upon special request admit individual lawyers who have been approved by the Committee. Before being admitted as a member of the Bar of this Court each applicant shall take and subscribe to the Oath shown in Appendix I to these Rules.

(C) Eligibility. Any member of the Bar of the Supreme Court of the United States, or of any United States Court of Appeals, or of any district court of the United States, or a member in good standing of the Bar of the highest court of any state of the United States, is eligible for admission to the Bar of this Court.

(D) Reciprocity. Any attorney who shall have been admitted to practice in any other federal district court of Oklahoma may be admitted to practice in this district upon the motion of a member of the Bar, in open court, without the filing of a formal application.

(E) Attorneys for the United States. Attorneys who are employed or retained by the United States or its agencies may practice in this Court in all cases or proceedings in which they represent the United States or such agencies,

(F) Admission of Nonresident Attorney for Limited Practice. Any member of the Bar of the Supreme Court of the United States, or of any United States Court of Appeals, or of any district court of the United States, who is a nonresident of Oklahoma may be admitted to the Bar of this Court for limited practice upon oral application and without compliance with subsection (B) hereof. Limited practice shall be restricted to appearance and practice in a case or proceeding then on file in the Court.

(G) Temporary Admission. Any resident attorney of Oklahoma who is eligible for admission to the Bar of this Court may in the discretion of a judge of this Court be granted temporary admission to practice in a pending case.

(H) Resident Counsel Required. Any attorney who is not a resident of, or who does not maintain an office in this state, shall, when he represents a party in this Court or in the Bankruptcy Court, show to the Court that he has associated with an attorney who is personally appearing in the action, and who

is a resident of, and who maintains his law office within the State of Oklahoma, and who has been duly and regularly admitted to practice in this Court. Such resident attorney shall sign the first pleading filed and shall continue in the case unless other resident counsel be substituted. Any notice, pleading or other paper may be served upon the resident attorney with the same effect as if personally made on such nonresident attorney within this state. The foregoing requirement of resident counsel shall not apply, however, to out-of-state counsel who come from a jurisdiction that does not require the association of local counsel in its courts.

(I) Withdrawal from Case. In criminal and civil cases, wherein appearance is made through counsel, there shall be no withdrawal by counsel except by leave of Court upon reasonable notice to the client and all other parties who have appeared in the case. Withdrawal of counsel may be granted subject to the condition that subsequent papers may continue to be served upon the counsel for forwarding purposes or upon the Clerk of the Court, as the Court may direct, unless and until the client appears by other counsel or in propria persona, and any notice to the client shall so state and any filed consent of the client shall so acknowledge.

(J) Disciplinary Enforcement and Procedure. The United States District Court for the Western District of Oklahoma, 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 other Rules pertaining to disciplinary enforcement heretofore promulgated.

(1) Attorneys Convicted of Crimes.

(a) Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted 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

Court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of 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 Court may set aside such order when it appears in the interest of justice to do so.

(b) 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."

(c) 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.

(d) Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Court shall, in addition to suspending that attorney in accordance with the provisions of this Rule, also refer the matter to counsel for the institution of a disciplinary proceeding before the Court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

(e) 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 before the Court;

provided, however, that the Court may in its discretion make no reference with respect to convictions for minor offenses.

(f) 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.

(2) Discipline Imposed by Other Courts.

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

(b) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been disbarred or suspended by any court of competent jurisdiction, this Court shall forthwith issue an order automatically suspending such attorney who may be reinstated only upon written application.

(c) The identical discipline imposed in the other jurisdiction shall be imposed by this Court 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:

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

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

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

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

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

(d) 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.

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

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

(3) Disbarment on Consent or Resignation in Other Courts.

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

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

(4) Standards for Professional Conduct.

(a) For misconduct defined in these Rules, and for good cause shown, and after notice and opportunity to be heard, 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.

(b) Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Code of Professional Responsibility 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 Code of Professional Responsibility adopted by this Court is the Code of Professional Responsibility adopted by the highest court of the state in which this Court sits, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of Bar Associations within the state.

(5) Disciplinary proceedings.

(a) 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 judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the judge shall refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

(b) Should 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 the Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise, setting forth the reasons therefor.

(c) To initiate formal disciplinary proceedings, counsel shall obtain an order of this Court upon a showing of probable cause requiring the respondent-attorney to show cause

within 30 days after service of that order upon that attorney, personally or by mail, why the attorney should not be disciplined.

(d) 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, this Court shall set the matter for prompt hearing before one or more judges of this Court; provided, however, that if the disciplinary proceeding is predicated upon the complaint of a judge of this Court the hearing shall be conducted by a panel of three other judges of this Court, appointed by the Chief Judge, or, if there are less than three judges eligible to serve or the Chief Judge is the complainant, by the Chief Judge of the Court of Appeals for this Circuit.

(6) Disbarment on Consent While Under Disciplinary Investigation or Prosecution.

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

(i) 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;

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

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

(iv) 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.

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

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

(7) Reinstatement.

(a) After Disbarment or Suspension. An attorney suspended or disbarred may not resume practice until reinstated by order of this Court.

(b) Time of Application Following Disbarment. A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment.

(c) 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 promptly refer the petition to counsel and shall assign the matter for prompt hearing before one or more judges of this Court, provided, however, that if the disciplinary proceeding was predicated upon the complaint of a judge of this Court the hearing shall be conducted before a panel of three other judges of this Court appointed by the Chief Judge, or, if there are less than three judges eligible to serve or the Chief Judge was the complainant, by the Chief Judge of the Court of Appeals for this Circuit. The judge or judges assigned to the matter shall within 30 days after referral schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law before this Court and that his 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.

(d) 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.

(e) 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.

(f) 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, 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 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.

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

(8) Attorneys Specially Admitted. Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (pro hac vice), this 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.

(9) Service of Papers and Other Notices. Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at the address shown in the most recent document filed with the Court Clerk. 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 shown on the most recent registration document filed with the Court Clerk; or to counsel or the respondent's attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding.

(10) Appointment of Counsel. Whenever counsel is to be appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this Court shall appoint as counsel the disciplinary agency of the highest court of the State of Oklahoma wherein the Court sits, or the attorney maintains his principal office in the case of the courts of appeal, or other disciplinary agency having jurisdiction. If no such disciplinary agency exists or such disciplinary agency declines appointment, or such appointment is clearly inappropriate, this Court shall appoint as counsel one or more members of the Bar of this Court to investigate allegations of misconduct or to prosecute disciplinary proceedings under these Rules, 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.

(11) Assessment of Attorneys.

(a) Lawyers admitted to practice before this Court shall pay a fee of $5.00 which may be used to pay the cost of disciplinary administration and enforcement under these Rules.

(b) Payment of the fee prescribed hereunder shall be a condition precedent to any application for admission pro hac vice by any attorney not otherwise admitted to this Court.

(c) An attorney admitted to practice before this Court as well as one or more other courts of the United States shall be required to make only a single payment of the fee prescribed hereunder in any fiscal year regardless of the number of courts of the United States to which he may be admitted.

(12) Duties of the Clerk.

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

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

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

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

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

(14) Alternative Action. The Court may elect to bypass the above procedures and in lieu thereof refer to the Oklahoma State Bar Association any request for disciplinary action against a member of the Bar of this Court.

RULE 5

PETITIONS FOR WRITS OF HABEAS CORPUS PURSUANT TO 28 U.S.C. §§ 2241 and 2254, MOTIONS PURSUANT TO 28 U.S.C. §§ 1331 and 2255, MOTIONS PURSUANT TO RULE 35, FEDERAL RULES OF CRIMINAL PROCEDURE, AND CIVIL RIGHTS COMPLAINTS PURSUANT TO 42 U.S.C. § 1983

(A) Petitions for writs of habeas corpus, motions to vacate sentence pursuant to 28 U.S.C. § 2255, and motions to correct or reduce sentence pursuant to Rule 35, Federal Rules of Criminal Procedure, by persons in custody pursuant to process issued by a court in a criminal proceeding, shall be in writing, signed and verified. Such petitions and motions, and civil rights complaints under 42 U.S.C. § 1983 if pro se shall be on forms approved by this Court and supplied without charge by the Clerk of this Court upon request.

(B) Every petition, motion or complaint filed under this Rule shall contain certain required information. The following information shall be supplied by every petitioner seeking post-conviction relief:

(1) Petitioner's full name and prison number (if any);

(2) Name of respondent;

(3) Place of petitioner's detention;

(4) Name and location of the court which imposed sentence;

(5) Case number and the offense or offenses for which sentence was imposed;

(6) Date on which sentence was imposed and the terms of the sentence;

(7) Whether a finding of guilty was made after a plea of (a) guilty, (b) not guilty, or (c) nolo contendere;

(8) In the case of a petitioner who has been found guilty following a plea of not guilty, whether that finding was made by a jury or a judge without a jury;

(9) Whether petitioner appealed from his conviction or the imposition of sentence, and if so the name of each court to which he appealed, the results of such appeals, and the date of such results;

(10) Whether petitioner was represented by an attorney at any time during the course of his arraignment and plea, his trial (if any), his sentencing, his appeal (if any), or during the preparation, presentation or consideration of any petitions, motions or applications which he filed with respect to this conviction; if so, the name and address of such attorney[s] and the proceedings in which petitioner was so represented; whether said attorney was one of petitioner's own choosing or whether he was appointed by the Court;

(11) Whether a plea of guilty was entered pursuant to a plea bargain and if so what were the terms and conditions of the agreement;

(12) Whether petitioner testified at trial (if any); and

(13) Whether petitioner has any petition, application, motion or appeal currently pending in any court, and if so the name of the court and the nature of the proceeding.

(C) The following additional information shall be supplied by a petitioner in challenging a state conviction:

(1) If petitioner did not appeal from the judgment of conviction or imposition of sentence, the reasons why he did not do so;

(2) In concise form, the grounds upon which petitioner bases his allegation that he is being held in custody unlawfully, the facts which support each of these grounds, and whether any such grounds have been previously presented to any court, state or federal, by way of any petition, motion or application; if so, which grounds have been previously presented and in what proceedings; if any grounds have not been previously presented, which grounds have not been so presented and the reasons for not presenting them; and

(3) Whether petitioner has filed in any court, state or federal, previous petitions, applications or motions with respect to this conviction; if so, the name and location of each such court, the specific nature of the proceedings therein, the disposition thereof, the date of each disposition and citations (if known) of any written opinions or orders.

(D) The following additional information shall be supplied by a petitioner in federal custody seeking a writ of habeas corpus or correction or reduction of his sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure:

(1) Whether petitioner has filed in any court, state or federal, previous petitions for habeas corpus, motions to vacate sentence (pursuant to 28 U.S.C. § 2255), or any other petitions, motions or applications with respect to this conviction; if so, the name and location of any and all such courts, the specific nature of the proceedings therein, the disposition thereof, the date of each such disposition and citations (if known) of any written opinions or orders entered therein or copies (if available) of such opinions or orders;

(2) In concise form, state the grounds upon which petitioner bases his allegations that he is being held in custody unlawfully or that this sentence is illegal, imposed in an illegal manner or should be reduced, the facts which support each of these grounds; whether any such grounds have been previously presented to any federal court by way of petition for a writ of habeas corpus, motion pursuant to 28 U.S.C. § 2255, or any other petition, motion or application; if so, which grounds have been previously presented and in what proceedings; if any grounds have not been previously presented, which grounds have not been so presented and the reasons for not presenting them; and

(3) If a previous motion pursuant to 28 U.S.C. § 2255 was not filed or if such a motion was filed and denied, the reasons petitioner's remedy by way of such motion is inadequate or ineffective to test the legality of his detention.

(E) The following additional information shall be supplied by a petitioner in federal custody who is seeking relief by motion pursuant to 28 U.S.C. § 2255:

(1) Name of the judge who imposed sentence;

(2) In concise form, the grounds on which petitioner bases his allegations that the sentence imposed upon him is invalid, the facts which support each of these grounds; whether any such grounds have been presented to any federal court by way of petition for writ of habeas corpus, motion pursuant to 28 U.S.C. §

2255, or any other petition, motion or application; if so, which grounds have been previously presented and in which proceedings; if any grounds have not been previously presented, which grounds have not been so presented and the reasons for not presenting them; and

(3) Whether petitioner has filed in any court petitions for habeas corpus, motions pursuant to 28 U.S.C. § 2255 or any other petitions, motions or applications with respect to this conviction; if so, the name and location of each such court, the specific nature of the proceedings therein, the disposition thereof, the date of each such disposition and citations (if known) of any written opinion or order entered therein or copies (if available) of such opinions or orders.

(F) (1) Petitions and motions for post-conviction relief submitted pursuant to this Rule shall specify all grounds for relief which are available to the petitioner or movant and of which he has or, by the exercise of reasonable diligence, should have knowledge.

(2) A successive petition or motion may be dismissed if the Court finds that it fails to allege new or different grounds for relief or, if new or different grounds are alleged, the Court finds that the failure of the petitioner or movant to assert those grounds in a prior petition or motion constituted an abuse of the writ.

(3) If it appears to the Court that a petition or motion for post-conviction relief may be subject to dismissal under this section or Rule 9 of the Supreme Court Rules Governing Section 2254 Cases or Section 2255 Proceedings for the United States District Courts, the Court may direct the Clerk to send appropriate notice of the defect[s] by Certified Mail to the petitioner or movant. Following such notification, petitioner or movant shall have an opportunity to explain any such defect[s]. Failure to do so within the time prescribed by the Court shall subject the petition or motion to dismissal.

(G) The following information shall be supplied by a plaintiff under this Rule who is seeking relief by a civil rights action pursuant to 42 U.S.C. § 1983:

(1) Plaintiff's full name;

(2) Place of plaintiff's residence;

(3) Name[s] of defendant[s];

(4) Place[s] of defendant[s] residence;

(5) Title and position of [each] defendant;

(6) Whether the defendant[s] was [were] acting under color of state law at the time the claim alleged in the complaint arose;

(7) Brief statement of the facts;

(8) Grounds upon which plaintiff bases his allegations that his constitutional rights, privileges or immunities have been violated, together with the facts which support each of these grounds; and

(9) A statement of prior judicial and administrative relief sought; and

(10) A statement of the relief requested.

(H) Where a petition, motion or complaint is tendered for filing in forma pauperis, a pro se petitioner, movant or plaintiff shall complete the motion for leave to proceed in forma pauperis and supporting affidavit or certificate on the forms supplied by the Clerk and shall set forth information regarding his ability to prepay the costs and fees of the proceeding or give security therefor. In all cases in which the petitioner, movant or plaintiff is an inmate of a penal institution and desires to proceed in forma pauperis, in addition to the proof of poverty required by statute, he shall submit a certificate executed by an authorized officer of the institution in which he is confined stating the amount of money or securities on deposit to his credit in any account in the institution. The certificate may be considered by the Court in acting on the motion for leave to proceed in forma pauperis. In the absence of exceptional circumstances, leave to proceed in forma pauperis may be denied if the value of the money and securities in petitioner's, movant's or plaintiff's institutional account exceeds Two Hundred Dollars ($200.00).

(I) Petitioners or movants seeking post-conviction relief shall send or deliver to the Clerk the original and two copies of the petition or motion. Plaintiffs submitting complaints for civil

rights relief must submit the original and one copy of the complaint for the Court and one copy for each of the persons named as defendant in the complaint. If tendered for filing by mail, petitions, motions or complaints shall be addressed to the Clerk of the Court at an address designated by the Clerk.

(J) Noncomplying petitions, motions, or complaints shall be returned, if the Clerk is so directed by a judge of the Court, together with a copy of this Rule and a statement of the reason or reasons for its return. The Clerk shall retain one copy of each noncomplying petition, motion or complaint returned.

(K) If the Clerk is in doubt as to whether such petition, motion or complaint complies with this Rule, he shall refer the same to a judge of this Court, who shall determine this matter or assign it for determination.

(L) Upon filing of a petition or motion for post-conviction relief contemplated by this Rule, the Clerk shall serve by mail a copy of the petition or motion, together with a notice of its filing, on the Oklahoma Attorney General and the Attorney General of any other state involved or the United States Attorney for the Western District of Oklahoma. The filing of such petition or motion shall not require an answer or other responsive pleading unless the Court orders otherwise.

(M) All pro se and/or prisoner complaints arising under 28 U.S.C. § 1331 shall be reviewed for filing only upon completion of the attached forms*: Information and Instructions, and Complaint Pursuant to 28 U.S.C. § 1331; and Motion for Leave to Proceed in Forma Pauperis and Supporting Declaration.

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*See Appendix II.

RULE 6

COSTS

(A) Upon the institution of any civil action, suit or proceeding, whether by original process, removal or otherwise, the party instituting such action, except the United States, shall pay to the Clerk a filing fee of $120.00; except that on application for a writ of habeas corpus the filing fee shall be $5.00. In forma pauperis proceedings may be filed without payment of a filing fee, and a full-time United States Magistrate may grant or deny such filing.

(B) In appeals in civil, bankruptcy, or criminal cases, a party filing a notice of appeal shall pay to the Clerk a filing fee of $5.00, and in addition thereto shall pay any fees provided by the Judicial Conference of the United States incurred in connection with the appeal, except when on behalf of the United States or taken in forma pauperis.

(C) In addition to the fees for services rendered in cases heretofore enumerated, the Clerk shall charge and collect fees for miscellaneous services performed by him, as provided by the Judicial Conference of the United States, except when on behalf of the United States.

(D) In all cases the Marshal shall be authorized to require from every party an advance deposit sufficient to cover all services to be performed on behalf of such party, except when on behalf of the United States.

(E) A prevailing party who seeks to recover judgment for costs against an unsuccessful party pursuant to 28 U.S.C §§ 1920, 1921, and/or who seeks to recover attorney's fees as a part of the costs shall file with the Clerk separate applications for the recovery of said items and support the same with briefs. These applications shall include, inter alia, the following:

(1) With respect to attorney's fees, the statutory or contractual authority for the request, and in an affidavit the amount of time spent on the case,the hourly fee claimed by the attorney, the hourly fee

usually charged by the attorney if this differs from the amount claimed in the case, and any other pertinent factors.

(2) With respect to other claimed cost items, a full itemized bill of costs supported by invoices or other evidence in the form provided by the Clerk.

An application for costs, attorney's fees, or both submitted pursuant to this Rule shall be filed with the Clerk not more than fifteen (15) calendar days after entry of judgment.

(F) The original and one copy of the verified bill of costs shall be filed upon forms provided by the Clerk, which shall have endorsed thereon proof of service upon the opposite party. The prevailing party shall provide either receipts, documents, or an affidavit in support of the following claims: deposition transcripts, air fare receipts, and exemplification and photocopy receipts. Receipts for deposition transcripts shall distinguish between the cost for original depositions and deposition copies.

(G) The original and one copy of each such application, including affidavit for attorney's fees and brief, shall have endorsed thereon proof of service upon the opposite party. Objections to the allowance of attorney's fees and cost must be filed within fifteen (15) calendar days from the filing of the application. The original and one copy of the objections, with accompanying brief, shall have endorsed thereon proof of service upon the opposite party.

(H) The Court may, for good cause shown, and upon written motion filed within the applicable period, extend the time for filing the application or objections thereto.

(I) The Clerk will forward applications for attorney's fees to the judge to whom the case is assigned. The Clerk will retain and, as soon as practicable after the period for filing objections has elapsed, consider applications for other costs, and after consideration of an application and any objections will make his written recommendation thereon allowing or disallowing the items, in whole or in part. If a bill of costs is properly and timely filed in accordance with this Rule and no written objection thereto

is filed within the time herein specified, the claimed costs shall be allowed in full. After the costs have been finally determined as provided herein, the Clerk will tax same in accordance with Rule 54(d), Federal Rules of Civil Procedure.

RULE 7

CIVIL PROCESS

(A) Upon the filing of a complaint, the party must complete the following forms:

(1) Civil Cover Sheet. A brief description must accompany the citing of the United States statute. The nature of suit must be identified with the proper code.

(2) Praecipe. Requests for the issuance of process shall be in writing, signed by the party desiring same or attorney of record, designating the name and address of each person to be served. If service is to be made on other than an individual, the name and address of the service agent, officer or partner to be served shall be named. The type of service required must be set out in the praecipe.

(3) Summons. Upon the filing of the complaint the Clerk shall forthwith issue summons and deliver same for service to the plaintiff or his attorney. Counsel or a pro se litigant shall be responsible for preparing all process but available forms therefor will be supplied by the Clerk. Additional summons shall issue upon request.

(4) Copies. When a restraining order is to be served, the Clerk will be furnished with sufficient copies so that the Marshal will have one upon which to make his return and one copy for each person to be served.

(B) The judges of this Court hereby authorize the Clerk of this Court and/or the Chief Deputy Clerk to issue orders appointing any sheriff or deputy sheriff or authorized process server in any state or territory of the United States to serve any civil process issued out of this Court. The person requesting that someone other than the Marshal be authorized to serve civil process should prepare a request therefor, stating the name of the person desired to be appointed and an order for the Clerk or his Chief Deputy to sign designating such person as the one authorized to serve process in any given case. Any judge of this Court may, of course, also issue any such order.

RULE 8

ASSIGNMENT OF CASES AND TRANSFER OF RELATED OR COMPANION CASES

CIVIL

(A) The assignment of civil cases, bankruptcy court appeals and miscellaneous matters which must be filed as a civil case for statistical purposes shall be divided by lot when filed so that no person will know the assigned judge until after the case, appeal or miscellaneous matter is filed with the Clerk.

(B) Assignment cards shall be prepared by the Clerk under the supervision of the Court in such a manner that each judge of the Court over a period of time shall be assigned substantially an equal number of cases in accord with their type of assignment to the Western District of Oklahoma. The Clerk shall divide the civil cases among the judges as directed by the Court.

(C) Attorneys for the plaintiff and defendant shall, on their initial pleading, advise the Court if they are aware, after reasonable inquiry, of any companion or related case(s) filed in any court involving (1) common property, (2) common issues of fact or growing out of the same transaction, and (3) validity or infringement of the same patent, copyright or trademark, and advise the name of the court, the judge and the case number(s).

(D) The term "companion case" as used herein means any case that may properly be consolidated and shall also include a case refiled after dismissal; a case involving the identical legal issue in the same or similar factual setting as one previously dismissed though now brought by different counsel with different parties; cases arising out of the same accident, incident or transaction involving the same or similar proof; a case filed for recovery of judgment after an earlier case brought to perpetuate testimony; a case transferred to or refiled in this district following enforcement of a foreign subpoena in the case within this district; appeal arising out of the same bankruptcy proceeding; civil litigation arising out of a criminal activity where the criminal case has already been tried (including a motion filed pursuant to 28 U.S.C. § 2255).

(E) When related or companion cases are filed, the case shall be transferred by the assigned judge to the judge receiving the lowest case number if the case through the draw did not fall to the judge with the lowest case number. However, any transfer of related or companion cases will not be made until the affected judges have mutually agreed as to the companion nature of the actions and any transfer of same.

(F) In the case of doubt as to whether the subsequent case is related or companion to the earlier one, and in instances where the handling of the first case may incline the judge to recuse himself in the second, the decision of the transferee judge shall be respected.

(G) Post-conviction cases, either federal habeas corpus or state habeas corpus under 28 U.S.C. § 2254, shall be transferred by the assigned judge to the judge of this Court who had the petitioner in the last prior habeas corpus case or who had the petitioner in a federal criminal case to which the habeas corpus being filed is directed.

(H) A complaint filed under the Civil Rights Act from a person, including prisoners, shall be transferred by the assigned judge to the judge of this Court who had the petitioner in the last prior civil rights complaint or petition.

(I) The judge to whom any particular action or proceeding is assigned will have full charge of such case until terminated except that (1) the matter may be transferred by order of the transferor judge upon agreement of acceptance by the transferee judge, or (2) by order of the Chief Judge, with the consent of the transferor and transferee judges.

CRIMINAL

(J) The assignment of criminal indictments, informations, magistrate appeals to the Court, and cases wherein the defendant objects to a trial before a magistrate shall be divided by lot when filed with the district court Clerk so that no person will know the assigned judge until after the criminal case is assigned a case number and filed with the Clerk.

(1)Assignment cards shall be prepared by the Clerk under the supervision of the Court in such manner that each judge of the

Court over a period of time shall be assigned substantially an equal amount of cases. The Clerk shall divide the criminal cases among the judges as directed by the Court.

(K) The Chief Judge will impanel and instruct all grand juries but shall not be required to preside over any of the sessions thereof. The responsibility of presiding over the grand juries shall be divided equally among the full-time, resident judges of this Court, except the Chief Judge, with the judge most senior having his preference as to which three-month period he desires. The judge next senior shall have his preference as to which of the three remaining three-month terms he desires, with the judge having the least seniority taking the remaining three-month term.

(L) The grand jury shall be called into session as early as feasible each month. Criminal cases should be tried within seventy (70) days from the filing date (and making public) of the information or indictment or from the date the defendant appears before a judicial officer of the Court in this district, whichever date last occurs.

(M) All applications for authorization for pen registers and other forms of interceptions of wire or oral or other forms of communications or other investigatory matters arising under Chapter 119 of Title 18 of U. S. Code and/or concerning matters under investigation by the grand jury shall be presented to the judge presiding over the grand jury. Such judge will be responsible for ruling on all such matters both during the time he so presides, and thereafter, if such matters or later applications concerning the same investigations should carry over or be presented after he has relinquished the grand jury to some other judge. If the presiding judge should be unavailable, any such application or matter may be presented to any other judge of the Court. However, the presiding judge should be notified by the U. S. Attorney in writing of such presentation to another judge as soon as possible thereafter. All civil cases arising out of such applications shall be assigned directly to the calendar of such judge responsible for them under this Rule.

(N) The judge presiding over the grand jury shall at the beginning of his three-month period as presiding judge determine the schedule for the three-month period by setting the following dates: the dates for the grand jury to appear; the dates for the calling and empaneling of the petit jury; the dates for arraignments (to be conducted by the magistrates), and the dates for commencement of the criminal trial docket.

(O) All informations shall be filed and assigned by lot. However, any superseding information to an indictment already filed shall be assigned the number of the original case in which the indictment is filed and will be assigned to the judge drawing the case in which the indictment was filed.

(P) Cases where the status of one or more of the defendants is fugitive shall, as regards the fugitive or fugitives, remain with the judge to whom it is originally assigned.

(Q) The judge to whom any particular action or proceeding is assigned will have full charge of such case until terminated except that the matter may be transferred by order of the transferor judge upon agreement of acceptance by the transferee judge.

(R) Where an information or indictment is filed concerning a defendant, and (1) that information or indictment arises out of the same transaction or series of transactions involved in a presently pending information or indictment in this district, or (2) that information or indictment involves the same defendant who has a presently pending information or indictment in this district, or (3) for other reasons would entail substantial duplication of labor if heard by a different judge, the United States Attorney shall notify the Clerk in writing and the matter shall be assigned to the judge having the low-numbered indictment or information subject to the approval of the affected judges. The written notice by the United States Attorney shall be on a form approved by the Court. The Clerk of Court, upon receipt of such notice of related criminal cases, shall immediately notify the judges, if there be more than one, to which the cases have been assigned, of such notice of related cases. Thereafter, the judges will determine whether the pending cases should be transferred to conserve judicial time and efficiency.

(S) Where an information or indictment originating in another district is transferred to this Court pursuant to Rule 20, Federal Rules of Criminal Procedure, involving a defendant proceeded against by indictment or information in this District, it shall be assigned or transferred to the judge to whom the matter arising in this District is assigned for disposition.

If an indictment is returned in this District against a defendant who has a Rule 20 plea pending, the indictment shall be referred to the judge to whom the Rule 20 plea has been assigned.

(T) Whenever an indictment has been dismissed before trial, any new indictment involving the same transaction or series of transactions shall be assigned to the judge to whom the first indictment was assigned.

RULE 9

PREPARATION AND SERVICE OF PAPERS AND PLEADINGS

(A) When Required. The requirement of service shall be in accordance with Rule 5(a), Federal Rules of Civil Procedure, unless otherwise expressly provided in these Rules.

(B) Manner of Service. Service of all papers requiring service under these Rules may be made in the manner specified in Rule 5(b), Federal Rules of Civil Procedure. If any paper is served by delivery of a copy, the delivery may be performed by any person of suitable age and discretion, unless otherwise expressly provided in these Rules or in the Federal Rules of Civil Procedure.

(C) Proof of Service of Pleadings, Motions and Other Papers. Except as otherwise provided in the Federal Rules of Civil Procedure, or by order of Court, proof of service of any pleadings, motions or other paper required to be served shall be made by the certificate of any attorney of record, or if made by any other person, the affidavit of such person. Such certificate or affidavit shall be filed with the Clerk with the paper or pleading so filed or may be endorsed upon the pleading, motion or other paper required to be served, excepting subpoenas for which proof of service need only be filed when a dispute arises.

(D) All pleadings, motions, applications, orders and briefs tendered to the Clerk for filing shall be double-spaced, if typewritten, and shall be on white bond paper, eight and one-half inches wide by eleven inches long, and only one side of the paper shall be used. Attached exhibits shall be clearly legible. All pleadings, motions, applications and briefs tendered to the Clerk for filing shall consist of an original plus one copy of each.

(E) There shall be tendered for filing with each final judgment, order, or decree, and with any order affecting real or personal property, the first copy thereof for insertion by the Clerk in the civil order book. In addition thereto, sufficient additional copies shall be tendered to each and all counsel of record in the case.

(F) The attorney signing a pleading shall cause his name, address, and telephone number to be typed thereunder.

(Rev. 12/31/91)

RULE 10

INTERROGATORIES AND REQUESTS FOR ADMISSIONS

(A) Each answer to an interrogatory under Rule 33, Federal Rules of Civil Procedure, shall be immediately preceded by the interrogatory being answered. The number of interrogatories to a party shall not exceed thirty (30) in number. Interrogatories inquiring as to the existence, location and custodian of documents or physical evidence each shall be construed as one interrogatory. All other interrogatories, including subdivisions of one numbered interrogatory, shall be construed as separate interrogatories. The number of requests for admissions for each party is also limited to thirty (30). No further interrogatories or requests for admissions will be served unless authorized by the Court. If counsel for a party believes that more than thirty (30) interrogatories or requests for admissions are necessary, he shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional interrogatories or requests for admissions. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the party seeking to submit such additional interrogatories or requests for admissions shall file a motion with the Court (1) showing that counsel have conferred in good faith but sincere attempts to resolve the issue have been unavailing, (2) showing reasons establishing good cause for their use, and (3) setting forth the proposed additional interrogatories or requests.

(B) Discovery Material Not to be Filed. Depositions, interrogatories, requests for documents, requests for admissions, and answers and responses thereto shall not be filed with the Clerk unless on special order of the Court or unless they are attached to a motion, response thereto, or are needed for use in a trial or hearing.

RULE 11

TIME

The computation of any period of time prescribed or allowed by these Rules shall be in accordance with Rule 6, Federal Rules of Civil Procedure.

RULE 12

DEMAND FOR JURY

(A) Any party may demand a trial by jury in accordance with Rule 38(b), Federal Rules of Civil Procedure. The demand may be filed separately or endorsed upon a pleading of the party. If so endorsed, the demand shall be set forth separately, at the end of the pleading.

(B) In any case removed from a state court, a demand for a jury trial must be filed within thirty (30) calendar days after the case is removed from the state court, or trial by jury is waived.

(C) In all civil jury cases the jury shall consist of not less than six (6) members. The challenges permitted shall remain as provided in 28 U.S.C. § 1870 and Rule 47(b), Federal Rules of Civil Procedure.

RULE 13

BRIEFS

(A) Filing. A copy of each brief shall be tendered to the Clerk of the district court at the time of filing the original.

(B) Title. Each brief shall be clearly styled to show whether it is opening, opposition, reply or supplemental, the particular application or proceeding to which it relates and the party or parties on whose behalf it is presented. Briefs shall refer to any previous briefs on file relating to the same matter. Reply and supplemental briefs are not encouraged and may be filed only upon application and leave of Court. They shall be limited to ten (10) pages in length unless otherwise authorized by the Court.

(C) Briefs Exceeding 15 Pages in Length. Briefs exceeding 15 pages in length shall be accompanied by an indexed table of contents showing headings or subheadings and an indexed table of statutes, rules, ordinances, cases, and other authorities cited. With the exception noted in Rule 14(A), briefs exceeding 25 pages in length will not be received. Reply and supplemental briefs, when allowed by the Court, shall be limited to ten (10) pages in length.

(D) Reference to Parties. If there are multiple parties plaintiff or defendant or if there are cross-claimants or intervenors, references to them shall include the name (which may be abbreviated) of the particular party to whom reference is made.

(E) Citations. Citations of federal cases shall be to the United States Supreme Court Reports and Law Edition, Federal Reporter, Federal Supplement, or Federal Rules Decisions, if so reported, and shall indicate the court and year of decision. Citations of federal statutes shall be to the United States Code. Citations of federal administrative rules shall be to the Code of Federal Regulations.

(F) Ordinances. The ordinance of any city or town or regulation of any governmental authority having the force of law and relied upon by a party shall be cited and quoted in the brief of the party.

(G) Statutes Foreign to the Jurisdiction. The statute of any

state or country foreign to the jurisdiction of the Court and relied upon by a party shall be cited and quoted in the brief of the party.

(H) Factual Matter Not Part of Record. Factual statements or documents appearing only in the briefs shall not be deemed to be a part of the record in the case, unless specifically permitted by the Court.

Rule 14

MOTIONS, APPLICATIONS AND OBJECTIONS

(A) Briefs. Each motion, application or objection shall set out the specific point or points upon which the motion is brought and shall be accompanied by a concise brief. Each party opposing the motion, application or objection shall, within fifteen (15) days after the same is filed, file with the Clerk and serve upon all other parties a response which shall be supported by a concise brief. Any motion, application or objection which is not opposed within fifteen (15) days, as set out above, shall be deemed confessed. The Court may, in its discretion, shorten or lengthen the time in which to respond. The original and one copy of each motion, application or objection shall be deposited with the Clerk. No brief shall be submitted which is longer than twenty-five (25) typewritten pages without special permission of the Court. Reply and supplemental briefs are not encouraged and may be filed only upon application and leave of Court. They shall be limited to ten (10) pages in length unless otherwise authorized by the Court. Oral arguments on motions, applications or objections will not be conducted unless ordered by the Court.

(B) Summary Judgment Motions. The brief in support of a motion for summary judgment (or partial summary judgment) shall begin with a section that contains a concise statement of material facts as to which movant contends no genuine issue exists. The facts shall be numbered and shall refer with particularity to those portions of the record upon which movant relies. The brief in opposition to a motion for summary judgment (or partial summary judgment) shall begin with a section which contains a concise statement of material facts as to which the party contends a genuine issue exists. Each fact in dispute shall be numbered, shall refer with particularity to those portions of the record upon which the opposing party relies, and, if applicable, shall state the number of the movant's fact that is disputed. All material facts set forth in the statement of the movant shall be deemed

admitted for the purpose of summary judgment unless specifically controverted by the statement of the opposing party.

(C) Motions Not Requiring Briefs. No brief is required by either movant or respondent unless otherwise directed by the Court, with respect to the following motions:

(1) for extension of time for the performance of an act required or allowed to be done, provided request therefor is made before the expiration of the period originally prescribed, or as extended by previous orders;

(2) to continue a pretrial conference, hearing or motion, or the trial of an action;

(3) to amend pleadings;

(4) to file supplemental pleadings;

(5) to appoint next friend or guardian ad litem;

(6) for substitution of parties; and

(7) motions to compel answers to interrogatories.

Any of the above motions not requiring briefs shall be accompanied by a proposed order stating the relief requested by said motion.

(D) Brief with Motion, Application or Objection. The Clerk shall not accept for filing any motion, application or objection requiring a brief, unless accompanied by such brief, without permission of the Court.

(E) Conference of Attorneys with Respect to Motions or Objections Relating to Discovery; Sanctions. With respect to all motions or objections relating to discovery pursuant to Rules 26 through 37, and Rule 45, Federal Rules of Civil Procedure, this Court shall refuse to hear any such motion or objection unless counsel for movant first advises the Court in writing that he has personally met and conferred in good faith with opposing counsel, but that, after a sincere attempt to resolve differences has been made, they have been unable to reach an accord. However, no personal conference shall be required where the movant's counsel represents to the Court in writing that he has conferred with opposing counsel by telephone and (1) the motion or objection arises from failure to timely make a discovery response, or (2) distance between counsels' offices renders a personal conference

infeasible. When the locations of counsels' offices, which will be stated with particularity by movant, are in Oklahoma only, a personal conference is always deemed feasible as to distance. After the presentation of a discovery dispute to the Court following compliance with this Rule, an award of expenses may be made or sanctions may be imposed in accordance with Rule 37, Federal Rules of Civil Procedure.

(F) Motions in Criminal Cases. Motions in criminal cases, and particularly motions made pursuant to Rules 7(f), 12, 16, 21 and 41(e), Federal Rules of Criminal Procedure, shall be in writing and state with particularlity the grounds therefor and the relief or order sought. All such motions shall be filed with the Clerk within eleven (11) calendar days after arraignment, and a copy served upon the United States Attorney, who shall respond within five (5) days after filing, unless a different time is fixed by statute or the Federal Rules of Criminal Procedure for such motions or responses thereto. All motions and responses thereto must be accompanied by a concise brief citing all authorities upon which the movant or respondent relies. The Court may, however, in its discretion, order or allow such motions or responses thereto to be filed at a time earlier than or later than that fixed by this Rule.

(G) Motions to Reconsider or Overrule Orders Issued by Judges of This District. Once a motion or application has been presented and an order entered by a judge sitting in this district, a motion to reconsider or overrule said order shall be presented only to the judge entering the order or to the other active judges sitting en banc. A unanimous vote of the other active judges sitting en banc will be required to overrule such order previously entered. The movant or applicant shall make known the action taken by the judge to whom it was previously submitted. This provision is intended to apply to such things as applications for search warrants, wiretaps, pen registers and other such applications or motions which are made to a judge without a case having been filed. It is not a means to appeal an order entered in a case, nor is it intended to apply where a case is transferred from one judge to another and a motion to reconsider a prior ruling is made.

(H) Applications for Extensions of Time. All applications for extension of time for the performance of an act required or allowed to be done shall state:

(1) the date the act is due to occur without the requested extension;

(2) whether previous applications for extensions have been made to include the number, length of extension, or other disposition of them;

(3) specific reasons for such requested extension to include an explanation why the act was not done within the originally allotted time;

(4) whether the opposing counsel or party agrees or objects to the requested extension; and

(5) the impact, if any, on scheduled trials or other deadlines.

Such requirements shall apply to all applications to extend the date for discovery cutoff, to file dispositive or other motions, to amend the pleadings, to bring in new parties, and/or to continue a trial or hearing date or to extend any other schedule established by the Court or by law. All applications shall be accompanied by a proposed order for the Court's use if such relief is granted.

RULE 15

DEPOSITIONS

(A) Depositions may be taken within the times specified in Rule 30(a), Federal Rules of Civil Procedure. Depositions may be taken by agreement of the parties where leave of Court would otherwise be required under the second sentence of that Rule. "Reasonable notice" as contemplated by Rule 30(b)(1), Federal Rules of Civil Procedure, for the taking of depositions shall be five (5) days, subject, however, to an order of the Court entered for cause shown enlarging or shortening the time. Rule 6, Federal Rules of Civil Procedure, shall govern the computation of time.

(B) Depositions in pending cases which have been duly filed in the Office of the Clerk may be opened by the Court at any time or by the Clerk for examination upon oral or written application of any attorney of record in the case.

RULE 16

EXHIBITS

(A) Marking and Disclosure. All exhibits and documents which are to be introduced in evidence are to be marked for identification and exhibited to opposing counsel prior to the pretrial conference.

(B) Withdrawal and Disposition. Exhibits introduced in evidence upon the trial of a case may be withdrawn from the custody of the Clerk only upon order of the Court. Any exhibit not withdrawn after final judgment may be destroyed or otherwise disposed of as the Court may direct.

(C) Numbering. The numbers and description of all exhibits to be offered at trial shall be set forth on the Exhibit List forms provided by the Clerk. See Appendix III of these Rules.

(D) Bulky, Heavy, Controlled Substance or Firearm Exhibits-Photography. With reference to bulky, heavy, controlled substance or firearm exhibits the Court may order that the party introducing same shall retain custody thereof during and after the trial even when an appeal is contemplated. Any such order shall provide for preservation of the exhibit as justice may require. Notwithstanding any provision of Rule 27(I) of these Rules to the contrary, exhibits, diagrams, charts and drawings on a blackboard may, under the supervision of the Court, be photographed for use on appeal or otherwise.

(E) Legibility. Exhibits attached to any motion, brief or other document shall be clearly legible, otherwise same shall not be accepted for filing by the Clerk.

RULE 17

CIVIL STATUS CONFERENCES; CRIMINAL PRETRIAL CONFERENCES; MANAGEMENT

(A) Scheduling. A scheduling order shall issue in civil cases (excepting administrative reviews and prisoner cases) within one hundred twenty (120) days from the date of filing the complaint, in accordance with Rule 16, Federal Rules of Civil Procedure.

(B) Preparation by Counsel for Status Conference Scheduled by the Court. Prior to the first status conference scheduled by the Court, trial counsel for each of the parties shall confer and prepare a status report. Said report shall include, to the extent then known, the contentions of each party and the issues of fact and law. It will also contain a list of all exhibits, witnesses, and discovery materials to the extent then known, together with estimates of time needed to complete discovery and trial time. It shall be the duty of counsel for the plaintiff to arrange this conference and the duty of all counsel to jointly participate in and facilitate it. The information exchanged shall be incorporated into the status report. This status report will be prepared and signed jointly and filed as a single document with the Clerk of the Court no later than five (5) days prior to the status conference scheduled by the Court. (The Status Report shall conform to the form required for Final Pretrial Order, attached to these Rules as Appendix IV, but shall be entitled "Status Report.")

(C) Exchange of Discovery Materials.

(1) Prior to the first status conference scheduled by the Court, each party shall, without awaiting a discovery request, disclose to all other parties:

(a) the identity of any expert witness whom the party intends to call, together with the expert's qualifications, a statement of the substance of the expert's expected testimony, and a summary of the grounds for the expert's opinion;

(b) a general description, including the location, of all books, documents, data, compilations, and tangible things in the possession, custody or control of the party that are likely to bear significantly on any claim or defense;

(c) the existence and content of any insurance

agreement under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment;

(d) a privilege log separately listing each document for which a privilege is asserted, including the date, author(s), addressee(s), general description of the subject matter, and the specific authority for assertion of the privilege.

(2) Each party is under a continuing obligation to supplement or correct its disclosure if the party obtains additional information which makes previously disclosed information incorrect or incomplete.

(3) Every disclosure or supplementation by a party represented by an attorney shall be signed by at least one attorney of record. A party who is not represented by an attorney shall sign the disclosure. The signature of the attorney or party constitutes the certification under, and is consequently governed by, the provisions of the Federal Rules of Civil Procedure. In addition, signing constitutes certification that the signer has read the disclosure, and that to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, the disclosure is complete as of the time it was made.

(4) Failure to comply with the requirements of this rule may result in the imposition of sanctions by the Court.

(D) Agenda at Conference.

(1) Counsel who will conduct the trial and pro se litigants shall attend any conference required by the Court. When justified by the circumstances, the Court may allow counsel to participate in such conference by telephone. Pro se litigants and counsel shall be prepared to discuss:

(a) the streamlining of claims and/or defenses;

(b) the possibility of obtaining admissions of fact and of documents;

(c) the avoidance of unnecessary proof and of cumulative evidence;

(d) the identification of witnesses and documents;

(e) the possibility of settlement or use of extra-

judicial procedures;

(f) the disposition of any pending matters;

(g) the need for adopting special procedures for managing of difficult or protracted litigation that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and

(h) all other appropriate matters.

(2) The Court at the status conference will establish insofar as feasible the time:

(a) to join other parties and to amend the pleadings;

(b) to serve and hear motions;

(c) to conduct and complete discovery; and

(d) to file the submissions required by the Final Pretrial Order entered by the Court, said submissions including proposed voir dire, requested jury instructions or proposed findings of fact and conclusions of law, witness lists, exhibit lists, trial briefs, joint preliminary statements, stipulations, and hypothetical questions.

(3) The Court will also set if necessary or feasible the dates of any supplemental status conferences, the date of the final pretrial conference, if any, and the date of trial.

(E) Preparation of Status Reports, Final Pretrial Orders, and Other Orders.

(1) Unless otherwise ordered by the Court, counsel for the plaintiff, with full and timely cooperation of other counsel and pro se parties, is responsible for preparing, obtaining approval of all parties, and furnishing the Court any status reports, pretrial orders or other orders required by the Court or these Rules.

(2) The clerk who keeps the minutes of the status conference shall have forms available substantially conforming to that attached to these Rules as Appendix V whereby the time and/or date fixed by the Court for the performance of specified duties may

be inserted. Upon request therefor, counsel will be supplied with a copy of such form so that they may make their own notations of deadlines and of other orders prescribed by the judge presiding over the conference. Such executed form, when approved by the Court and filed, shall constitute the order of the Court as to such schedules without the necessity of filing of any other order to the same effect. Unless otherwise directed by the assigned judge, the form and content of a jointly prepared, proposed, Final Pretrial Order, conforming to the sample form shown at Appendix IV, attached hereto, shall be tendered to the Court by plaintiff's counsel on or before the first day of the month that the case is scheduled for trial.

(F) Default. Failure to prepare and file a required status report, failure to comply with the Final Pretrial Order, failure to appear at a conference, appearance at a conference substantially unprepared, or failure to participate in good faith may result in any of the following sanctions: the striking of a pleading, a preclusion order, staying the proceeding, default judgment, assessment of expenses and fees (either against a party or the attorney individually), or such other order as the Court may deem just and appropriate.

(G) Criminal Case -- Pretrial Conference. A pretrial conference may be held in criminal cases for the purpose of considering such matters as will promote a fair and expeditious trial. Such conference may, at the discretion of the Court, be conducted by a magistrate, as provided in Rule 39(B)(2) hereof.

(H) Criminal Case -- Stipulations -- Exhibits. Consistent with the applicable Federal Rules of Criminal Procedure, and whenever it can be done without violating or jeopardizing the constitutional rights of the defendant in any criminal case, stipulations should be made at or prior to the pretrial conference with respect to the undisputed facts and the authenticity of documents. Each instrument which it is anticipated may be offered in evidence by either side (or photostatic copy of such instrument, if agreeable), should be marked with an exhibit number prior to the trial.

(I) Settlement Conferences. The Court may upon its own

motion or at the request of any of the parties order a settlement conference at a time and place to be fixed by the Court. A magistrate or a district judge other than the judge assigned to the case, to be known as the settlement conference judge, shall conduct it. The lead attorney who will try the case for each party shall appear, and shall be accompanied by one with full settlement authority. The latter will be the parties if natural persons, or representatives of parties which are not natural persons, but may not be counsel (except in-house counsel) or a person who is not directly and actively associated with the party or parties. Other interested parties such as insurers or indemnitor shall attend and are subject to the provisions of this Rule. Only the settlement conference judge may excuse attendance by any attorney, party or party's representative. The parties, their representatives and attorneys are required to be completely candid with the settlement conference judge so that he may properly guide settlement discussions, and the failure to attend a settlement conference or the refusal to cooperate fully may result in imposition of sanctions mentioned in paragraph (E) of this Rule. The settlement conference judge may issue such other and additional requirements of the parties or persons having an interest in the outcome as to him shall seem proper in order to expedite an amicable resolution of the case. The settlement judge will not discuss the merits of the case with the assigned judge but may discuss the status of motions and other procedural matters and shall have the right to meet jointly or individually with parties or persons or representatives interested in the outcome of the case without the presence of counsel. No statements, admissions, or conversations will, in any form, be used in the event of subsequent trial.

(J) Summary Jury Trial; Alternative Methods of Dispute Resolution. The Court may, in its discretion, set any civil case for summary jury trial, mandatory (nonbinding) arbitration (in accordance with Rule 43), mediation (in accordance with Rule 46) or other alternative method of dispute resolution as the Court may deem proper.

RULE 18

SETTING CASES FOR TRIAL

(A) Trial on Merits. All civil cases which have been pretried shall be set for trial on the merits, upon reasonable notice to counsel of record, at times to be designated by the Court.

(B) En Banc. In nonjury cases of great public interest or of first impression the Court may sit and consider same en banc.

(C) Notice of Requirement of Three-Judge Court. Whenever any action or proceeding is required by Title 28 U.S.C. § 2284 to be heard and determined by a district court of three judges, the plaintiff shall simultaneously file with the complaint a separate notice to the Court to this effect. If the plaintiff fails to do so, every other party shall file such notice, provided, that as soon as a notice is filed by any party, all other parties are relieved of this obligation. The Clerk shall notify the Court promptly of such notice.

(D) Notice of Request for Class Action Determination. Whenever any action or proceeding is commenced which includes a request that the Court certify the case or proceeding as a class action, the plaintiff shall immediately notify the judge to whom said action is assigned of the request for class action determination. If the plaintiff fails to do so, every other party receiving notice of such suit shall so notify the judge to whom the case is assigned, provided, however, that as soon as a notice is given by any party the other parties are relieved of this obligation. The notice herein required shall be in writing and the Clerk shall promptly notify the judge to whom the case is assigned of such notice.

(E) Notice of Bankruptcy Filing. Whenever any civil case is interrupted by one of the parties filing bankruptcy or being filed against as an involuntary bankrupt, counsel for the party filed against shall notify the Court within five (5) days of the filing of said bankruptcy by filing a formal notice in the civil case, with proof of service to all parties.

RULE 19

CONTINUANCES AND EXTENSIONS

No trial date or other schedule may be continued upon stipulation of counsel alone, but such continuances may be allowed by order of the Court upon good cause shown, on proper application, as required by Local Rule 14(H).

RULE 20

LISTS OF WITNESSES IN CIVIL CASES

At the commencement of the trial of a civil case the attorneys shall submit to the judge, the court clerk, the court reporter and to the bailiff a typewritten list of the witnesses they expect to call.

RULE 21

APPEARANCE OF COUNSEL AND WITHDRAWAL OF COUNSEL

(A) An attorney appearing for a party in a civil or criminal case shall enter his appearance by signing and filing an entry of appearance on a form prescribed by the Clerk of this Court.

(B) In the event a party should change counsel or add additional counsel, the new or additional counsel for such party shall enter his appearance by entry of appearance on a form to be provided by the Clerk for that purpose.

(C) In the event an attorney appearing for a party in a pending case should change his mailing address, he shall promptly file a notice of address change on a form prescribed by the Clerk of this Court.

(D) Counsel of record in any case shall be permitted to withdraw conformably to Rule 4(I) only by order of the judge to whom the case is assigned.

(E) Certificate of Familiarity With Local Court Rules.

(1) Every person, upon entering an appearance in any cause or proceeding in this Court, or upon first tendering for filing any pleading or paper therein, shall be required to certify that such person has received, read and is familiar with the current Local Rules of this Court, specifically including all of the most recently published amendments to them.

(2) Such certification shall be required before any such entry of appearance, pleading or paper shall be filed by the Clerk, provided, however, for good cause shown, the Clerk may in his discretion receive and file any such matter on condition that the required certificate be filed within ten (10) days thereafter, failing in which the matter so filed shall be stricken.

(3) The same certification shall also be required of every other person thereafter participating in such cause or proceeding.

(4) The Clerk shall keep a master file of all such certificates. Once a person has so certified it shall not be necessary to do so again in subsequent cases unless required by order of the Court.

(5) A judge of this Court may authorize the Clerk to waive this requirement as to certain persons or categories of persons when such will best serve the administration of justice.

RULE 22

ARGUMENTS AND INSTRUCTIONS

(A) Arguments. Arguments to juries will be subject to limitation as to time.

(B) Instructions. Requested instructions, other than those necessitated by unanticipated events during trial and voir dire, shall be presented in writing as ordered by the Court or filed fifteen (15) calendar days before trial if the Court has not ordered otherwise.

(C) Opening Statements. Unless otherwise allowed by the Court, opening statements shall be limited to ten (10) minutes per side.

RULE 23

ENTRY OF JUDGMENT

(A) Unless otherwise directed by the Court, the Clerk shall forthwith prepare, sign and enter the judgment upon a general verdict of a jury, or upon a decision by the Court that a party shall recover only a sum certain, or costs, or that all relief shall be denied. Upon a decision by the Court granting other relief, or upon a special verdict, or a general verdict accompanied by answer to interrogatories, the prevailing party shall, within five (5) calendar days, prepare a form of judgment on a separate document, bearing approval of opposing counsel unless such approval is excused by the Court, to be presented to the Court for its signature. If the parties are unable to agree upon the form of judgment, they shall immediately submit their differences to the Court, who shall prescribe the form and contents of the judgment.

(B) The entry in the docket of the judgment, directed by the Court and signed by the Judge or by the Clerk, where provided by the Rules, will constitute entry of judgment as provided by Rules 58 and 79(a), Federal Rules of Civil Procedure. The Clerk shall send a copy of the judgment reflecting the date of entry to counsel of record or pro se litigants.

(C) An entry of default judgment must be made by either a motion, application, or request for default judgment. In addition, the party must provide the Court Clerk with an "Entry of Default by Clerk" form. The Court Clerk will verify that a response to the complaint has not been filed and that the time for responding has expired. Judgment must be for a sum certain. The party must verify that service was made and the manner in which it was made.

RULE 24

STAY PENDING DISPOSITION OF MOTIONS AFTER JUDGMENT

In order to insure consideration by the Court before the execution of a judgment or any proceedings to enforce a judgment, any such execution or proceedings are stayed pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, Federal Rules of Civil Procedure, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b) unless the Court shall otherwise order.

RULE 25

SECURITY

(A) Scope of Rule. Whenever a security, bond, or undertaking is required by federal statute, the Federal Rules of Civil Procedure, or by an order of Court, and the form or amount thereof is not otherwise specified in or determined by statute, rule, or order, the amount and form thereof shall be as provided by this Rule, unless otherwise specifically stated by an order of a judge of this Court.

(B) Security for Costs. On its own motion or upon motion of a party in interest, the Court may at any time order any party to give security, bond, or undertaking in such amount as the Court may order for the payment of costs or for performance of other conditions or requirements imposed in an action or proceedings.

(C) Corporate Surety. No security, bond or undertaking with corporate surety shall be accepted or approved unless (1) the corporate surety is in compliance with the provisions of Title 6 U.S.C. §§ 6-13; and (2) there is on file with the Clerk a duly authenticated power of attorney appointing the agents or officers executing such obligation to act on behalf of the corporate surety.

(D) Cash or Negotiable Bonds of the U.S. In lieu of corporate surety, a party may deposit with the Clerk the required amount in lawful money or negotiable bonds of the United States accompanied by a written instrument, to be approved by the Court, executed and acknowledged by the party and setting forth the conditions upon which the deposit is made. Where the true owner is other than the party making the deposit, the instrument shall so state and shall also be executed and acknowledged by the true owner. Upon exoneration of the deposit, it may be returned by the Clerk, after application to claims of the United States in the proceedings and to proper fees of the Marshal and Clerk, to the depositor or, if the depositor is other than the named true owner, then to the latter.

(E) Submission to Jurisdiction -- Agent for Service of Process. Notwithstanding any provision of a security instrument to the contrary, every surety or depositor of security subjects

himself to the jurisdiction of this Court, irrevocably appoints the Clerk thereof as his agent upon whom any papers affecting his liability may be served, and consents that his liability shall be joint and several, that judgment may be entered against him in accordance with his obligation simultaneously with judgment against his principal, and that execution may thereupon issue against his property.

(F) Further Security of Justification of Personal Sureties. Upon reasonable notice to the party presenting the security, any other party for whose benefit it is presented may apply to the Court at any time for further or different security or for an order requiring personal sureties to justify.

(G) Court Officers as Sureties. No Clerk, Marshal, member of the Bar, or other officer of this Court will be accepted as surety, either directly or indirectly, on any bond or undertaking in any action or proceeding in this Court.

RULE 26

REMOVAL OF CASES FROM STATE COURTS

(A) A defendant or defendants who desire to remove a civil case from a state court to this Court pursuant to Title 28 U.S.C. §1446, unless removed on behalf of the United States, shall file a Notice of Removal with the Clerk.

(B) Simultaneous with the Notice of Removal, there shall be filed a clearly legible copy of all documents filed in the case sought to be removed.

(C) If a jury trial is desired, refer to procedure required under Rule 12(B) of the Local Court Rules.

(D) Simultaneously with the Notice of Removal, counsel for the opposing parties and the Clerk of the state court from which removal is sought shall be notified.

RULE 27

FREE PRESS - FAIR TRIAL

(A) It is the duty of the lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by any means of public communication, in connection with pending or imminent criminal litigation with which a lawyer or a law firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(B) With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated, by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

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

(1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status and, if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his apprehension or to warn the public of any dangers he may present;

(2) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(5) The possibility of a plea of guilty to the offense charged or a lesser offense;

(6) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

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

(E) During a jury trial or any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that the lawyer or law firm may quote

from or refer without comment to public records of the court in the case.

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

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

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

Such a special order may be addressed to some or all of the following subjects:

(1) A proscription of extrajudicial statements by participants in the trial (including lawyers, parties, witnesses, jurors and court officials) which might divulge prejudicial matter not of public record in the case.

(2) Specific directives regarding the clearing of entrances to and hallways in the courthouse and respecting the

management of the jury and witnesses during the course of the trial, to avoid their mingling with or being in the proximity of reporters, photographers, parties, lawyers and others, both in entering and leaving the courtroom or courthouse and during recesses in the trial.

(3) A specific direction that the jurors refrain from reading, listening to, or watching news reports concerning the case, and that they similarly refrain from discussing the case with anyone during the trial and from communicating with others in any manner during their deliberations.

(4) Sequestration of the jury on motion of either party or by the Court, without disclosure of the identity of the movant.

(5) Direction that the names and addresses of jurors or prospective jurors not be publicly released except as required by statute, and that no photograph be taken or sketch made of any juror within the environs of the Court.

(6) Insulation of witnesses during the trial.

(7) Specific provisions regarding the seating of spectators and representatives of the news media, including:

(a) An order that no member of the public or news media representative be at any time permitted within the bar railing;

(b) The allocation of seats to news media representatives in cases where there are an excess of requests, taking into account any pooling arrangement that may have been agreed to among the newsmen.

(I) The taking of photographs and operation of tape recorders in the courtroom or its environs and radio or television broadcasting from the courtroom or its environs during the progress of or in connection with judicial proceedings, including proceedings before a United States Magistrate, whether or not court is actually in session, is prohibited. A judge may, however, permit (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, and (2) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings.

(J) As used in this Rule the term "environs" means any place above the first floor of the United States Courthouse Building in Oklahoma City.

RULE 28

COURT REPORTERS

PLAN FOR MANAGEMENT OF
COURT REPORTING SERVICES

(A) Supervision and Implementation. The Clerk of this Court is hereby designated and fully empowered to perform all supervisory, administrative and oversight functions hereinafter set forth. In addition, the Clerk shall periodically advise the Court regarding the effectiveness and equity of work distribution of court reporting services provided pursuant to this Plan.

(B) Appointment and Retention of Court Reporters.

(1) Court reporters shall be appointed in accordance with the provisions of the Court Reporter Act, 28 U.S.C. 753, and the procedures of the Administrative Office of the United States Courts. No reporter shall be appointed, nor serve as a contractual or replacement court reporter, unless that reporter is fully qualified under the standards adopted by the Judicial Conference of the United States.

(2) Reporters are employed by the Court en banc and shall retain their employment at the will of the Court en banc, regardless of the death, resignation or retirement of an individual judge. If the volume of work does not justify retention of the full complement of existing reporters, a reduction shall be accomplished through relocation, attrition or in the last instance by termination upon notice of not less than sixty days. Selection for retention shall be based upon merit.

(C) Assignment and Availability. Court reporters shall be assigned to active judges as a matter of convenience. However, when necessary and subject to the approval of the judge to whom they are ordinarily assigned, a court reporter may be temporarily reassigned by the Clerk to another active judge of the district, a senior judge, a visiting district judge, a magistrate, or to land commissioners. A court reporter shall also report grand jury proceedings when required and directed by the Court. The Clerk shall endeavor to equalize the burdens of reporting duties set forth above. Each court reporter shall also, during regular work

hours, maintain telephone availability when not actively engaged in reporting the aforementioned proceedings in order that he can be summoned to the Court within thirty minutes in the event of an emergency.

(D) Substitute Reporting Services.

(1) Every reasonable effort will be made through scheduling to reduce the need for temporary or contractual court reporting services. To the extent that the complement of regular court reporters cannot fulfill the reporting needs of this district, the Court will employ contract court reporters to satisfy the Court's additional requirements, subject to the approval of the Circuit Council and of the Administrative Office.

(2) If a reporter is disabled from service for bona fide medical reasons, a substitute reporter will be provided at Court expense. However, absent prior approval by the Administrative Office no reporter may be maintained on sick leave status for more than thirty days in the aggregate in any calendar year. Except as noted above, any necessary replacement reporter services required, including those necessitated by the demands of expedited, daily or hourly copy, shall be provided at the assigned reporter's expense. Such expense shall not be passed on to litigants ordering transcripts, except to the extent authorized by the higher fees adopted by the Judicial Conference of the United States.

(3) To the extent that the work of the Court permits, two or more official court reporters may cooperate and share the work necessitated by preparation of daily or hourly copy.

(E) Place of Work, Hours, Notes.

(1) All reporters shall maintain regular hours of work between the hours of 8:30 a.m. and to 5:00 p.m., Monday through Friday, excepting legal holidays, unless otherwise excused. All reporters who are not in the courthouse are expected to maintain telephone availability so that they may be summoned to the courthouse within thirty minutes in the event of an emergency.

(2) Official reporters shall maintain an office within the courthouse so as to allow litigants reasonable and prompt access to make arrangements for ordering required transcripts.

(3) All reporters' notes shall be prepared in "note-readable" form. They shall be marked, filed and maintained within the courthouse so as to be accessible by another reporter in the event of an emergency. The notes of replacement or contract reporters shall be suitably marked and filed with the Clerk when not being actively used by the reporters.

(F) Free-lance Reporting. Free-lance reporting (i.e., reporting not required in the discharge of official duties) shall only be undertaken with the specific prior approval of the Court. In conducting such reporting, when authorized, neither court facilities nor equipment may be used.

(G) Fees for Transcripts.

(1) The Clerk shall prominently post at the counter a schedule of fees currently authorized by the Judicial Conference of the United States for regular and expedited transcripts, as well as for daily or hourly copy. Such schedule shall list the per-page charge for originals and for copies, shall explain that one copy of each transcript ordered is to be filed within the Court for Court use at no expense to the litigants and shall note the number of lines to be included on each page for which a full charge is made and the margin requirements for those lines. The notice shall explain that an "expedited" transcript is one which is delivered within seven calendar days after ordering. The Clerk shall also post a notice that any party who has reasonable cause to believe that he may have been overcharged may in complete confidence seek review by the Clerk of the transcript and bill to verify the accuracy of the billing.

(2) The Clerk shall in each transcript paid for with government funds (whether under the Criminal Justice Act or in civil appeals) review the transcripts filed and the bill submitted to ensure the correctness of the charges assessed.

(3) The Clerk shall also post at the counter a notice listing the sanctions to be imposed for late delivery of transcripts ordered for appeals, as hereinafter described in paragraph (H) of this Plan.

(H) Time for Delivery of Transcripts.

(1) In criminal cases and cases brought under 28 U.S.C. §§ 2241, 2254, and 2255, all transcripts ordered for purposes of appeal are to be delivered within thirty days of the date on which they are ordered and satisfactory arrangements are made for payment of the costs of their production, in accordance with Fed. R. App. P. 11(b). In all other cases, all transcripts ordered for purposes of appeal are to be delivered within sixty days of the date on which they are ordered and satisfactory arrangements are made for payment of the costs of their production. These time limitations may be extended only by the United States Court of Appeals for the Tenth Circuit.

(2) If any transcript is not delivered within the specified time, the charge assessable to the ordering party shall be reduced unless the Clerk of the Court of Appeals expressly waives this requirement. The rate of such reduction shall be one percent reduced from the total bill for each three full days that the transcript remains undelivered to the Clerk of the district court beyond the due date. Approval of an extension of time by the Court of Appeals pursuant to Fed. R. App. P. 11(b) does not constitute a waiver of the fee reduction requirement. A showing of extreme or unusual circumstances will be required to obtain a waiver.

(3) Upon delivery of the transcript, the Clerk of the district court shall calculate the sanctions to be imposed and shall notify the court reporter and the Court of Appeals. This notice shall be deemed a court order that sanctions shall be paid.

(4) Within ten days of notice that sanctions have been imposed, the reporter shall deliver to the Clerk of the district court a copy of the billing rendered to the ordering party, showing the total original charge, the penalty reduction subtracted from the total and the net bill to be paid by the ordering party. A copy of each such bill shall be forwarded to the Court of Appeals after receipt and review by the Clerk.

(5) Nothing contained herein shall be construed as sanctioning untimely delivery of transcripts, nor should this

provision be considered the only penalty that may be imposed by the Court or Circuit Council.

(I) Reports to be Filed. Each official court reporter shall timely file with the Administrative Office the reports set forth below. In addition, a copy of each of these reports shall be filed with the Clerk, for the use of the Court, not later than thirty days after the report is due to the Administrative Office. The Clerk shall maintain these copies in strict confidence, except as specifically directed by the Court acting en banc.

(1) The Report of Attendance and Transcripts of United States Court Reporters (Form A.O. 40A) shall be submitted quarterly during each calendar year to the Fiscal Management Division of the Administrative Office of the United States Courts, Washington, D.C. 20544. It shall be mailed so as to arrive within twenty days after the end of each quarter.

(2) The Statement of Earnings of United States Court Reporters (Form A.O. 40B) shall be submitted annually to the Financial Management Division of the Administrative Office of the United States Courts, Washington, D.C. 20544. It shall be mailed so as to arrive within sixty days after the end of each calendar year.

(J) Rates.

(1) Rates to be charged by court reporters of this Court are established, such as are fixed from time to time by the Judicial Conference of the United States, as follows:

To	Original	First Copy To Each Party	Additional Copies Same Party
ORDINARY TRANSCRIPT	$3.00	$ .75	$ .50
7-DAY EXPEDITED	$4.00	$ .75	$ .50
DAILY TRANSCRIPT	$5.00	$1.00	$ .75
HOURLY TRANSCRIPT	$6.00	$1.00	$ .75

(2) The reporter shall not be required to undertake the making of a typed transcript without the deposit of an adequate indemnity, nor to furnish such transcript prior to the payment thereof.

(K) Electronic Sound Recording.

(1) The provisions of 28 U.S.C. § 753(b), as amended April 2, 1982, Pub. L. 97-164, Title IV, § 401(a), 96 Stat. 56, allow a district judge or magistrate of this Court to record arraignments in any criminal case by electronic sound recording if the system that is utilized possesses those essential features of reliability and quality of performance mentioned therein. Those requirements include, but are not limited to, multichannel recording, dual cassettes with automatic changeover, no erase head on recorder, a signal sensor to prevent overrecording, a LED Digital Indexing System. By reason of the often-encountered difficulty in finding a court reporter who has free time to attend and take these arraignments, this Rule is adopted to allow and authorize arraignments to be conducted by a magistrate without the presence of a court reporter when reliable electronic sound recording equipment is utilized.

Accordingly, in the future, in instances where a court reporter is not readily available, electronic sound recording devices are hereby authorized for use in arraignments. Where so utilized, the Clerk shall certify on a recording log, inter alia, the case number, caption, date, cassette number, and pertinent digital indexes for each arraignment. The original recording log shall be filed with the cassette in a designated place for safekeeping by the Clerk, and shall thereafter be preserved as the official Court record of the arraignment. The Clerk shall also file a copy of the recording log with the minutes of the arraignment.

(2) Upon approval of a written application by the Court showing good cause therefor, any party may be permitted to listen to a playback of the arraignment on the Court's recording system. The applicant may also obtain a transcript thereof, provided: (a) satisfactory arrangements are made with a Certified Shorthand Reporter (with a Certificate of Merit or Proficiency) for prepayment of the transcript costs, or by showing that the applicant is unable to pay costs, all in accordance with 28 U.S.C. § 753(f); (b) a certified copy of the transcript is filed in the case; and, (c) if the requisites of reliability and accuracy are

preserved, said reporter may transpose or "dub" through the use of the Court's recording system onto another cassette for the purpose only of preparing a transcript.

RULE 29

NATURALIZATION DAYS

Regular hearings upon petitions for naturalization shall be conducted at Oklahoma City on dates fixed by the Chief Judge. Special hearings may be held at any place within the district on dates fixed by any judge of this Court.

RULE 30

COURTROOM DECORUM

(A) The Canons of Professional Ethics were adopted by the American Bar Association as a general guide, because as stated in the preamble, "[N]o code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life." The preamble further admonishes that "the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned." In that spirit, all lawyers should become familiar with their duties and obligations as defined and classified generally in the Canons, the common law decisions, the statutes, and the usages, customs, and practice of the Bar.

(B) The purpose of this Rule is to emphasize, not to supplant, certain portions of those ethical principles applicable to the lawyer's conduct in the courtroom. In addition to all other requirements, therefore, lawyers appearing in this Court shall:

(1) Be punctual in attendance at Court.

(2) Refrain from addressing one another in Court by their first names.

(3) Refrain from leaving the courtroom while Court is in session, unless it is absolutely necessary, and then only if the Court's permission has been first obtained.

(4) See that only one of them is on his feet at a time unless an objection is being made.

(5) Refrain from approaching jurors who have completed a case unless authorized by the Court.

(6) Avoid approaching the bench as much as possible. In this connection, counsel should try to anticipate questions which will arise during the trial, and take them up with the Court and opposing counsel in chambers. If, however, it becomes necessary for an attorney to confer with the Court at the bench, the Court's permission should be obtained, and opposing counsel should be openly invited to accompany him.

(7) Refrain from employing dilatory tactics.

(8) Deliver jury arguments from the lectern placed in a proper position facing the jury. If it is necessary to argue from an exhibit, the Court will, upon request, grant permission to do so.

(9) Hand all papers intended for the Court to see to the Clerk, who in turn will pass them up to the Judge.

(10) Hand to the Clerk, rather than the court reporter, any exhibits to be marked which have not previously been identified.

(11) Advise clients, witnesses, and others concerning rules of decorum to be observed in Court.

(12) Stand and use the lectern when interrogating witnesses, unless otherwise instructed by the Court. However, when interrogating a witness concerning an exhibit the Court may, upon request, grant permission to approach the witness stand or the exhibit, as the case may be, for that purpose.

(13) Never conduct or engage in experiments involving any use of their own persons or bodies except to illustrate in argument what has been previously admitted in evidence.

(14) Not conduct a trial when they know, prior thereto, that they will be necessary witnesses, other than as to merely formal matters such as identification or custody of a document or the like. If, during the trial, they discover that the ends of justice require their testimony, they should from that point on, if feasible and not prejudicial to their client's case, leave further conduct of the trial to other counsel. If circumstances do not permit withdrawal from the conduct of the trial, lawyers should not argue the credibility of their own testimony.

(15) Avoid disparaging personal remarks or acrimony toward opposing counsel and remain wholly uninfluenced by any ill feeling between the respective clients. They should abstain from any allusion to personal peculiarities and idiosyncrasies of the opposing counsel.

(16) Rise when addressing, or being addressed by the judge.

(17) Refrain from assuming an undignified posture. They should always be attired in a proper and dignified manner, and

should abstain from any apparel or ornament calculated to attract attention to themselves.

(18) Comply, along with all other persons in the courtroom, with the following:

(a) No tobacco in any form will be permitted at any time.

(b) No propping of feet on tables or chairs will be permitted at any time.

(c) No bottles, beverage containers, paper cups or edibles should be brought into the courtroom, except with permission of the bailiff.

(d) No gum chewing or reading of newspapers or magazines (except as a part of the evidence in a case) will be permitted while Court is in session.

(e) No talking or other unnecessary noises will be permitted while Court is in session.

(f) Everyone must rise when instructed to do so, upon opening, closing, or declaring recesses of Court.

(g) All male lawyers and male court personnel must wear both coats and ties.

(h) Any attorney who appears in Court intoxicated or under the influence of intoxicants, drugs or narcotics may be summarily held in contempt.

RULE 31

LAND CONDEMNATION CASES

(A) The Clerk is directed in land condemnation actions filed by the United States of America to establish a master file in which a single declaration of taking will be filed, along with the master complaint. Within the master complaint, there will be a schedule or schedules which set out a description of the various tracts and ownership of the tracts involved in the taking.

(B) For each tract, economic unit or ownership for which just compensation is required to be separately determined, a separate civil action shall be opened by the Clerk. An appropriate reference in each such separate civil action to the master file case number shall be deemed to incorporate by reference the declaration of taking in the master file.

RULE 32

EQUAL ACCESS TO JUSTICE

(A) Application for Fees and Expenses. 28 U.S.C. § 2412 (d)(1)(B).

(1) A party applying for an award of fees and expenses shall submit the required information on form AO 291, available from the Clerk of the Court.

(2) A party applying for fees and expenses shall identify the specific position of the government which the party alleges was not substantially justified.

(B) Petitions for Leave to Appeal. 5 U.S.C. § 504(c)(2).

(1) Petitions for leave to appeal an agency fee determination shall be filed within thirty (30) days after the entry of the agency's order, with proof of service on all other parties to the agency's proceeding.

(2) The petition shall contain a copy of the order to be reviewed and any findings of fact, conclusions of law and opinion relating thereto, a statement of the facts necessary to and understanding of the petition and a memorandum showing why the petition for permission to appeal should be granted. An answer may be filed within thirty (30) days after service of the petition, unless otherwise directed by the Court. The application and any answer shall be submitted without further briefing and oral argument unless otherwise ordered.

(C) Appeals to review fee determinations otherwise contemplated by the Equal Access to Justice Act must be filed pursuant to the applicable statutes and Rules of the Court.

RULE 33

INVESTMENT AND DISBURSEMENT OF REGISTRY FUNDS

(A) Pursuant to Rule 67 of the Federal Rules of Civil Procedure, all registry funds, with the exceptions listed in subsection (B)(8) hereof, will be deposited by the Court Clerk in an interest-bearing account. Such registry funds will be invested in a general interest-bearing account unless the party or parties depositing the same specify that said money be placed in a designated account. Unless the party or parties designate a particular investment, registry funds will be placed with the banking institution submitting the most favorable bid therefor. Bids for the registry funds of this Court will be received annually by the Clerk no later than the second Monday of each December for the next ensuing calendar year, commencing in 1984. Solicitation for bids will be extended only to those banking institutions in the Western District of Oklahoma that are approved by the Administrative Office to receive registry funds.

(B) Investment of Registry Funds.

(1) Monies deposited with the Clerk of the Court may be accepted without written authorization in cases where the general account is used, but the Clerk will not receive money in any other case without written directions of the Judge to whom the case is assigned. In cases where the party or parties depositing funds with the Clerk desire that same be invested with a named institution, the order shall so specify, but, in the absence of specific directions to the contrary, all registry funds will be invested in a general interest-bearing account in the bank selected for that period through bidding procedures provided for herein.

(2) Counsel obtaining an order as described in paragraph (B)(1) of this Rule shall cause a copy of the order to be served personally upon the Clerk of the Court or the Financial Deputy. The Chief Deputy Clerk may accept service on behalf of the Clerk or the Financial Deputy in their absence. Any order obtained by a party or parties directing the clerk to invest in an interest-bearing account shall include the following:

(a) the amount to be invested;

(b) the name of the depository approved by the Treasurer of the United States as a depository in which funds may be deposited;

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

(d) wording which directs the clerk to deduct from the income earned on the investment a fee, not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office at equal to the first 45 days income earned on the investment, whenever such income becomes available for deduction in the investment so held and without further order of the court.

(3) The Clerk shall deposit funds into the general interest-bearing account or specific designated account promptly after having been served with a copy of the order as provided in paragraph (B)(2) of this Rule.

(4) Any party or parties obtaining an order directing investment of funds into a specific designated account by the Clerk will, no later than ten (10) days after service of the order as provided by paragraph (B)(2) of this Rule, file with the Clerk a statement verifying or disavowing that the funds have been invested as ordered.

(5) Failure to so verify or disavow shall release the Court Clerk from any liability for the loss of earned interest on such funds.

(6) It shall be the responsibility of counsel to notify the Clerk regarding disposition of specific designated account funds at maturity of a timed instrument. In the absence of such notice, the Clerk will redeposit said funds, together with any interest thereon.

(7) Service of notice by counsel as required in paragraph (B)(6) of this Rule will be in accordance with the requirements of paragraph (B)(1) of this Rule no later than ten (10) days prior to maturity.

(8) Criminal cash bail, cost bonds and other bonds in the form of cash, such as removal cost bonds, admiralty cost bonds, etc., will be deposited by the Clerk in the Federal Reserve Bank in Oklahoma City, Oklahoma. Funds received by the Clerk through civil garnishments will not be invested but shall be disbursed in accordance with the Court order pertaining thereto.

(9) In all cases, counsel must furnish the Clerk with the social security number and tax identification number of the recipient of accrued interest.

(C) Disbursement of Registry Funds. All checks drawn by the Clerk of this Court on deposits made in the registry of the Court shall be made payable to the order of the payee or payees as the name or names thereof shall appear in the orders of this Court providing for distribution. Disbursements from the registry of the Court shall be made immediately upon receipt of order for disbursement except in cases where it is necessary to allow time for a check or draft to clear, or in cases where an order is appealable and must be held until the time for appeal has expired. All orders with respect to withdrawal of deposit of funds held by the Clerk shall bear the certification of the Financial Deputy Clerk that this Rule has been complied with and such order shall not be presented to the Judge for signature without such certification. The attorney drafting an order for the disbursement of funds invested by the Clerk should contact the Financial Section of the Clerk's Office for all needed information.

(D) Nonregistry Funds. All disbursements to individuals of monies other than registry funds, when made by check of the Clerk on the Treasury of the United States, shall be made to the payee as the name shall appear in the disbursement voucher certified by the Clerk or his designated certifying officer.

RULE 34

FORFEITURE OF COLLATERAL IN LIEU OF APPEARANCE

A person who is charged with a petty offense as defined in Title 18 U.S.C. §§ 1(3), 7(3), 13, other than an offense classified as mandatory appearance (M.A.), may in lieu of appearance, post collateral in the amount indicated for the offense, waive appearance before a United States Magistrate, and consent to forfeiture of collateral. Collateral shall be posted by paying, prior to initial appearance or issuance of process or a warrant, of the specified fine to the Clerk, which shall signify that the person charged does not contest the charge or request a trial, and the amount paid shall be automatically forfeited to the United States. The offense for which collateral may be posted and forfeited in lieu of appearance by the person charged, together with the amounts of collateral to be posted, are generally stated on the charge (violation notice) and are contained in written schedules approved by this Court and on file with the Clerk.

RULE 35

RANDOM SELECTION OF GRAND AND PETIT JURORS

Pursuant to the Jury Selection and Service Act of 1b, Title 28 U.S.C. § 1861, et seq., as amended, the following Plan is hereby adopted by this Court.

(A) The Court has considered parts of the district from which jurors should be selected for the places where Court is held, and finds that a designation of counties from which jurors will be drawn for each place of holding court will result in impartial trials and at the same time avoid incurring unnecessary expense and unduly burdening citizens in any part of the district with jury service. For this purpose there shall be four divisions as follows:

(1) Oklahoma City, Guthrie, Chickasha, Pauls Valley and Shawnee Division: Blaine, Canadian, Cleveland, Garvin, Grady, Kingfisher, Lincoln, Logan, McClain, Oklahoma and Pottawatomie Counties.

(2) Enid and Ponca City Division: Alfalfa, Garfield, Grant, Kay, Noble and Payne Counties.

(3) Lawton and Mangum Division: Beckham, Caddo, Comanche, Cotton, Greer, Harmon, Jackson, Jefferson, Kiowa, Stephens, Tillman and Washita Counties.

(4) Woodward Division: Beaver, Cimarron, Custer, Dewey, Ellis, Harper, Major, Roger Mills, Texas, Woods and Woodward Counties.

(B) This Plan shall apply separately to each place of holding court designated herein, except that Oklahoma City, Guthrie, Chickasha, Pauls Valley and Shawnee shall have the same jury wheel; Enid and Ponca City shall have a jury wheel; Lawton and Mangum shall have a jury wheel; and Woodward a jury wheel.

(C) The Clerk of the Court shall manage the jury selection process under the supervision and control of the Chief Judge or in his absence, any other judge of the district court. The Clerk may be assisted in the performance of functions under this Plan by any other person authorized by the Court.

(D) Voter registration lists represent a fair cross section

of the community in the Western District of Oklahoma. Accordingly, names of grand and petit jurors shall be selected at random from the voter registration lists of all counties within the district. The selection shall be accomplished by drawing a starting number by lot from twenty numbers, and that number shall be selected from the voter registration list of each county in the Oklahoma City Division, along with each sixteenth number thereafter. The selection for the three remaining divisions shall be accomplished in the same manner except that every sixtieth number after the starting number shall be selected. The Clerk is authorized to accept the voluntary assistance of the Secretary of any county election board in accomplishing the requirement of this paragraph, provided such Secretary certifies the names furnished were selected in the manner herein prescribed.

(E) The Clerk shall maintain a Master Jury Wheel for each of the four divisions for holding court. The names of all persons randomly selected from the voter registration lists of the counties in each division shall be placed in the Master Jury Wheel for that division at a computer facility. The minimum number of names placed initially in the Master Jury Wheels shall be as follows:

(1) Oklahoma City, Guthrie, Shawnee, Chickasha and Pauls Valley Division: Forty Thousand (40,000) names.

(2) Enid-Ponca City Division: Two Thousand (2,000) names.

(3) Lawton-Mangum Division: Two Thousand (2,000) names.

(4) Woodward Division: One Thousand (1,000) names.

(F) Any judge of this district may order additional names to be placed in the Master Jury Wheels from time to time when necessary. The Master Jury Wheels shall be filled not later than March 31, 1993, and emptied and refilled between November 15, 1996, and March 31, 1997, and every fourth year thereafter. If for any reason approved by one of the judges of the district the Master Jury Wheels are not emptied and refilled within the time as herein provided, the current Master Jury Wheels shall continue to serve until they are properly refilled.

The Clerk, after refilling the Master Jury Wheel, shall issue

to the operator of the computer facility written instructions describing the operations to be performed by the computer equipment as follows: (1) Prepare an alphabetical list of all the names from each Master Jury Wheel for transmission to the Clerk, which list shall not be disclosed to any person except by order of the Court; (2) On or before March 31, 1993, and each succeeding thirty-first day of March thereafter, a juror qualification form shall be mailed to one out of every four individuals listed on the Master Jury Wheel. The operator shall mail juror qualification forms in the following manner:

1993 - Starting with #1 and every fourth name thereafter.
1994 - Starting with #2 and every fourth name thereafter.
1995 - Starting with #3 and every fourth name thereafter.
1996 - Select the remaining names listed on the Master Jury Wheel.

(H) The mailing of the jury qualification forms shall be accomplished with instructions to fill out and return the form, duly signed and sworn to, to the Clerk by mail within ten (10) days in order to elicit necessary information as to prospective jurors' qualifications for jury service.

(I) The Clerk shall maintain at the computer facility a qualified jury wheel for each division within the district which shall list those jurors not disqualified or exempt pursuant to this Plan.

(J) The Clerk shall publicly draw a starting number between one and ten, and determine an interval ("quotient") which shall govern the selection of jury names from the qualified jury wheel. The quotient number is obtained by dividing the number of jurors required into the number of qualified jurors remaining in the qualified jury wheel for a division.

(K) The Clerk shall issue written instructions to the computer facility to randomly draw from the divisional qualified jury wheel a sufficient number of petit jury panels and prepare a list of the names drawn. Grand jurors shall be drawn proportionately from each of the four qualified jury wheels as ordered by the Court by issuing to the operator of the computer

facility written instructions describing the operations which shall be performed by the computer equipment. Upon the completion of the data processing work required of the computer facility, the Court shall require the execution of an affidavit by the agency providing the computer service. Such affidavit shall state under penalty of perjury that the procedures set down by the Court governing the selection of its jurors have been fully met in the automated phase of the selection process.

(L) The Clerk shall then receive into the permanent records of the court the selection instruction to the computer facility and the affidavit by the representative of the computer facility certifying compliance with the same. Until they have been qualified in open court, the names of persons summoned for grand or petit jury service shall not be made public unless a judge of this Court shall otherwise direct.

(M) The contents or records or papers used by the Clerk in connection with the jury selection process shall not be disclosed except upon order of the Court as may be necessary in the preparation or presentation of a motion challenging compliance with the selection procedures of the district court Plan. The parties in a case shall be allowed to inspect, reproduce, and copy such records or papers at all reasonable times during the preparation and pendency of such motion. Any person who discloses the contents of any record or paper shall be subject to penalty as provided in the Jury Selection and Service Act of 1968 as amended. Names of grand jurors shall not be disclosed except upon special order of the Court. Court hearings on motions to quash, subpoenas, motions for protective orders, or other contested matters affecting grand jury proceedings prior to the indictment stage shall be closed to the public and the press.

(N) The Clerk shall issue summonses directed to the persons so drawn by First Class Mail.

(O) When there is an unanticipated shortage of available petit jurors drawn and summoned from the qualified jury wheel, the Court may require the Marshal to summon a sufficient number of petit jurors selected at random from available citizens listed on

voter registration lists in the manner ordered by the Court who are by the Court found to be qualified.

(P) The names of persons drawn for use in the trials of civil actions and criminal actions shall be placed in the courtroom jury box from which the Clerk or deputy clerk shall draw at random the names of persons to make up the trial panel. The names of persons drawn for the trial of a case who may be excused or not excused for any reason shall be placed back in the courtroom jury box, as well as the names of the trial panel after it has completed the trial of a case. The procedure is to be repeated for each subsequent case tried at each session of Court.

(Q) The judges of this Court deem any person to be qualified to serve on grand and petit juries in this district unless he or she:

(1) Is not a citizen of the United States eighteen years old who has resided for a period of one year within the judicial district;

(2) Is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

(3) Is unable to speak the English language;

(4) Is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or

(5) Has a charge pending against him for the commission of, or has been convicted in a state or federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored.

(R) The judges find it to be in the public interest and not inconsistent with the Jury Selection and Service Act of 1968 to exempt from jury duty the following:

(1) Members in active service in the Armed Forces of the United States.

(2) Members of the fire or police department of any state, district, territory, possession or subdivision thereof.

(3) Public officers in the executive, legislative, or judicial branches of the government of the United States, or any

state, district, territory or possession or subdivision thereof, who are actively engaged in the performance of official duties. Public officer shall mean a person who is either elected to public office or who is directly appointed by a person elected to public office.

(S) The district court hereby finds that excuse from jury service by members of the following groups of persons will not be inconsistent with the Act, and shall be granted upon individual request:

(1) Persons over 70 years of age.

(2) Persons who have, within the past two years, served on a federal grand or petit jury.

(3) Persons in charge of minor children.

(4) Volunteer safety personnel who serve without compensation as firefighters, or members of a rescue squad or ambulance crew for a public agency.

(T) In making the determination of whether a particular person falls within the category of those disqualified, exempt or entitled to be excused from serving, the judge who is qualifying a jury panel is vested with complete authority to make a final decision with respect thereto. In making such determination, he shall be governed by all pertinent information before him, including, but not limited to, information contained in the juror qualification form, sworn testimony, public records, letters and communications received by the judge from the prospective juror or persons acting on behalf of such prospective juror, and any other competent evidence.

RULE 36

GUIDELINES OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA FOR IMPLEMENTATION OF RULE 41(c)(2), FEDERAL RULES OF CRIMINAL PROCEDURE, AUTHORIZING TELEPHONIC SEARCH WARRANTS

(A) Warrant Upon Oral Testimony.

(1) General Rule. If the circumstances make it reasonable to dispense with a written affidavit, a federal Magistrate may issue a warrant based upon sworn oral testimony communicated by telephone or other appropriate means.

(2) Application. The person who is requesting the warrant shall prepare a document to be known as a duplicate original warrant and shall read such duplicate original warrant, verbatim, to the federal Magistrate. The federal Magistrate shall enter, verbatim, what is so read to such Magistrate on a document to be known as the original warrant. The federal Magistrate may direct the warrant be modified.

(3) Issuance. If the federal Magistrate is satisfied that the circumstances are such as to make it reasonable to dispense with a written affidavit and that grounds for the application exist or that there is probable cause to believe that they exist, the federal Magistrate shall order the issuance of a warrant by directing the person requesting the warrant to sign the federal Magistrate's name on the duplicate original warrant. The federal Magistrate shall immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued. The finding of probable cause for a warrant upon oral testimony may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

(4) Recording and Certification of Testimony. When a caller informs the federal Magistrate that the purpose of the call is to request a warrant, the federal Magistrate shall immediately place under oath each person whose testimony forms a basis of the application and each person applying for that warrant. If a voice recording device is available, the federal Magistrate shall record by means of such device all of the call after the caller informs the federal Magistrate that the purpose of the call is to request

a warrant. Otherwise a stenographic or longhand verbatim record shall be made. If a voice recording device is used or a stenographic record made, the federal Magistrate shall have the record transcribed, shall certify the accuracy of the transcription, and shall file a copy of the original record and the transcription with the Court. If a longhand verbatim record is made, the federal Magistrate shall file a signed copy with the Court.

(5) Contents. The contents of a warrant upon oral testimony shall be the same as the contents of a warrant upon affidavit.

(6) Additional Rule for Execution. The person who executes the warrant shall enter the exact time of execution on the face of the duplicate original warrant.

(7) Motion to Suppress Precluded. Absent a finding of bad faith, evidence obtained pursuant to a warrant issued under this paragraph is not subject to a motion to suppress on the ground that the circumstances were not such as to make it reasonable to dispense with a written affidavit.

(B) Applicability of the New Procedure. The new telephonic procedure for obtaining a search warrant from a federal Magistrate should be used sparingly. Under no circumstances will it be allowed to become a substitute for the normal personal appearance requirement of Rule 41(c)(1) to meet the convenience of law enforcement personnel. The Magistrate must be "satisfied that the circumstances are such as to make it reasonable to dispense with a written affidavit. . ." All applications should be made to the full-time United States Magistrate in Oklahoma City. In the event that he is not available an application may be made to a United States District Judge. Applications will not be made to a part-time Magistrate. No application will be entertained that has not been authorized by the United States Attorney or one of his assistants.

(C) Initial Showing. Upon receipt of a telephone request for a search warrant the Magistrate shall require a showing of an emergency need for the warrant. If practicable, an Assistant United States Attorney should be included in the telephone

conversation. The burden is on the agent and/or the United States Attorney to establish that the circumstances are such that it is unreasonable for the agent to present a written affidavit to the Magistrate in person.

(D) Demonstrating Need for Dispensing With a Written Affidavit. Before the telephonic procedure will be approved it must appear:

(1) The agent cannot reach the Magistrate in his office during regular court hours;

(2) The agent making the search is a significant distance from the Magistrate;

(3) The factual situation is such that it would be unreasonable for a substitute agent, who is located near the Magistrate, to present a written affidavit in person to the Magistrate in lieu of proceeding with a telephonic application;

(4) The need for a search is such that without the telephonic procedure a search warrant could not be obtained and there would be a significant risk that evidence would be destroyed.

(E) Procedures to be Used in Considering Issuance of Warrant. In considering a telephonic application for a search warrant the Magistrate will observe the following procedures: (1) The Magistrate will record the entire conversation with the affiant (or affiants) after the caller informs the Magistrate that the purpose of the call is to request a warrant;

(2) If recording equipment is not available, the Magistrate shall make a stenographic or longhand verbatim record;

(3) If feasible an Assistant United States Attorney should be included in the telephone conversation at the same time as the agent and the Magistrate;

(4) The Magistrate must place under oath each person whose testimony will form a basis for the application in accordance with Rule 41. Adequate identification of the agent will be required;

(5) Ordinarily the Magistrate will complete a log sheet, such as Form AO-269, that includes essential data such as:

(a) The date and precise time of the telephone call;

(b) The name or names of the agents involved and agency affiliations;

(c) The names and addresses of any other affiants;

(d) The name of any Assistant United States Attorney who may have spoken with the Magistrate regarding the search warrant application;

(e) The "emergency" circumstances giving rise to the telephonic warrant request;

(f) Any additional factual information deemed particularly necessary or useful that does not already appear on the original warrant;

(g) The magistrate's determination of the application.

(6) In the absence of an extreme emergency the agent's sworn oral testimony should already be reduced to written form by the time the Magistrate is contacted, just as if a written affidavit were being presented in person to the Magistrate. (Form AO-106). This will enable the Magistrate to determine probable cause more easily and clearly. The agent or the attorney for the government should read the contents of the prepared statement to the Magistrate. The Magistrate may ask questions and solicit additional information necessary to establish all the elements needed for probable cause;

(7) The grounds for issuance and the contents of the warrant are those required by Rule 41(c)(1);

(8) The applicant for the warrant must prepare a "duplicate original" warrant;

(9) Once the Magistrate is satisfied that the contents of the warrant are proper and that issuance of the warrant is justified, he should direct the agent or the attorney for the government to sign the Magistrate's name on the "duplicate original" warrant;

(10) The Magistrate and the applicant[s] should synchronize their watches to assure that times placed on the warrants correlate with each other;

(11) The Magistrate should simultaneously sign the original warrant and enter the exact date and time of issuance in accordance with Rule 41(c)(2)(C). The agent must place the exact time of execution on the duplicate original warrant in accordance with Rule 41(c)(2)(F);

(12) The agent and Magistrate should use the newly adopted oral search warrant form AO-93A.

(F) Procedures Following Issuance of Warrant. The following procedures should be observed by the Magistrate after issuing a search warrant under the telephonic procedure:

(1) On the first court day following the issuance of the telephonic warrant the Magistrate should direct that a duplicate tape be made of his conversation with the law enforcement agent. The duplicate tape should be turned over to the agent or the United States Attorney's office for preparation of a transcript of the telephonic conversation;

(2) The agent or Assistant United States Attorney should subsequently present to the Magistrate's office a transcript of the conversation with the applicant. The Magistrate should verify the accuracy of the transcript against his own recording and log sheet and certify it, if in order. At this time the Magistrate may, but there shall be no requirement that he do so, have the agent sign and swear to the veracity of the transcribed conversation. If neither a sound recording nor stenographic record was made, the Magistrate shall file a signed copy of a longhand verbatim record with the court;

(3) The Magistrate should specify, on the face of the warrant, the amount of time granted to execute the warrant. Presumably, only a relatively short period of time is required, as the agent would otherwise have sufficient opportunity to apply in person to the Magistrate for a warrant upon written affidavit. (The return must still conform to the requirements of Rule 41(d).)

(4) In accordance with normal arrangements devised in cooperation with the Clerk of the Court the Magistrate will

ultimately send his log, the original tape (or the stenographic or longhand record), the certified transcript, and the warrants to the Clerk for permanent filing, together with appropriate docket or notations.

(G) Failure to Observe Guidelines. Failure to observe these guidelines shall not, without more, constitute a ground to suppress evidence, and a search otherwise valid shall not be rendered invalid because of a violation of the guidelines.

RULE 37

THE FINANCIAL RIGHT TO PRIVACY ACT OF 1978

(A) The Financial Right to Privacy Act of 1978, P.L. 95-630, effective March 10, 1979, same being 12 U.S.C. § 3420, et seq., provides, inter alia, as follows:

> "Financial records about a customer obtained from a financial institution pursuant to a subpoena issued under authority of a federal grand jury shall not be maintained, or a description of the contents of that record shall not be maintained by any government authority other than in the sealed records of the grand jury, unless the record has been used in the prosecution of a crime for which the grand jury issued an indictment or presentment or for the purpose authorized by Rule 6(e) of the Federal Rules of Criminal Procedure."

(B) Pursuant to the foregoing, the material which is the subject of the aforesaid subsection of the Act is hereby directed to be sealed as a matter of course in all instances.

(C) In order that this may be accomplished, it is directed that the United States Attorney for the Western District of Oklahoma notify the Clerk of this Court when return is made of subpoena filed in conformity with the requirements of The Financial Right to Privacy Act of 1978.

RULE 38

PLAN FOR ACHIEVING PROMPT DISPOSITION OF CRIMINAL CASES IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Pursuant to the requirements of Rule 50(b) of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974 (18 U.S.C. Chapter 208, Sections 3161, et seq.), the Speedy Trial Act Amendments Act of 1979 (Pub. L. No. 96-43, 93 Stat. 327), and the Federal Juvenile Delinquency Act (18 U.S.C. Sections 5036, 5057), the Judges of the United States District Court for the Western District of Oklahoma have adopted the following time limits and procedures to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings (all section references are to Title 18 U.S.C.).

(A) Applicability.

(1) Offenses. The time limits set forth herein are applicable to all criminal offenses triable in this Court, including cases triable by the United States Magistrates, except for petty offenses as defined in 18 U.S.C. Sec. 1(3). Except as specifically provided, they are not applicable to proceedings under the Federal Juvenile Delinquency Act. (Sec. 3172)

(2) Persons. The time limits are applicable to persons accused who have not been indicted or informed against as well as those who have, and the word "defendant" includes such persons unless the context indicates otherwise.

(B) Priorities in Scheduling Criminal Cases. Preference shall be given to criminal proceedings as far as practicable as required by Rule 50(a) of the Federal Rules of Criminal Procedure. The trial of defendants in custody solely because they are awaiting trial and of high-risk defendants as defined in Paragraph (E) should be given preference over other criminal cases. (Sec. 3164(a))

(C) Time Within Which an Indictment or Information Must be Filed.

(1) Time Limits. If an individual is arrested or served with a summons and the complaint charges an offense to be

prosecuted in this district, any indictment or information subsequently filed in connection with such charge shall be filed within 30 days of arrest or service. (Sec. 3161(b))

(2) Grand Jury Not in Session. If the defendant is charged with a felony to be prosecuted in this district, and no grand jury in the district has been in session during the 30-day period prescribed in subsection (1), such period shall be extended an additional 30 days. (Sec. 3161(b))

(3) Measurement of Time Periods. If a person has not been arrested or served with a summons on a federal charge, an arrest will be deemed to have been made at such time as the person (a) is held in custody solely for the purpose of responding to a federal charge; (b) is delivered to the custody of a federal official in connection with a federal charge; or (c) appears before a judicial officer in connection with a federal charge.

(4) Related Procedures.

(a) At the time of the earliest appearance before a judicial officer of a person who has been arrested for an offense not charged in an indictment or information, the judicial officer shall establish for the record the date on which the arrest took place.

(b) In the absence of a showing to the contrary, a summons shall be considered to have been served on the date of service shown on the return thereof.

(D) Time Within Which Trial Must Commence.

(1) Time Limits. The trial of a defendant shall commence not later than 70 days after the last to occur of the following dates:

(a) The date on which an indictment or information is filed in this district;

(b) The date on which a sealed indictment or information is unsealed; or

(c) The date of the defendant's first appearance before a judicial officer of this district.

(Sec. 3161(c)(1))

(2) Retrial; Trial After Reinstatement of an Indictment or Information. The retrial of a defendant shall commence within

70 days from the date the order occasioning the retrial becomes final, as shall the trial of a defendant upon an indictment or information dismissed by a trial court and reinstated following an appeal. If the retrial or trial follows an appeal or collateral attack, the Court may extend the period if unavailability of witness or other factors resulting from passage of time make trial within 70 days impractical. The extended period shall not exceed 180 days. (Sections 3161(d)(2), (e))

(3) Withdrawal of Plea. If a defendant enters a plea of guilty or nolo contendere to any or all charges in an indictment or information and is subsequently permitted to withdraw it, the time limit shall be determined for all counts as if the indictment or information were filed on the day the order permitting withdrawal of the plea became final. (Sec. 3161(i))

(4) Superseding Charges. If, after an indictment or information has been filed, a complaint, indictment, or information is filed which charges the defendant with the same offense or with an offense required to be joined with that offense, the time limit applicable to the subsequent charge will be determined as follows:

(a) If the original indictment or information was dismissed on motion of the defendant before the filing of the subsequent charge, the time limit shall be determined without regard to the existence of the original charge. (Sec. 3161(d)(1))

(b) If the original indictment or information is pending at the time the subsequent charge is filed, the trial shall commence within the time limit for commencement of trial on the original indictment or information. (Sec. 3161(h)(6))

(c) If the original indictment or information was dismissed on motion of the United States before the filing of the subsequent charge, the trial shall commence within the time limit for commencement of trial on the original indictment or information, but the period during which the defendant was not under charges shall be excluded from the computations. Such period is the period between the dismissal of the original indictment or information and the date the time would have commenced to run on

the subsequent charge had there been no previous charge.[1] (Sec. 3161(h)(6))

(d) If the subsequent charge is contained in a complaint, the formal time limit within which an indictment or information must be obtained on the charge shall be determined without regard to the existence of the original indictment or information, but earlier action may in fact be required if the time limit for commencement of trial is to be satisfied.

(5) Measurement of Time Periods. For the purposes of this paragraph:

(a) If a defendant signs a written consent to be tried before a Magistrate and no indictment or information charging the offense has been filed, the time limit shall run from the date of such consent.

(b) In the event of a transfer to this district under Rule 20 of the Federal Rules of Criminal Procedure, the indictment or information shall be deemed filed in this district when the papers in the proceeding or certified copies thereof are received by the Clerk.

(c) A trial in a jury case shall be deemed to commence at the beginning of voir dire.

(d) A trial in a nonjury case shall be deemed to commence on the day the case is called, provided that some step in the trial procedure immediately follows.

(6) Related Procedures.

(a) At the time of the defendant's earliest appearance before a judicial officer of this district, the officer will take appropriate steps to assure that the defendant is represented by counsel and shall appoint counsel where appropriate

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[1]Under the rule of this paragraph, if an indictment was dismissed on motion of the prosecutor on May 1, with 20 days remaining within which trial must be commenced, and the defendant was arrested on a new complaint on June 1, the time remaining for trial would be 20 days from June 1: the time limit would be based on the original indictment, but the period from the dismissal to the new arrest would not count. Although the 30-day arrest-to-indictment time limit would apply to the new arrest as a formal matter, the short deadline for trial would necessitate earlier grand jury action.

under the Criminal Justice Act and Rule 44 of the Federal Rules of Criminal Procedure.

(b) The court shall have sole responsibility for setting cases for trial after consultation with counsel. At the time of arraignment or as soon thereafter as is practicable, each case will be set for trial on a day certain or listed for trial on a weekly or other short-term calendar. (Sec. 3161(a))

(c) Individual calendars shall be managed so that it will be reasonably anticipated that every criminal case set for trial will be reached during the week of original setting. A conflict in schedules of Assistant United States Attorneys or defense counsel will be grounds for a continuance or delayed setting only if approved by the Court and called to the Court's attention at the earliest practicable time.

(d) In the event that a complaint, indictment, or information is filed against a defendant charged in a pending indictment or information or in an indictment or information dismissed on motion of the United States Attorney, the trial on the new charge shall commence within the time limit for commencement of trial on the original indictment or information unless the Court finds that the new charge is not for the same offense charged in the original indictment or information or an offense required to be joined therewith.

(e) At the time of the filing of a complaint, indictment, or information described in paragraph (6)(d), the United States Attorney shall give written notice to the Court of that circumstance and of his position with respect to the computation of the time limits.

(f) Any pretrial hearing shall be conducted as soon after the arraignment as possible, consistent with the priorities of other matters on the Court's criminal docket.

(E) Defendants in Custody and High-Risk Defendants.[2]

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[2]If a defendant's presence has been obtained through the filing of a detainer with the state authorities, the Interstate Agreement on Detainers, 18 U.S.C., Appendix, may require that trial commence before the deadline established by the Speedy Trial Act. See U.S. v. Mauro, 436 U.S. 340 (356-57) n. 24 (1978).

(1) Time Limits. Notwithstanding any longer time periods that may be permitted under Paragraphs (C) and (D), the following time limits will also be applicable to defendants in custody and high-risk defendants as herein defined:

(a) The trial of a defendant held in custody solely for the purpose of trial on a federal charge filed in this district shall commence within 90 days following the beginning of continuous custody.

(b) The trial of a high-risk defendant shall commence within 90 days of the designation as high risk. (Sec. 3164(b))

(2) Definition of "High-Risk Defendant." A high-risk defendant is one reasonably designated by the United States Attorney as posing a danger to himself or any other person or to the community.

(3) Measurement of Time Periods. For the purpose of this paragraph:

(a) A defendant is deemed to be in detention awaiting trial when he is arrested on a federal charge or otherwise held for the purpose of responding to a federal charge. Detention is deemed to be solely because the defendant is awaiting trial unless the person exercising custodial authority has an independent basis (not including a detainer) for continuing to hold the defendant.

(b) If a case is transferred pursuant to Rule 20 of the Federal Rules of Criminal Procedure and the defendant subsequently rejects disposition under Rule 20 or the Court declines to accept the plea, a new period of continuous detention awaiting trial will begin at that time.

(c) A trial shall be deemed to commence as provided in paragraphs (D)(5)(c) and (D)(5)(d).

(4) Related Procedures.

(a) If a defendant is being held in custody solely for the purpose of awaiting trial, the United States Attorney shall advise the Court at the earliest practicable time of the date of the beginning of such custody.

(b) The United States Attorney shall advise the Court at the earliest practicable time (usually at the hearing with respect to bail) if the defendant is considered by him to be high risk.

(c) If the Court finds that the filing of a "high risk" designation as a public record may result in prejudice to the defendant, it may order the designation sealed for such period as is necessary to protect the defendant's right to a fair trial, but not beyond the time that the Court's judgment in the case becomes final. During the time the designation is under seal, it shall be made known to the defendant and his counsel but shall not be made known to other persons without the permission of the Court.

(F) Exclusion of Time From Computations.

(1) Applicability. In computing any time limit under Paragraphs (C), (D), or (E), the periods of delay set forth in 18 U.S.C. Sec. 3161(h) shall be excluded. Such period of delay shall not be excluded in computing the minimum period for commencement of trial under paragraph (G).

(2) Records of Excludable Time. The Clerk of the Court shall enter on the docket, in the form prescribed by the Administrative Office of the United States Courts, information with respect to excludable periods of time for each criminal defendant. With respect to proceedings prior to the filing of an indictment or information, excludable time shall be reported to the Clerk by the United States Attorney.

(3) Stipulations.

(a) The attorney for the government and the attorney for the defendant may at any time enter into stipulations with respect to the accuracy of the docket entries recording excludable time.

(b) To the extent that the amount of time stipulated by the parties does not exceed the amount recorded on the docket for any excludable period of delay, the stipulation shall be conclusive as between the parties unless it has no basis in fact or law. It shall similarly be conclusive as to a codefendant for the limited purpose of determining, under 18 U.S.C.

Sec. 3161(h)(7), whether time has run against the defendant entering into the stipulation.

(c) To the extent that the amount of time stipulated exceeds the amount recorded on the docket, the stipulation shall have no effect unless approved by the Court.

(4) Pre-Indictment Procedures.

(a) In the event that the United States Attorney anticipates that an indictment or information will not be filed within the time limit set forth in Paragraph (C), he may file a written motion with the Court for a determination of excludable time. In the event that the United States Attorney seeks a continuance under 18 U.S.C. Sec. 3161(h)(8), he shall file a written motion with the Court requesting such a continuance.

(b) The motion of the United States Attorney shall state (i) the period of time proposed for exclusion, and (ii) the basis of the proposed exclusion. If the motion is for a continuance under 18 U.S.C. Sec. 3161(h)(8), it shall also state whether or not the defendant is being held in custody on the basis of the complaint. In appropriate circumstances, the motion may include a request that some or all of the supporting material be considered ex parte and in camera.

(c) The Court may grant a continuance under 18 U.S.C. Sec. 3161(h)(8) for either a specific period of time or a period to be determined by reference to an event (such as recovery from illness) not within the control of the government. If the continuance is to a date not certain, the Court shall require one or both parties to inform the Court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the Court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The Court shall determine the frequency of such reports in the light of the facts of the particular case.

(5) Post-Indictment Procedures.

(a) At each appearance of counsel before the Court, counsel shall examine the Clerk's records of excludable time for completeness and accuracy and shall bring to the Court's immediate

attention any claim that the Clerk's record is in any way incorrect.

(b) In the event that the Court continues a trial beyond the time limit set forth in section (D) or (E), the Court shall determine whether the limit may be recomputed by excluding time pursuant to 18 U.S. C. Sec. 3161(h).

(c) If it is determined that a continuance is justified, the Court shall set forth its findings in the record, either orally or in writing. If the continuance is granted under 18 U.S.C. Sec. 3161(h)(8), the Court shall also set forth its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the defendant in a speedy trial. If the continuance is to a date not certain, the Court shall require one or both parties to inform the Court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the Court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The Court shall determine the frequency of such reports in the light of the facts of the particular case.

(G) Minimum Period for Defense Preparation. Unless the defendant consents in writing to the contrary, the trial shall not commence earlier than 30 days from the date on which the indictment or information is filed, or, if later, from the date on which counsel first enters an appearance or on which the defendant expressly waives counsel and elects to proceed pro se. In circumstances in which the 70-day time limit for commencing trial on a charge in an indictment or information is determined by reference to an earlier indictment or information pursuant to paragraph (D)(4), the 30-day minimum period shall also be determined by reference to the earlier indictment or information. When prosecution is resumed on an original indictment or information following a mistrial, appeal, or withdrawal of a guilty plea, a new 30-day minimum period will not begin to run. The Court will attempt to schedule trials so as to permit defense counsel adequate preparation time in the light of all the circumstances. (Sec. 3161(c)(2))

(H) Time Within Which Defendant Should be Sentenced.

(1) Time Limit. A defendant shall ordinarily be sentenced within 60 days of the date of his conviction or plea of guilty or nolo contendere.

(2) Related Procedures. If the defendant and his counsel consent thereto, a presentence investigation may be commenced prior to a plea of guilty or nolo contendere or a conviction.

(I) Juvenile Proceedings.

(1) Time Within Which Trial Must Commence. An alleged delinquent who is in detention pending trial shall be brought to trial within 30 days of the date on which such detention was begun, as provided in 18 U.S.C. Sec. 5036.

(2) Time of Dispositional Hearing. If a juvenile is an adjudicated delinquent, a separate dispositional hearing shall be held no later than 20 court days after trial, unless the Court has ordered further study of the juvenile in accordance with 18 U.S.C. Sec. 5037(c).

(J) Sanctions.

(1) Dismissal or Release from Custody. Failure to comply with the requirements of Title I of the Speedy Trial Act may entitle the defendant to dismissal of the charges against him or to release from pretrial custody. Nothing in this Plan shall be construed to require that a case be dismissed or a defendant released from custody in circumstances in which such action would not be required by 18 U.S.C. Sections 3162 an 3164.

(2) High-Risk Defendants. A high-risk defendant whose trial has not commenced within the time limit set forth in 18 U.S.C. Sec. 3164(b) shall, if the failure to commence trial was through no fault of the attorney for the government, have his release conditions automatically reviewed. A high-risk defendant who is found by the Court to have intentionally delayed the trial of his case shall be subject to an order of the Court modifying his nonfinancial conditions of release under Chapter 207 of Title 18 U.S.C., to ensure that he shall appear at trial as required. (Sec. 3164(c))

(3) Discipline of Attorneys. In a case in which counsel (a) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial, (b) files a motion solely for the purpose of delay which he knows is frivolous and without merit, (c) makes a statement for the purpose of obtaining a continuance which he knows to be false and which is material to the granting of the continuance, or (d) otherwise willfully fails to proceed to trial without justification consistent with 18 U.S.C. Sec. 3161, the Court may punish such counsel as provided in 18 U.S.C. Sections 3162(b)and (c).

(4) Alleged Juvenile Delinquents. An alleged delinquent in custody whose trial has not commenced within the time limit set forth in 18 U.S.C. Sec. 5036 shall be entitled to dismissal of his case pursuant to that section unless the Attorney General shows that the delay was consented to or caused by the juvenile or his counsel, or would be in the interest of justice in the particular case.

(K) Persons Serving Terms of Imprisonment. If the United States Attorney knows that a person charged with an offense is serving a term of imprisonment in any penal institution, he shall promptly seek to obtain the presence of the prisoner for trial, or cause a detainer to be filed, in accordance with the provisions of 18 U.S.C. Sec. 3161(j).

(L) Effective Dates.

(1) The amendments to the Speedy Trial Act made by Public Law 96-43 became effective August 2, 1979. To the extent that this revision of the district's Plan does more than merely reflect the amendments, the revised Plan shall take effect upon approval of the reviewing panel designated in accordance with 18 U.S.C. 3165(c). However, the dismissal sanction and the sanctions against attorneys authorized by 18 U.S.C. Sec. 3162 and reflected in paragraphs (J)(1) and (3) of this Plan shall apply only to defendants whose cases are commenced by arrest or summons on or after July 1, 1980, and to indictments and informations filed on or after that date.

(2) If a defendant was arrested or served with a summons before July 1, 1979, the time within which an information or

indictment must be filed shall be determined under the Plan that was in effect at the time of such arrest or service.

(3) If a defendant was arraigned before August 2, 1979, the time within which the trial must commence shall be determined under the plan that was in effect at the time of such arraignment.

(4) If a defendant was in custody on August 2, 1979, solely because he was awaiting trial, the 90-day period under section (E) shall be computed from that date.

RULE 39

UNITED STATES MAGISTRATES

(A) Each United States Magistrate appointed by this Court is authorized to perform the duties prescribed by 28 U.S.C.§ 636(a), and is also authorized to:

(1) Try persons accused of, and sentence persons convicted of, misdemeanors committed within this district in accordance with 18 U.S.C. § 3401 and the Rules of Procedure for the Trial of Misdemeanors Before United States Magistrates promulgated by the Supreme Court of the United States and may order a presentence investigation report on any such person.

(2) Enter bond forfeitures, remissions and judgment on bond forfeitures and exonerations of bonds in proceedings before the Magistrate.

(3) Conduct removal proceedings and issue warrants of removal in accordance with Rule 40, Federal Rules of Criminal Procedure.

(4) Conduct extradition proceedings in accordance with 18 U.S.C. § 3184.

(5) Conduct proceedings pursuant to letters rogatory in accordance with 28 U.S.C. § 1782 as a person hereby appointed by the Court.

(B) Each full-time United States Magistrate appointed by this Court is authorized to:

(1) Conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case upon the consent of the parties pursuant to 28 U.S.C. § 636(c).

(2) Hear, determine and enter an order on any pretrial matter pending before the Court as authorized by 28 U.S.C.§ 636(b)(1)(A).

(3) Conduct hearings, including evidentiary hearings, and to submit to a judge of the Court proposed findings of fact and recommendations for the disposition by a judge of the Court, of any motion excepted in 28 U.S.C. § 636(b)(1)(A), of applications for post-trial relief by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(4) Conduct proceedings including issuing an attachment or order or other process to enforce obedience to an Internal Revenue Service summons to produce records or to give testimony. 26 U.S.C. §§ 7402(b), 7604(a) and (b).

(5) Conduct examinations of judgment debtors in accordance with Rule 69, Federal Rules of Civil Procedure, and enter necessary orders in aid of the judgment or execution.

(6) Conduct pretrial conferences and enter pretrial orders there, upon request of a judge of the Court.

(7) Conduct arraignments in criminal cases to the extent of taking "Not Guilty" pleas upon request of a judge of the Court.

(8) Serve as special master in appropriate civil cases in accordance with 28 U.S.C. § 636(b)(2) and Rule 53, Federal Rules of Civil Procedure. Upon the consent of the parties a United States Magistrate may be designated by a judge to serve as a special master in any civil case notwithstanding the limitations of Rule 53(b), Federal Rules of Civil Procedure.

(9) Conduct and finalize proceedings on petitions under Title III of the Narcotics Addict Rehabilitation Act, 42 U.S.C. § 3411, et seq.

(10) Conduct and finalize proceedings for the collection of civil penalties of not more than $200.00 assessed under the Federal Boat Safety Act of 1971 in accordance with 46 U.S.C. § 1484(d).

(11) Receive grand jury returns in accordance with Rule 6, Federal Rules of Criminal Procedure.

(12) Empanel petit juries in civil cases upon request of a judge of the Court.

(13) Accept petit jury verdicts in civil cases at the request of a judge.

(14) Conduct preliminary hearings on petitions to revoke probationary sentences as requested by a judge of the Court.

(15) 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 for court proceedings.

(16) Issue administrative inspection warrants.

(17) Accept waivers of indictment pursuant to Rule 7(b), Federal Rules of Criminal Procedure.

(18) Perform any additional duty as it not inconsistent with the Constitution and laws of the United States.

(C) Appeals. Any party may appeal from a Magistrate's order determining a motion or matter under subsections (A)(1), (A)(2), (B)(2), (B)(4), (B)(5), (B)(6), (B)(9), and (B)(10) of this Rule, within ten days after the issuance of the Magistrate's order unless a different time is prescribed by a Magistrate or a judge. As to subsection (B)(1), when the appeal is to the district court by consent of the parties, the appeal shall be filed within 30 days after entry of the Magistrate's judgment; but if the United States or an officer or agency thereof is a party the same shall be filed within 60 days of entry of the judgment. Such party within said ten, thirty, or sixty-day periods, shall file with the Clerk of Court and serve on the Magistrate and all parties a written statement of appeal which shall specifically designate the order, judgment, or part thereof appealed from, and the basis for any objection thereto. A judge of the Court shall consider the appeal and shall set aside any portion of the Magistrate's order found to be clearly erroneous or contrary to law. A judge may also reconsider sua sponte any matter determined by a Magistrate under this Rule.

(D) Reviews. Any party may object to a Magistrate's proposed findings, recommendations or report under subsection (B)(3) of this Rule, within ten days after the issuance of the Magistrate's proposed findings, recommendations or report unless a different time is prescribed by a Magistrate or a judge. Such party within said ten-day period shall file with the Clerk of Court, and serve on the Magistrate and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. Any party may respond to another party's objections within ten days after being served with a copy thereof. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in

part, the findings or recommendations made by the Magistrate. The judge, however, need conduct a new hearing only in his discretion or where required by law, and may consider the record developed before the Magistrate, making his own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the Magistrate with instructions.

(E) Consent Procedure Under Paragraph 2(a), Supra.

(1) Notice. The Clerk of the Court shall notify the parties in all civil cases that they may consent to have a full-time Magistrate conduct any or all proceedings in the case and order the entry of the final judgment. Such notice shall be handed or mailed to the plaintiff[s] or his [their] representative[s] at the time an action is filed and to other parties as attachments to copies of the complaint and summons to be served. Additional notices may be furnished to the parties at later stages of the proceedings and may be included with pretrial conference notices and instructions.

(2) Execution of Consent. The Clerk shall not accept a consent form unless it has been signed by all the parties in the case. The plaintiff shall be responsible for securing the execution of a consent form by the parties and for filing such form with the Clerk of Court. No judge, Magistrate or other court official shall attempt to persuade or induce any party to consent to the reference of a civil case to a Magistrate.

(3) Reference. After the consent form has been executed and filed, the Clerk shall transmit it to the judge to whom the case has been assigned for approval and referral of the case to a Magistrate.

(F) Jurisdiction. The jurisdiction of the Magistrates of the Western District of Oklahoma, both full-time and part-time, shall be district-wide and any Magistrate may hold court at any place within the district. Without limiting the generality of the foregoing, the primary geographical areas of responsibility of the respective Magistrates will be as follows:

(1) The hearing and deciding of misdemeanor and petty offense matters [including referrals from the Central Violations

Bureau, Denver, Colorado] which are alleged to have occurred on any federal enclave, military base, federal prison, national wildlife refuge, federal reservoir or federal building situated within the boundaries of Oklahoma County [excepting the VA Hospital and Tinker Air Force Base], plus Canadian, Custer and Washita Counties, is imposed upon the full-time Magistrates headquartered in Oklahoma City.

(2) The part-time Magistrate headquartered at Lawton, Oklahoma, will be responsible for handling those matters alleged to have occurred within the boundaries of Comanche, Stephens and Jefferson Counties.

(3) The part-time Magistrate headquartered in the Midwest City-Del City area will be responsible for handling those matters alleged to have occurred at Tinker Air Fore Base or at the VA Hospital in Oklahoma City, Oklahoma.

(4) The part-time Magistrate headquartered in Enid, Oklahoma, will be responsible for handling those matters alleged to have occurred within Garfield, Alfalfa, Kay, Blaine, Dewey, Woodward and Texas Counties.

(5) The part-time Magistrate headquartered in Altus, Oklahoma, will be responsible for handling those matters alleged to have occurred within Jackson County, Oklahoma.

RULE 40

PLAN OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA PURSUANT TO THE CRIMINAL JUSTICE ACT OF 1964, AS AMENDED (18 U.S.C. § 3006A, ET SEQ.), FOR THE REPRESENTATION OF INDIGENT DEFENDANTS

Pursuant to the provisions of the Criminal Justice Act Revision of 1984, i.e., 18 U.S.C. § 3006A, et seq., [hereinafter referred to as "the Act"], the Judges of the United States District Court for the Western District of Oklahoma adopt the following amended Plan for the representation of any person otherwise financially unable to obtain adequate representation:

(1) who is charged with a felony, misdemeanor (other than a petty offense as defined in 18 U.S.C. § 1 unless the defendant faces the likelihood of loss of liberty), or with juvenile delinquency [see 18 U.S.C. § 5034], or with a violation of probation, or

(2) who is under arrest, when such representation is required by law, or

(3) who is in custody as a material witness, or seeking collateral relief, as provided in subsection (g) of the Act, or

(4) for whom the Sixth Amendment to the Constitution requires the appointment of counsel, or for whom, in a case in which he or she faces loss of liberty, any federal law requires the appointment of counsel, or

(5) who is entitled to appointment of counsel in parole proceedings under Chapter 311 of Title 18, U.S.C.

Representation shall include counsel and investigative, expert, and other services necessary for an adequate defense.

(A) Provision for Furnishing Counsel.

(1) This Plan provides for the furnishing of legal services by a Federal Public Defender Organization, supervised by a Federal Public Defender, and serving the United States District Courts for the Northern, Eastern and Western Districts of Oklahoma.

In addition, this Plan provides for the appointment and compensation of private counsel in a substantial proportion of cases. The term "private counsel" includes counsel furnished by a bar association or a legal aid agency, and a claim by such an organization for compensation will be approved on the same basis as in the case of the appointment of private counsel.

(2) The determination of whether a party entitled to representation by the Federal Public Defender Organization or by private counsel is within the discretion of the appointing Judge or Magistrate.

(B) Federal Public Defender Organization.

(1) The Court has determined that the use of a Federal Public Defender Organization, as defined in subsection (h)(2)(A) of the Act, serving this district as well as the Northern and Eastern Districts of Oklahoma, will facilitate the representation of persons entitled to the appointment of counsel under the Act, and that the Northern, Eastern and Western Districts of Oklahoma are adjacent districts in which at least two hundred (200) persons annually require the appointment of counsel, as required by subsection (h)(1) of the Act, concerning the qualifications necessary to establish such an organization.

A Federal Public Defender Organization with headquarters in Oklahoma City, Oklahoma, has been properly established.

(2) The Federal Public Defender Organization shall operate pursuant to the provisions of subsection (h)(2)(A) of the Act, as well as the Guidelines for the Administration of the Criminal Justice Act, promulgated by the United States Judicial Conference pursuant to subsection (i) of the Act.

(3) Neither the Federal Public Defender nor any appointed staff attorney may engage in the private practice of law.

(4) The Federal Public Defender shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed by the Director, reports of the organization's activities, its financial position and proposed budget.

(5) The Federal Public Defender shall furnish to this Court the initial roster of staff attorneys and shall report any changes thereto to this Court.

(6) In order to ensure the effective supervision and management of the Federal Public Defender Organization, the Federal Public Defender will be responsible for the assignment of cases among the staff attorneys in the Federal Public Defender office. Accordingly, the Court will assign cases in the name of the Federal Public Defender Organization rather than in the name of individual staff attorneys.

(7) The Federal Public Defender Organization will make such arrangements with federal, state, and local investigative and police agencies as will adequately assure that at the earliest practicable stage, persons arrested under circumstances where such representation is required by federal law may promptly have counsel furnished them by the organization. In communities where an organization attorney is not available, such investigative and police agencies shall have access to the name, address and telephone number of an attorney from the panel of private attorneys approved by the Court, as described in section (C) of this Plan.

(C) Panel of Private Attorneys.

(1) Composition of Panel of Private Attorneys.

(a) Approval. The Court shall establish a panel of private attorneys (hereinafter referred to as the "CJA Panel") who are eligible and willing to provide representation under the Act. The Court shall approve attorneys for membership on the Panel after receiving recommendations from the "Panel Selection Committee," established pursuant to part (2) of this section. Members of the CJA Panel shall serve at the pleasure of the Court.

(b) Size. The Court shall fix, periodically, the size of the CJA Panel. The Panel shall be large enough to provide a sufficient number of experienced attorneys to handle the Criminal Justice Act case load, yet small enough so that Panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and thereby provide a high quality of representation.

(c) Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure and the Federal Rules of Evidence.

(d) Terms. The initial CJA Panel established pursuant to this amended Plan will be divided into three groups, equal in number. Members will be assigned to one of the three groups on a random basis. Members of the first group will serve on the Panel for a term of one year, members of the second group will serve on the Panel for a term of two years, and members of the third group will serve on the Panel for a term of three years. Thereafter, attorneys admitted to membership on the CJA Panel will each serve for a term of three years.

(e) Reappointment. A member of the CJA Panel shall not be eligible for reappointment to the Panel for the one-year period immediately following expiration of his or her term, unless waiver of this restriction is certified by the Court.

(f) Application. Application forms for membership on the CJA Panel shall be made available, upon request, by the Federal Public Defender. Completed applications shall be submitted to the Federal Public Defender, who will transmit the applications to the chairperson of the Panel Selection Committee.

(2) Panel Selection Committee.

(a) Membership. A Panel Selection Committee shall be established by the Court. The Committee shall consist of one district judge, one Magistrate, one attorney who is entering the third year of his or her term as a member of the CJA Panel, and the Federal Public Defender. The Committee shall select its own chairperson.

(b) Duties.

(i) The Panel Selection Committee shall meet at least once a year to consider applications for the vacancies created by the terms expiring each year. The Committee shall review the qualifications of applicants and recommend, for approval

by the Court, those applicants best qualified to fill the vacancies.

(ii) At its annual meeting, the Committee shall also review the operation and administration of the Panel over the preceding year, and recommend to the Court any changes deemed necessary or appropriate by the Committee regarding the appointment process and Panel management.

(iii) The Committee shall also inquire annually as to the continued availability and willingness of each Panel member to accept appointments.

(iv) If, at any time during the course of a year, the number of vacancies due to resignation, removal, or death significantly decreases the size of the Panel, the Committee shall solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval. Members approved by the Court to fill mid-term vacancies shall serve until the expiration of the term that was vacated, and shall be immediately eligible for reappointment, notwithstanding the one-year restriction imposed by paragraph (1)(e) of this section, provided that the portion of the expired term actually served by the member did not exceed eighteen (18) months.

(3) CJA Training Panel. The Panel Selection Committee may establish a "CJA Training Panel," consisting of attorneys who do not have the experience required for membership on the CJA Panel. Training Panel members may be assigned by the Court to assist members of the CJA Panel in a "second chair" capacity. Training Panel members are not eligible to receive appointments independently, and shall not be eligible to receive compensation for their services in assisting CJA Panel members. Prior service on the CJA Training Panel is not a requirement for membership on the CJA Panel, nor will service on the Training Panel guarantee admission of an attorney to the CJA Panel.

(D) Selection for Appointment.

(1) Maintenance of List and Distribution of Appointments. The Federal Public Defender shall maintain a current list of all attorneys included on the CJA Panel, with current

office addresses and telephone numbers, as well as a statement of qualifications and experience. The Federal Public Defender shall furnish a copy of this list to each Judge and Magistrate. The Federal Public Defender shall also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between the Federal Public Defender Organization and private attorneys, according to the formula described in part (1) of section (A) of this Plan.

(2) Method of Selection.

(a) Appointments from the list of private attorneys should be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation for each CJA defendant.

(b) Upon the determination of a need for the appointment of counsel, the Court shall notify the Federal Public Defender of the need for counsel and the nature of the case.

(c) The Federal Public Defender shall advise the Court as to the status of distribution of cases as between the Federal Public Defender Organization and the Panel of private attorneys. If the Court decides to appoint an attorney from the Panel, the Federal Public Defender shall determine the name of the next Panel member on the list who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required, and who is available for appointment, and shall provide the name to the appointing Judge or Magistrate.

(d) In the event of an emergency, i.e., weekends, holidays, or other nonworking hours of the office of the Federal Public Defender, the Court may appoint any attorney from the list. In all cases where members of the CJA Panel are appointed out of sequence, the Court shall notify the Federal Public Defender as to the name of the attorney appointed and the date of appointment.

(E) Determination of Need for Counsel.

(1) Advice of Right, Financial Inquiry, Appointment Procedure.

(a) In every criminal case in which a person is entitled to representation as provided in the preamble of this Plan and appears without counsel, the Court shall advise the person of the right to be represented by counsel and that counsel will be appointed if the person is financially unable to afford adequate representation. Unless the person waives representation by counsel in writing, the Court, if satisfied after appropriate inquiry that the person is financially unable to obtain counsel, shall appoint counsel to represent the person. If the need for the assistance of counsel is immediate and apparent, and the person states under oath that he or she is financially unable to obtain counsel, the inquiry may follow the person's request for appointment of counsel as soon thereafter as is practicable. All statements made by a person in requesting counsel or during the inquiry into eligibility shall be either (i) by affidavit sworn to before the Court, a Court Clerk or Deputy, or a Notary Public, or (ii) under oath in open Court.

(b) In appointing counsel, the Court shall select the Federal Public Defender Organization or an attorney from the Panel of private attorneys approved by the Court, except in extraordinary circumstances where it becomes necessary to make another selection of a member of the Bar of this Court.

(c) The Court shall appoint separate counsel for persons having interests that cannot be represented by the same counsel or when other good cause is shown.

(2) Continuity and Duration of Appointment. A person for whom counsel is appointed shall be represented at every stage of the proceedings from initial appearance before the United States Magistrate or the district court judge through appeal, including ancillary matters appropriate to the proceedings. If a United States Magistrate appoints counsel to represent a person and the person is later before a district court judge in connection with the same charge, the same counsel shall appear before the judge to represent the person until the judge has had the opportunity to make an independent determination as to whether appointment of

counsel in the proceedings is appropriate and, if so, who should be appointed.

(3) Appeal. In the event that a criminal defendant enters a plea of guilty or is convicted following trial, counsel appointed hereunder shall advise the defendant of the right of appeal and of the right to counsel on appeal. If requested to do so by the defendant in a criminal case, counsel shall file a timely Notice of Appeal. Counsel's duties under his appointment by the trial court include: (a) arranging for timely transmission of the record on appeal as provided by Fed.R.App.P. 10 and 11; (b) filing a docketing statement in accordance with Tenth Circuit Rule 8; (c) if requested, filing a memorandum opposing summary disposition. See 10th Cir. R. 4(b). Counsel's appointment remains in full force and effect until relieved of his duties by order of the district court or the court of appeals.

(4) Partial Payment or Reimbursement.

(a) If at any time after appointment of counsel the Court finds that the person is financially able to obtain counsel or to make partial payment for the representation, or that funds are available for payment from or on behalf of a person furnished representation, the Court may terminate the appointment of counsel or authorize payment as provided in subsection (f) of the Act, as the interests of justice may dictate.

(b) If at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with the representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court. The Court will then take appropriate action, which may include permitting assigned counsel to continue to represent the party with part or all of the cost of representation defrayed by such party. In such event, the amount so paid or payable by the party shall be considered by the Court in determining the total compensation to be allowed to such attorney. No appointed counsel may require, request, or accept any payment or promise of payment for representing a party, unless such payment is approved by order of the Court.

(c) If at any stage of the proceedings, including an appeal, the Court finds that the party is financially unable to pay counsel whom he or she had retained, the Court may appoint counsel as provided in the Act, and authorize such payment as therein provided, as the interests of justice may dictate.

(d) The Court, in the interests of justice, may substitute one appointed counsel for another at any stage of the proceedings.

(5) Discretionary Representations. Any person in custody as a material witness, or seeking relief under §§ 2241, 2254, or 2255 of Title 28, or § 4245 of Title 18, United States Code, may be furnished representation pursuant to this Plan whenever the Court determines that the interests of justice so require and that such person is financially unable to afford adequate representation. Such appointments are discretionary pursuant to subsection (g) of the Act, and payment for such representation shall be in accordance with the provisions of the Act and this Plan.

(F) Investigative, Expert, and Other Services.

(1) Upon Request. Counsel (whether or not appointed under the Act) for a party who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request such services in an ex parte application before the Judge or before a United States Magistrate if the services are required in connection with a matter over which the Magistrate has jurisdiction, or if a Judge otherwise refers such application to a Magistrate for findings and report. Upon finding, after appropriate inquiry in such ex parte proceedings, that the services are necessary, and that the person is financially unable to obtain them, the Judge or the Magistrate, as the case may be, shall authorize counsel to obtain the services. The maximum which may be paid to a person or organization for services so authorized shall not exceed $300 exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the Judge, or by the Magistrate if the services were rendered in connection with a case disposed of entirely before the Magistrate, as necessary to provide fair compensation for services

of an unusual character or duration, and the amount of the excess payment is approved by the Chief Judge of the Court of Appeals for the Tenth Circuit.

(2) Without Prior Request. Counsel appointed under the Act may obtain, subject to later review, investigative, expert, or other services without prior authorization, if necessary for adequate representation. However, the total cost for services obtained without prior authorization may not exceed a maximum of $150 and expenses reasonably incurred, for each person or organization providing the services. Waiver of this provision is not authorized, since the Act prohibits any payment of compensation in excess of $150 for such services where prior authorization was not secured. Counsel may request ratification for investigative, expert, or other services within the $150 limit by submitting an application for ex parte review by the Judge, or by a United States Magistrate if the services were rendered in connection with a matter over which the Magistrate has jurisdiction.

(3) Ex Parte Applications. Ex parte applications for services other than counsel shall be heard in camera, and shall not be revealed without the consent of the person represented. The application shall be placed under seal until the final disposition of the case in the trial Court, subject to further order of the Judge or Magistrate.

(4) Claims. Claims for compensation of persons providing investigative, expert, and other services under the Act shall be submitted on the appropriate CJA form to the office of the Federal Public Defender. The Federal Public Defender shall review the claim form for mathematical and technical accuracy and for conformity with the Guidelines for the Administration of the Criminal Justice Act, (Volume VII, Guide to Judiciary Policies and Procedures), and, if correct, shall forward the claim for the consideration of the appropriate Judge or Magistrate.

(5) Federal Public Defender Organization. The Federal Public Defender Organization may obtain investigative, expert, or other services without regard to the requirements and limitations of this section, provided that total expenditures of the

organization for investigative, expert, and other services do not exceed its budget authorization for these specific categories.

(G) Payment for Representation by Private Counsel.

(1) Hourly Rates. Any private attorney appointed under this Plan shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding $60 per hour for time expended in Court, and $40 per hour for time reasonably expended out of Court. Such attorney shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the Court.

(2) Maximum Amounts. For representation of a person before the Judge or the United States Magistrate, or both, the compensation to be paid to a private attorney appointed under this Plan shall not exceed $2,000 for each attorney in a case in which one or more felonies are charged, and $800 for each attorney in a case in which only misdemeanors are charged. For representation in connection with a post-trial motion made after entry of judgment, a probation revocation proceeding, a parole proceeding, or for discretionary appointments as provided in subsection (g) of the Act, the compensation shall not exceed $500 for each attorney in each proceeding in each Court.

(3) Waiving Maximum Amounts. Payment in excess of any maximum amount provided in the previous paragraph may be made for extended or complex representation whenever the presiding Judge, or the United States Magistrate, if the representation was furnished exclusively before the Magistrate, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the Chief Judge of the Court of Appeals for the Tenth Circuit.

(4) Filing Claims.

(a) Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the Federal Public Defender. The Federal Public Defender shall review the claim form for mathematical and technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act, (Volume VII, Guide to Judiciary Policies and Procedures) and, if correct, shall forward the claim form for the consideration and

action of the presiding Judge, or to the United States Magistrate if the representation was furnished exclusively before the Magistrate. In cases where representation is furnished other than before the district judge, magistrate, or an appellate court, the district court judge shall fix the compensation and reimbursement to be paid.

(b) In cases where the amount of compensation and reimbursement approved by the reviewing judicial officer is less than was requested by appointed counsel, the judicial officer should notify appointed counsel that the claim has been reduced, and provide an explanation for the reasons for the reduction.

(H) Miscellaneous.

(1) Forms. Where standard forms have been approved by the Judicial Conference of the United States or an appropriate committee thereof, and have been distributed by the Administrative Office, such forms shall be used by the Court, the Clerk, the Federal Public Defender Organization, and counsel.

(2) Guidelines for the Administration of the Criminal Justice Act. The Court, Clerk of the Court, Federal Public Defender Organization, and private attorneys appointed under the Act and this Plan, shall comply with the provisions of the Judicial Conference's Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to the Judiciary Policies and Procedures.

ADDENDUM TO THE PLAN
FOR THE IMPLEMENTATION OF
THE CRIMINAL JUSTICE ACT OF 1964
AS AMENDED, 18 U.S.C. § 3006A

WHEREAS, the number of death row inmates who will exhaust their state court remedies and be in a position to seek federal habeas corpus relief in this district is expected to increase;

WHEREAS, representation of persons who have been convicted and sentenced to death requires a specialized knowledge of state and federal appellate procedure, certiorari practice, state and federal habeas corpus procedure, criminal and Eighth Amendment jurisprudence and entails an extraordinary commitment of time;

WHEREAS, this court is responsible for ensuring the adequate representation of financially eligible persons seeking federal habeas corpus relief when such representation is required in the interest of justice;

WHEREAS, the Oklahoma Appellate Public Defender System, a state public defender organization, has a Capital Post Conviction Unit which furnishes representation, and assistance in connection with the representation of death-sentenced inmates in the State of Oklahoma;

WHEREAS, the Capital Post Conviction Project of the Oklahoma Appellate Public Defender System is authorized to provide representation and assistance in federal death penalty habeas corpus cases;

WHEREAS, subsection (g) of the Criminal Justice Act of 1964, as amended, 18 U.S.C. §3006A [hereinafter referred to as "the Act"] authorizes the establishment of Community Defender Organizations in adjacent districts in which at least 200 persons annually require the appointment of counsel, and the Western, Northern, and Eastern Districts of Oklahoma meet that requirement,

IT IS THEREFORE ORDERED, that the Plan for the Implementation of the Criminal Justice Act for the Western District of Oklahoma, (dated July 15, 1985) is hereby amended to provide for the designation of the Oklahoma Appellate Public Defender System as a Community Defender Organization in accordance with subsection (g)(2)(B) of the Act, subject to the conditions set forth below:

1. The Oklahoma Appellate Public Defender System [hereinafter referred to as OAPDS] is authorized by this Plan to provide representation, assistance, information, and other related services to eligible persons and appointed attorneys in connection with federal death penalty habeas corpus cases pursuant to subsection (g)(2)(B) of the Act. As provided in the Criminal Justice Act Plans for the Northern and Eastern Districts of Oklahoma, OAPDS also may provide such services in those courts. The governing laws of OAPDS are incorporated as part of the Plan, and a copy of these laws shall be maintained by the Clerk of the Court and attached to the original of this plan.

2. OAPDS shall operate pursuant to the provisions of subsection (g)(2)(B) of the Act, the terms and conditions of the sustaining grant approved by the Judicial Conference of the United States, and the Guidelines for the Administration of the Criminal Justice Act, (Volume VII, Guide to Judiciary Policies and Procedures), promulgated by the Judicial Conference of the United States pursuant to subsection (h) of the Act.

3. OAPDS shall submit to the Judicial Conference of the United States an annual report setting forth its activities and financial position and the anticipated caseload and expenses for the next fiscal year.

4. OAPDS shall furnish to this court the initial roster of staff attorneys and shall report any changes thereto to the court.

5. The goal of OAPDS will be to assist the court in ensuring that adequate representation is provided to persons under death sentence who seek federal habeas corpus relief. Toward that end OAPDS will perform the following functions:

a. OAPDS shall monitor all capital litigation in the State of Oklahoma.

b. OAPDS shall screen and recruit qualified members of the private bar who are willing to provide representation in death penalty post-conviction proceedings in federal court and submit a list of such attorneys to the court for approval as a "Special Death Penalty Habeas Corpus Panel."

c. In each federal death penalty habeas corpus case in which the court has determined that counsel shall be

appointed, OAPDS shall provide to the court the name of the next available member of the "Special Death Penalty Habeas Corpus Panel." In cases where the interest of justice requires the appointment of more than one attorney, OAPDS shall furnish the name of two attorneys.

d. OAPDS shall be authorized to serve as counsel of record, and shall recommend to the court those cases in which its appointment as counsel of record is appropriate.

e. Upon the request, pursuant to subsection (e) of the Act and paragraph 3.16 of the Guidelines for the Administration of the Criminal Justice Act, of appointed or pro bono counsel in a federal habeas corpus death penalty case, OAPDS shall provide consulting services in such areas as, but not limited to, records completion, exhaustion of state remedies, identification of issues, review of draft pleadings and briefs.

f. OAPDS will coordinate resources with other state and national organizations providing legal assistance to death-sentenced inmates.

g. OAPDS will maintain a brief bank and clearinghouse of materials to assist lawyers in death penalty habeas corpus cases in federal courts.

h. OAPDS will perform such other tasks as may be necessary to ensure that adequate representation is provided to financially eligible persons in federal death penalty habeas corpus proceedings.

6. In order to ensure the effective supervision and management of OAPDS, the deputy appellate public defender in charge of the capital post conviction unit of OAPDS will be responsible for the assignment of cases (both as counsel of record and as consultant) among the staff attorneys in capital post conviction unit of OAPDS. Accordingly, the court will assign cases in the name of the designated deputy appellate public defender rather than in the name of individual staff attorneys.

7. OAPDS may obtain investigative, expert, or other services without regard to the requirements or limitations set forth in the Plan dated July 15, 1985, with respect to procurement of such

services by panel attorneys, provided that total expenditures of the organization for investigative, expert, and other services do not exceed its grant authorization for these specific categories.

The provisions of the Plan shall remain in effect except to the extent that they are inconsistent with the provisions of this addendum, in which case the provisions of the addendum shall govern.

RULE 41

PLEA AGREEMENT PROCEDURE

The following plea agreement procedure is hereby adopted by this Court:

(A) Rule 11(e), Federal Rules of Criminal Procedure, provides in pertinent part as follows:

> (e) Plea Agreement Procedure.
>
> (1) In General. The attorney for the government and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the government will . . .
>
> (A) move for dismissal of other charges; . . . The Court shall not participate in any such discussions.

(B) The Judges of this Court will receive agreements pursuant to Rule 11(e)(1)(A), supra, that the government will move for dismissal of other charges, but the Judges of this Court will not receive recommendations of the government or an agreement of the parties to a particular sentence or an agreement of the parties that the government will not oppose a defendant's request for a particular sentence or an agreement of the parties that a specific sentence is the appropriate disposition of the case.

(C) Nothing herein shall prohibit the government and the defendant from entering into an agreement wherein the government agrees to charge only a specific number of counts, or to refrain from bringing additional charges. Such an agreement must delineate the nature of the counts which will not be charged, and be limited to offenses committed within the Western District of Oklahoma. If the agreement includes offenses committed outside the Western District of Oklahoma, it must be specific as to the district included, and have the consent of the United States Attorney from that district. Any agreement contemplated under this subsection must also be approved by the Court before it is enforceable.

RULE 42

PRESENTENCE AND PROBATION REPORTS

(A) The Presentence and Probation Reports maintained by the Probation Office of this Court are hereby declared to be confidential and, except as otherwise authorized in this Rule, are to be used only as allowed by Title 18 U.S.C. Section 4205(e), Section 4208(b)(2) and Rule 32(c)(3), Federal Rules of Criminal Procedure.

(B) Any copy of a Presentence Report which the Court makes available, or has made available, to the Bureau of Prisons or the United States Parole Commission constitutes a confidential Court document and shall be considered to remain under the continuing control of the Court during the time it is in the temporary custody of these agencies. Such copy shall be lent to the Bureau of Prisons and the Parole Commission only for the purpose of enabling those agencies to carry out their official functions, including parole releases and supervision, and shall be returned to the Court after such use, or upon request. Each Presentence Report furnished either to the Bureau of Prisons or the Parole Commission shall be stamped in the following manner:

CONFIDENTIAL

PROPERTY OF U. S. COURTS

SUBMITTED FOR OFFICIAL USE OF
U. S. PAROLE COMMISSION AND
FEDERAL BUREAU OF PRISONS,
TO BE RETURNED AFTER SUCH USE,
OR UPON REQUEST.
DISCLOSURE AUTHORIZED ONLY TO
COMPLY WITH 18 U.S.C. § 4208(b)(2) AND THE
FREEDOM OF INFORMATION ACT, 5 U.S.C. § 552

(C) When a demand for disclosure of a Presentence Report or Probation Record is made, by way of subpoena or other judicial process or otherwise, to a Probation Officer of this Court, the Probation Officer shall file a petition seeking instructions from the Court with respect to whether or not such Probation Officer should comply with the subpoena or other demand. When such petition is filed, it shall be promptly presented to the Judge for

whom the Report was made, or his successor, or in their absence to the Chief Judge, who may lift the confidentiality of said Report as such Judge deems is required to meet the ends of justice.

(D) Nothing contained in this Rule shall be construed to deprive the Chief Probation Officer of his independent authority over such Reports for the purpose of making disclosures necessary to achieve the rehabilitation of a probationer or the protection of the public. The Judges hereby grant discretionary authority to the Chief Probation Officer to make disclosures of nonclassified portions of such Reports, such as names, addresses, places of employment, telephone and social security numbers, etc., to law enforcement and other governmental agencies when the same is deemed appropriate.

(E) Procedure for Disclosure of Presentence Reports Under the Sentencing Reform Act of 1984. The following procedures are hereby established to govern sentencing proceedings under the Sentencing Reform Act of 1984, Pub. L. No. 98-473, Title II, ch. II, §§ 211-239. See 28 U.S.C. § 994 and 18 U.S.C. § 3553, to provide adequate time for the United States Probation Office's preparation of the presentence investigation report (PSI), disclosure of the PSI to the parties, the filing of presentence submissions by the parties, and such other and further procedures contemplated by the Sentencing Guidelines and this Order:

(1) Upon its completion, the probation officer shall promptly disclose the PSI to the defendant, to counsel for the defendant and the government. Within eleven (11) calendar days thereafter defense counsel, after consultation with the defendant and the attorney for the government, shall communicate to the probation officer any objections they may have as to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the report. The due date for such objections shall be contained in the transmittal letter accompanying the disclosure of the PSI. The communication of objections to the PSI may in the first instance be oral or written; but, if oral, should be confirmed immediately thereafter in writing unless the probation officer forthwith

accedes to the oral request or objection by a written supplement to the PSI. Sentencing will take place not less than twenty (20) days from the date of the disclosure of the PSI unless an earlier date is agreed upon by the parties and the Court.

(2) After receiving counsel's objections, the probation officer shall conduct any further investigation and make any revisions to the presentence report that may be necessary. The officer, as a representative of the Court, may require counsel for both parties to meet at a designated time and place with the officer to discuss unresolved factual and legal issues.

(3) Prior to the date of the sentencing hearing, the probation officer shall submit the PSI to the sentencing judge. The report shall be accompanied by an addendum setting forth any objections counsel may have made that have not been resolved, together with the officer's comments thereon. The probation officer shall certify that the contents of the report, including any revisions thereof, have been disclosed to the defendant and to counsel for the defendant and the government, that the contents of the addendum have been communicated to counsel, and that the addendum fairly states any remaining objections.

(4) Except with regard to any objection made under subdivision (1) that has not been resolved, the report of the presentence investigation may be accepted by the Court as accurate. The Court, however, for good cause shown, may allow a new objection, if in writing, to be raised at any time before the imposition of sentence. In resolving disputed issues of fact at the sentencing hearing or prior thereto, the Court may consider any information it deems reliable presented by the probation officer, the defendant, or the government.

(5) Nothing in this Rule requires the disclosure of any portions of the presentence report that are not disclosable under Rule 32 of the Federal Rules of Criminal Procedure. The probation officer may, if requested by the Court, recommend to the Court a specific sentence within the applicable sentencing guideline table range, or a departure therefrom, if in the probation officer's

opinion such is justified under the facts and circumstances presented.

(6) The presentence report shall be deemed to have been disclosed (a) when a copy of the report is physically delivered, (b) one day after the report's availability for inspection is orally communicated, or (c) three days after a copy of the report or notice of its availability is mailed.

(7) The presentence report is a confidential Court document and shall not be photocopied or otherwise reproduced or disclosed to third parties except upon permission of the Court or in conformity with Local Rule 42.

RULE 43

COURT-ANNEXED ARBITRATION

(A) Scope and Purpose of Rule. This Rule governs the consensual and mandatory referral of certain actions to non-binding arbitration in accordance with 28 U.S.C. §651, et seq. This Rule shall not affect Title 9 of the United States Code. The purpose of this Rule is to provide an alternative mechanism for the early disposition of many civil cases and an incentive for the just, efficient, and economical resolution of controversies by informal procedures while preserving the right to a full trial on demand.

(B) Actions Subject to this Rule. Notwithstanding any provision of law to the contrary and except as otherwise provided herein, the following actions are subject to this Rule:

(1) Consensual Reference to Non-binding Arbitration. Any civil action, including any adversary proceeding in Bankruptcy, may be referred to non-binding arbitration under this Rule, upon consent of the parties. The following is the procedure for consent to arbitration under this rule:

(a) Notice. The Clerk of Court shall notify the parties in all civil cases not otherwise required to proceed to arbitration under this Rule that they may voluntarily consent to non-binding arbitration under this Rule. Such notice shall be furnished the parties at pretrial/scheduling conferences or may be included with pretrial conference notices and instructions. Consent to arbitration under this Rule may be discussed at the pretrial/scheduling conference. (See Appendix IV) No party or attorney shall be prejudiced for refusing to participate in arbitration.

(b) Execution of Consent. The Clerk shall not accept a consent form unless it has been signed by all the parties in the case. The plaintiff shall be responsible for securing the execution of a consent form by the parties and for filing such form with the Clerk of Court within ten (10) days after receipt of such form. No Judge, Magistrate, or other court official shall attempt to persuade or induce any party to consent to reference of a civil

case not otherwise required to participate in the arbitration program. Such consent shall be freely and knowingly obtained.

(2) Mandatory Reference to Non-binding Arbitration. Any of the following civil actions (excepting administrative reviews and prisoner cases, or any action based on an alleged violation of a right secured by the Constitution of the United States or if jurisdiction is based in whole or in part on 28 U.S.C. §1343) shall be referred to mandatory non-binding arbitration:

(a) Actions in which the United States is not a party and seek relief limited to money damages not exceeding $100,000.00, exclusive of interest and costs, and in which any claim for non-monetary relief is determined by the assigned Judge or Magistrate to be insubstantial.

(b) Actions in which the United States is a party which

(i) seek relief limited to money damages not exceeding $100,000.00, exclusive of interest and costs, and which arise under the Federal Tort Claims Act (28 U.S.C. §§2671, et seq.), the Longshoremen's and Harbor Workers Act (33 U.S.C. §§901 et seq.), or under the Admiralty Act (46 U.S.C. §§741 et seq.) and involve no general average, or

(ii) arise under the Miller Act (40 U.S.C. §270b), with the United States having no monetary interest in the claim, and seek relief limited to money damages not exceeding $100,000.00, exclusive of interest and costs, and in which any claim of nonmonetary relief is determined by the assigned Judge or Magistrate to be insubstantial.

(c) For purpose of this section only, and in order to make a determination as to whether the damages are in excess of $100,000.00, damages shall be presumed not to exceed $100,000.00, exclusive of interest and costs, unless counsel asserting such claims certify in writing before the case is referred to arbitration that to the best of his or her knowledge and belief, in good faith, the damages which may be recoverable exceed such amount. Such certification shall be included on the Status Report form. (See Appendix IV)

(d) Actions which are subject to this Rule except that they include a claim for nonmonetary relief shall be referred to the assigned Judge or designated Magistrate at the initial pretrial/scheduling conference or at any appropriate time thereafter for determination of whether, for purposes of this Rule the nonmonetary claim is insubstantial. That determination may be made, in the judge's discretion, either ex parte or following consultation with the parties.

(e) At the initial pretrial/status conference or at any appropriate time thereafter in any action subject to this section, the assigned Judge or designated Magistrate may determine, on a motion by any party or sua sponte, that for purposes of this section no genuine claim for damages in excess of $100,000.00 exists and that the action is subject to mandatory arbitration. The determination may be made at any hearing or conference at which the parties are represented. In the event of such a determination, the action shall be referred to arbitration as herein provided.

(C) Time for Referral.

(1) Every action subject to this Rule under (B)(1) shall be referred to arbitration in accordance with the procedures under this Rule after the consent form has been executed and filed.

(2) Every action subject to this Rule under (B)(2) shall be referred to arbitration in accordance with the procedures under this Rule at the initial pretrial/scheduling conference, except as otherwise provided.

(3) Prior to the initial pretrial/scheduling conference, if any party files a motion to dismiss the complaint, motion for judgment on the pleadings, or motion for summary judgment, the motion shall be heard by the assigned Judge and further proceedings under this Rule shall be deferred pending resolution of the motion unless the parties agree otherwise, and provided, however, that the filing of such a motion on or after the referral shall not stay the proceedings unless the Court so orders. If the action is not dismissed or otherwise terminated as the result of the decision on the motion, it shall be referred to arbitration. Counsel shall promptly notify the Clerk of Court (arbitration deputy) and receive scheduling information.

(D) Authority of Assigned Judge. Notwithstanding any provision of this Rule, every action subject to this Rule shall be assigned to a Judge upon filing in the normal course in accordance with Rule 8 and the assigned Judge shall have authority, in his discretion, to conduct status/pretrial conferences, to refer the case for settlement conference, to hear motions, and to supervise the action in all other respects in accordance with these Rules and the Federal Rules of Civil Procedure notwithstanding the referral of the action to arbitration.

(E) Relief from Referral. Any party may request relief from the operation of this Rule by filing with the Court a motion for such relief within twenty (20) days after entry of the initial pretrial/scheduling order or any other order which refers the case for arbitration unless modified by the Court. Such motion shall conform to Rule 14(A). The assigned Judge may, sua sponte or on motion, in his discretion, exempt an action from the application of this Rule where the objectives of arbitration would not be realized because (1) the case involves complex or novel legal issues, (2) because legal issues predominate over factual issues, or (3) for other good cause.

(F) Certification, Compensation, and Selection of Arbitrators.

(1) Certification.

(a) The Clerk of Court shall maintain a roster of arbitrators who shall hear and determine actions under this Rule. Arbitrators shall be selected by the Court from applications submitted by or on behalf of attorneys willing to serve. Any attorney who has been admitted to practice for not less than five (5) years, who has been admitted to practice in this Court, and who is determined by the Court en banc to be competent to perform the duties of an arbitrator shall be eligible for selection. Each person shall upon selection take the oath or affirmation prescribed in 28 U.S.C. §453.

(b) No person shall serve as an arbitrator in an action in which any of the circumstances specified in 28 U.S.C. §455 exist or may in good faith be believed to exist.

(c) Any person whose name appears on the roster maintained by the Clerk of Court may ask at any time to have his or her name removed or, if selected to serve on a panel, decline to serve but remain on the roster.

(d) An arbitrator is an independent contractor and is subject to the provisions of 18 U.S.C. §§201-211 to the same extent as such provisions apply to a special government employee of the Executive Branch. A person may not be barred from the practice of law because such person is an arbitrator.

(2) Compensation.

(a) Subject to limits set by the Judicial Conference of the United States, arbitrators shall be paid $150.00 per day or portion of each day of hearing in which they participate as a single arbitrator or as a member of a panel of three arbitrators. At the time when the decision of the arbitrator(s) is filed, each arbitrator shall submit a voucher on the form prescribed by the Clerk of Court for payment by the Administrative Office of the United States Courts for compensation and transportation expenses necessarily incurred in the performance of their duties under this Rule. Only transportation expenses (including mileage and parking) which have been itemized on said voucher and can be reasonably documented are reimbursable.

(b) Those attorneys who are eligible for selection as arbitrators and whose names appear on the roster maintained by the Clerk of Court shall be exempted from the list of attorneys from which counsel are appointed to represent indigent criminal defendants pursuant to the Criminal Justice Act, 18 U.S.C. §3006(A), unless they request to remain eligible for such appointment or otherwise agree to accept such appointment.

(3) Selection. Whenever an action eligible for arbitration is set for pretrial/scheduling conference or referred to arbitration pursuant to this Rule, the Clerk of Court shall furnish to each party a list of ten (10) arbitrators whose names have been drawn at random from the roster of arbitrators maintained in the Clerk's Office. The parties shall confer for the purpose of selecting a single arbitrator or, if all parties so request in writing, a panel of three (3) arbitrators.

(a) The process to be utilized for selecting a single arbitrator or a panel of three (3) in cases involving one plaintiff and one defendant and in cases involving multiple plaintiffs and/or multiple defendants when all plaintiffs and all defendants can agree among themselves as to the selection of the arbitrators is as follows:

(i) Each side shall be entitled to strike two names from the list, plaintiff(s) to strike the first name, defendant(s) the next, then plaintiff(s), and then defendant(s);

(ii) The parties shall then select the panel from the remaining six names by alternately selecting one name, defendant(s) to make the first choice, plaintiff(s) the second, and continuing in this fashion.

(b) In cases involving multiple plaintiffs and/or multiple defendants when all plaintiffs or all defendants cannot agree among themselves as to the selection of the arbitrator(s), then each defendant and each plaintiff shall propose one name from the list of ten (10) arbitrators furnished by the Clerk of Court until a list of at least six (6) arbitrators has been selected. In instances of third party action, if parties cannot agree, selection shall proceed as above between primary defendants and plaintiffs and then third party defendants until a list of at least six (6) arbitrators has been selected. If the number of plaintiffs and/or defendants is greater than ten (10), then the Clerk of Court shall furnish a list of arbitrators which is one (1) greater in number than the total number of plaintiffs and/or defendants who are to participate in the selection process;

(c) At the conclusion of these processes, the parties shall list the six names in the order selected and submit them to the Clerk of Court at the time of the initial pretrial/ scheduling conference or no later than ten (10) days from receipt by them of the original list of ten (10) names if received at or after the scheduling conference. In the event the parties fail to submit such a list within the time provided, the Clerk of the Court shall make the selection of arbitrators at random from the original list of ten names;

(d) The Clerk of Court shall promptly notify the person or persons whose name or names appear as the first choice or choices of the parties of the selection, or if no choices have been made, the persons the Clerk has selected. If any person so selected is unable or unwilling to serve, the Clerk shall notify the person whose name appears next on the list. If the Clerk is unable to select an arbitrator or constitute a panel of arbitrators from the six selections, the process of selection under this Rule shall be completed by the parties in conjunction with instructions from the Office of the Clerk (arbitration deputy).

(G) Hearing Date.

(1) Determination. The assigned Judge or designated Magistrate shall assist counsel of record at the initial scheduling conference (pursuant to Local Rule 17) to see that a mutually convenient date for hearing is set. Normally this date shall be set prior to the discovery cut-off date scheduled for the trial case; however, in the discretion of the assigned Judge or designated Magistrate, such hearing date may be set after the discovery cut-off date. If the case is later referred to arbitration, the Clerk shall communicate with the parties to ascertain a mutually agreeable date within the same time frame. In no event should an arbitration hearing date be within thirty (30) days of the scheduled trial date. No arbitration hearing under this Rule shall begin later than 180 days after the filing of an answer and no arbitration proceedings shall, in the absence of the consent of the parties, commence until thirty (30) days after the disposition by the Court of any motion to dismiss the complaint, motion for judgment on the pleadings, motion to join necessary parties, or motion for summary judgment, if such motion was filed in accordance with these local rules or other orders of the Court. Both the 180 and 30-day periods may be modified by the Court for good cause shown.

(2) Notification. When the requisite number of arbitrators has agreed to serve, the assigned Judge shall direct the Clerk to enter an order setting forth the date and time of the arbitration hearing and the name(s) of the arbitrator(s) designated

to hear the case, and the Clerk shall promptly send said order to each arbitrator, counsel of record, and pro se parties, if any.

(3) Continuance. This date shall not be continued except for extreme and unanticipated emergencies as established in writing and approved by the assigned Judge. The Clerk of Court (arbitration deputy) must be notified immediately of any request for or order granting continuance or other pleading, situation or settlement of the case that would affect the hearing date. Any continuance must be to a date certain and cleared with the Clerk of Court (arbitration deputy).

(4) Discovery. Critical discovery necessary for purposes of meeting the goals of an arbitration hearing shall be completed prior to the hearing.

(5) Default of Party. Subject to the provisions of this Rule, the hearing shall proceed on the noticed date. Absence of a party shall not be grounds for a continuance but damages shall be awarded against an absent party only upon presentation of proof thereof satisfactory to the arbitrator(s). Failure to appear by a person required to be present or other failure to participate in good faith may constitute a default in accordance with Local Rule 17(E). In such instances, the hearing shall proceed and the arbitrator(s) shall enter an award. Upon a report of absence or other non-compliance with this Rule, or, on the motion of opposing counsel, appropriate action may be taken by the Court.

(H) Joint Stipulations Arbitration Summary. Ten (10) days prior to the hearing, the parties shall submit to the arbitrator(s) assigned to a particular action and to the Clerk of Court (arbitration deputy) a joint statement containing all facts and legal issues that (a) are not in dispute and (b) are in dispute. In addition, each party shall submit to the arbitrator(s), to opposing counsel, and to the Clerk of Court (arbitration deputy), a summary of the position of that party which includes any remaining factual issues or legal issues in dispute and any damages requested or defenses asserted. Each Arbitration Summary should not exceed five (5) pages in length and neither it nor the Joint Stipulations will be made a part of the case file.

(I) Attendance at and Conduct of Hearing.

(1) In addition to lead counsel who will try the case for each party, a person with actual settlement authority must likewise be present for the hearing. This will be the parties if natural persons, or representatives of parties which are not natural persons, but may not be counsel (except in-house counsel) or a person who is not directly or actively associated with the party or parties. Other interested parties such as insurers or indemnifiers shall attend and are subject to the provisions of this Rule. Only the assigned Judge may excuse attendance by any attorney, party, or party's representative.

(2) Hearings are intended to last approximately 2-21/2 hours. Counsel for each party shall have up to one hour to communicate the highlights of his or her case. Plaintiff(s) will be permitted to reserve a limited time for rebuttal. In the case of multiple parties and multiple claims, adjustments are made at the discretion of the arbitrator.

(3) The hearing shall be conducted informally. All evidence shall be presented through counsel who may incorporate argument on such evidence in his or her presentation. The Federal Rules of Evidence shall be a guide, but shall not be binding. Counsel may present factual representations supportable by reference to discovery materials, including depositions, stipulations, signed statements of witnesses, or other documents or by a professional representation that counsel personally spoke with the witness and is repeating what the witness stated. Statements, reports, and depositions may be read from, but not at undue length. Physical evidence, including documents, may be exhibited during a presentation.

(4) The hearing supplements the arbitration summary submitted to each arbitrator and allows the arbitrator(s) to pursue during the hearing those points which appeared particularly pertinent in the summaries.

(J) Transcript or Recording. A party may cause a transcript or recording to be made of the hearing at its expense but shall, at the request and expense of opposing party, make a copy available to that party. In the absence of agreement of the parties, and except as provided in this Rule, no transcript of the hearing shall be

admissible in evidence at any subsequent de novo trial of the action.

(K) Place and Time of Hearing.

(1) Hearings shall be held in any courtroom, hearing room, or other room in the U.S. Courthouse or Federal Complex made available by the Clerk of Court. When no such room is available, the hearing shall be held in any location within this judicial district assigned by the Clerk in consultation with the arbitrator(s) with consideration to the convenience of the arbitrator(s) and the parties.

(2) Unless the parties agree otherwise, hearing shall be held during normal business hours.

(L) Optional Waiver of Trial De Novo; Voluntary Arbitration. At any time prior to the commencement of the hearing, the parties may by written stipulation approved by order of the assigned judge waive the right to a trial de novo following the award and proceed as in voluntary arbitration. In the event of such a stipulation, the provision of state and federal law governing review of awards rendered in voluntary arbitration shall govern.

(M) Authority of Arbitrator. The arbitrator to whom an action is referred shall have the following powers: to conduct arbitration hearings and make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing; to administer oaths and affirmations if necessary; and to make awards. Any two members of a panel shall constitute a quorum, but (unless the parties stipulate otherwise) the concurrence of a majority of the entire panel shall be required for any action or decision by the panel.

(N) Ex Parte Communication. There shall be no ex parte communication between an arbitrator and any counsel or any party on any matter concerning the action except for purposes of scheduling or continuing the hearing.

(O) Arbitration Award and Judgment.

(1) Filing of Arbitration Award. The arbitrator shall file the award with the Clerk of Court promptly following the close of the hearing and in any event not more than ten (10) days

following the close of the hearing. The Clerk shall promptly serve copies on the parties.

(2) Contents of the Award. The award shall state clearly and concisely the name or names of the prevailing party or parties and the party or parties against which it is rendered and the precise amount of money and other relief, if any, awarded. It shall be in writing and signed by the arbitrator or by at least two (2) members of a panel. No member of a panel shall participate in the award without having attended the hearing. Arbitrators are not required to issue an opinion explaining the award. All awards shall be in keeping with the evidence presented and the applicable law.

(3) Sealing of the Award. Promptly upon the filing of the award with the Clerk, the after the Clerk has served copies on the parties, the award shall be sealed and filed under seal. The contents of any arbitration award made under this Rule shall not be made known to any Judge who might be assigned to the case until the district court has entered final judgment in the action or the action has otherwise been terminated, except for purposes of preparing the report required by §903(b) of the Judicial Improvements and Access to Justice Act.

(4) Effect of the Award. If no party files a demand for trial de novo within thirty (30) days of the filing of the sealed award in accordance with section (P), the award will be unsealed and the Clerk shall enter judgment thereon in accordance with Rule 58 Fed.R.Civ.P., and the judgment shall have the same force and effect as any judgment of the Court in a civil action, except that no appeal shall lie from such judgment (any notice of appeal shall be treated as a demand for a trial de novo if filed within thirty (30) days of the filing of the sealed award). Any applications for attorney's fees and costs following the entry of judgment should be in conformity with Local Rule 6.

(P) Trial De Novo.

(1) Time for Demand and Restoration to Court Docket. Within thirty (30) days after the filing of the arbitration award with the Court, any party may file with the Court and serve on all the parties a written demand for a trial de novo. In such cases,

the sealed award shall not be unsealed, become or be filed as a judgment in the case, and the action shall be restored to the docket of the Court and treated for all purposes as if it had not been referred to arbitration. In such a case, any right of trial by jury that a party otherwise would have had, as well as any place on the Court calendar which is no later than that which a party otherwise would have had, are preserved and the action shall proceed in the normal manner before the assigned judge.

(2) Limitation on Admission of Evidence. At a trial de novo, the Court shall not admit any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding unless the evidence would otherwise be admissible in the Court under the Federal Rules of Evidence, or the parties have otherwise stipulated.

(3) Fees Required for Demanding Trial De Novo. Upon making a timely demand for a trial de novo, the moving party, other than the United States or its agencies or officers, shall, unless permitted to proceed in forma pauperis, deposit with the Clerk of Court an amount equal to the fees for each arbitrator ($150.00) as provided in Rule 43(F)(2).

(4) Return of Deposited Fees. Upon application within fifteen (15) days of the entry of a final judgment, the sum so deposited shall be returned to the party demanding the trial de novo, if

(a) the party demanding the trial de novo obtains a final judgment, exclusive of interest and costs, more favorable than the arbitration award, or

(b) the Court determines that the demand for trial de novo was made for good cause.

In the event that the moving party does not obtain a more favorable result and the sum so deposited is not returned to the moving party, such sum shall be paid to the Treasury of the United States.

(5) In mandatory arbitration cases only, no penalty for demanding a trial de novo, other than that provided in section (P)(3) and (4), shall be assessed by the Court.

(Q) Evaluation. Ongoing evaluation may be conducted by the Clerk of Court in conjunction with the Court's alternative dispute resolution committee, if established, to monitor this and other programs to assure conformity with the stated purpose(s).

RULE 44

VOLUNTARY ARBITRATION

Notwithstanding the provisions of Rule 43, the parties to any action or proceeding may stipulate to its referral to arbitration upon such terms as they may agree to, subject to approval by order of the assigned judge. In the case of such referral, the provision of state and federal law governing voluntary arbitration shall control.

RULE 45

DISTRICT COURT RULE ON REFERRAL OF BANKRUPTCY CASES

(A) THE BANKRUPTCY COURT.

The serving Bankruptcy Judges of this District constitute and shall be known as "The United States Bankruptcy Court for the Western District of Oklahoma."

(B) SCOPE OF RULES.

These Local District Court Rules govern practice and procedure in this District of all cases under Title 11, United States Code and of all civil proceedings arising under, in, or related to Title 11. They implement and complement Title 11, United States Code, the Bankruptcy Amendments and Federal Judgeship Act of 1984, the Bankruptcy Rules promulgated under 28 U.S.C. §2075 and other Local Rules of this Court.

(C) FILING OF PAPERS.

(1) Bankruptcy Rules 5005, 7001, 7003 and 9027 apply and all petitions, proofs of claim or interest, complaints, motions, applications and other papers referred to in those rules shall be captioned "In the United States Bankruptcy Court for the Western District of Oklahoma" and filed with the Clerk of the Bankruptcy Court.

(2) The filing requirements provided by subsection (C)(1) of this Rule include -- but are not limited to -- cases and proceedings within the purview of 28 U.S.C. §1334(c)(2) and 28 U.S.C. §157(b)(5).

(D) MAINTENANCE OF CASE AND CIVIL PROCEEDING FILES; ENTRY OF JUDGMENTS.

The Clerk of the Bankruptcy Court shall maintain a complete file in each Title 11 case and in each proceeding arising in, under, or related to Title 11. A certified copy is sufficient for a judgment, order, decision, ruling, memorandum or other judicial writing of a District Judge in a proceeding separately docketed in the District Court. The entry of a judgment by a District Judge or a Bankruptcy Judge, as the case may be, shall be in accordance with Bankruptcy Rule 9021.

(E) CLARIFICATION OF GENERAL REFERENCE TO BANKRUPTCY JUDGES.

(1) The Order of this Court ("In the Matter of the Enactment of an Order Conferring Authority and Responsibility Pursuant to The Bankruptcy Amendments and Federal Judgeship Act of 1984") became effective as of July 10, 1984. Under that Order all Title 11 U.S.C. cases and proceedings in, under or related to Title 11 continue to be referred to the Bankruptcy Judges of this District.

(2) That reference includes, without limitation--

(1) Personal injury tort and wrongful death claims or causes of action within the purview of Title 28 U.S.C. §157(b)(5);

(2) State law claims or causes of action of the kind referred to at Title 28 U.S.C. §1334(c)(2); and

(3) Involuntary cases under Title 11 U.S.C. §303.

(F) TRANSFER OF PARTICULAR PROCEEDINGS FOR HEARING AND TRIAL BY A DISTRICT JUDGE.

A particular proceeding commenced in or removed to the Bankruptcy Court shall be transferred to the District Court for hearing and trial by a District Judge only in accordance with the procedure below.

(1) A party seeking such transfer shall file a motion therefor in the Bankruptcy Court certifying one or more of the following grounds:

(a) It is in the interest of justice, in the interest of comity with State Courts or respect for State law that this District Court should abstain from hearing the particular proceeding as is contemplated by 28 U.S.C. §1334(c)(1).

(b) The particular proceeding is based upon a State law claim or State law cause of action with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under 28 U.S.C. §1334; that an action on the claim or cause of action is commenced and can be timely adjudicated in a State forum; and that under 28 U.S.C. §1334(c)(2) this District Court must abstain from hearing the particular proceeding.

(c) The particular proceeding is a personal injury tort or a wrongful death claim within the purview of Title 28 U.S.C. §157(b)(5).

(d) Resolution of the particular proceeding requires consideration of both Title 11 U.S.C. and other laws of the United States regulating organizations or activities affecting interstate commerce and thus must be withdrawn to this District Court under 28 U.S.C. §157(d).

(e) The proceeding is under 11 U.S.C. §303 and a jury trial is demanded.

(f) Cause exists, within the contemplation of 28 U.S.C. §157(d), for the withdrawal of the particular proceeding to this District Court (a specification of such alleged cause must be stated).

(2) If movant is an original plaintiff, the motion shall be filed within twenty (20) days after the proceeding is commenced.

(3) If movant is an original defendant, intervenor, or an added party, the motion shall be filed within twenty (20) days after movant has entered appearance or been served with summons or notice.

(4) In a proceeding that has been removed under 28 U.S.C. §1452 the removing party shall file the motion within twenty (20) days after the removal; other parties shall file within twenty (20) days after being served with summons or notice.

(5) In a proceeding of the kind designated in (1)(C) above, a recommendation to the District Court may be filed by a Bankruptcy Judge sua sponte at any time.

(6) The motion for transfer, together with a written recommendation of a Bankruptcy Judge, shall be transmitted by the Clerk of the Bankruptcy Court to the Clerk of the District Court. The latter shall assign the motion to a District Judge who shall rule ex parte or upon such notice as the District Judge shall direct. The ruling shall be filed in the Bankruptcy Court as an order of the District Judge.

(7) In instances where such ruling is not dispositive of the particular proceeding transferred, the proceeding shall go

forward to hearing, trial and judgment as the District Judge's order shall direct.

(8) A proceeding retained for hearing and determination by a District Judge shall be carried on the civil docket of the Clerk of the District Court. Certified copies of all final orders and judgments entered by the District Judge shall be transmitted by the Clerk of the District Court and filed with the Clerk of the Bankruptcy Court.

(G) DETERMINATION OF PROCEEDINGS AS "NON-CORE".

Subject to Sec. (F) next above a particular proceeding shall be "non-core" under 28 U.S.C. §157(b) only if a Bankruptcy Judge so determined sua sponte or rules on a motion of a party filed under 28 U.S.C. §157(b)(3) within the time periods fixed by Sec. (F)(2)(3) and (4) supra. A determination that a related proceeding is non-core shall be in accordance with the guidelines of 28 U.S.C. §157(b) (1984) and on the general premise that core proceedings are matters arising in and under the Title 11 case that are integral and incident to the chapter relief requested.

(H) REVIEW OF NON-CORE PROCEEDINGS HEARD BY BANKRUPTCY JUDGE.

(1) Recommended findings of fact, conclusions of law and proposed judgment and order prepared by a Bankruptcy Judge in a "non-core" proceeding pursuant to 28 U.S.C. §157(c)(1) shall be mailed to all parties in interest by the Bankruptcy Clerk and concurrently transmitted to the District Court Clerk for assignment to a District Judge.

(2) The parties all have ten (10) days after the date of mailing the recommendations to file written objections thereto. Objections lacking specificity as to allegedly erroneous factual findings or legal conclusions may be summarily overruled.

(3) If no objection is timely filed, or if the parties consent in writing, the recommendations of the Bankruptcy Judge may be accepted by the District Judge and appropriate orders may be entered without further notice. Procedure for determining objections shall be as set forth in 28 U.S.C. §157(c)(1).

(4) If the objection is timely filed, the objectant shall, concurrently, mail a copy to opposing counsel and the Clerk of the Bankruptcy Court together with objectant's designation of

those items to be included in the record on review. Additional designations may be so filed and served by opposing counsel within seven (7) days.

(5) Thereupon, the Bankruptcy Court Clerk shall cause all designated portions of the record to be transmitted to the District Court Clerk for a de novo review by the District Judge.

(I) POST-JUDGMENT MOTIONS.

(1) In both "core" and "non-core" proceedings heard and determined by a Bankruptcy Judge, motions under Bankruptcy Rules 9023 and 9024 shall be filed in, and addressed to, the Bankruptcy Court.

(2) In proceedings heard and determined by a District Judge, motions under Bankruptcy Rules 9023 and 9024 shall be filed in, and addressed to, the District Court.

(J) APPEALS.

(1) An appeal from a final or interlocutory order of a Bankruptcy Judge in a core or a non-core proceeding under 28 U.S.C. §157(c)(2) shall be taken to the District Court. Such appeals are governed by 28 U.S.C. §158(a) and the procedure shall be according to Part VIII of the Bankruptcy Rules with the following modifications:

> (a) Notice of Appeal, Filing and Service. The filing of the notice of appeal and other papers with the Bankruptcy Judge as required by Rules 8001, 8002, 8006 and 8008 of the Federal Rules of Bankruptcy Procedure shall be made by filing them with the Clerk of the Bankruptcy Court, except that the Bankruptcy Judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk of the Bankruptcy Court. In lieu of the provision in Bankruptcy Rule 8004 for service of a notice of the filing of a notice of appeal, it shall be the duty of the appellant to serve a copy of the notice of appeal; with a notation of the time of the filing thereof upon all other parties to the appeal at their addresses of record and to file a certificate of such service.
>
> (b) Application for Leave to Appeal Interlocutory Order. Leave to appeal

interlocutory orders and the decrees of Bankruptcy Judges shall be sought by filing an application for leave with the Clerk of the Court to which the appeal is addressed within the time provided by Bankruptcy Rule 8002 for filing a notice of appeal, with proof of service by the applicant in accordance with Bankruptcy Rule 8004. A notice of appeal need not be filed. The application shall contain a statement of the facts necessary to an understanding of the questions to be presented by the appeal; a statement of those issues and of the relief sought; a statement of the reasons why in the opinion of the applicant leave to appeal should be granted; and a copy of the interlocutory order, decree, or judgment complained of and of any opinion or memorandum relating thereto. Within ten (10) days after service of the application, an adverse party may file an answer in opposition. The application and answer shall be submitted without oral argument unless otherwise ordered.

(c) Leave to Appeal Granted; Filing of Record. If leave to appeal is granted, the record shall be designated and transmitted and the appeal docketed in accordance with Bankruptcy Rules 8006 and 8007 and this rule. The time fixed by those Bankruptcy Rules for designating and transmitting the record and docketing the appeal shall run from the date of the order granting leave to appeal. A notice of appeal need not be filed.

(d) Appeal Improperly Taken Regarded as an Application for Leave to Appeal. If a timely notice of appeal is filed where the proper mode of proceeding is by an application for leave to appeal under this rule, the notice of appeal shall be deemed a timely and proper application for leave to appeal. The district Court may enter an order either granting or denying leave to appeal or directing that an application for leave to appeal be filed. Unless the District Court fixes another time in its order directing that an application for leave to appeal be filed, the application shall be filed within ten (10) days of entry of the District Court's order.

(e) Preparation and Transmission or Record. The record shall be designated and prepared in accordance with Bankruptcy Rule 8006 but the record transmitted by the

Bankruptcy Clerk shall be copies of the pleadings and papers designated and the record shall be transmitted forthwith upon the filing of the transcript. If no transcript is designated, the record shall be transmitted forthwith. Notice of the transmission of the record to the Clerk of the District Court shall be given to all parties to the appeal.

(f) Filing and Service of Briefs.

(i) Appellant Brief. The appellant shall serve and file his brief within fifteen (15) days after the transmission of the record to the Clerk of the District Court.

(ii) Appellee Brief. The appellee shall serve and file his brief within fifteen (15) days after service of the brief of the appellant.

(iii) Reply Brief. The appellant may serve and file a reply brief within ten (10) days after service of the brief of the appellee.

(iv) Oral Argument Excused. Oral argument as required by Bankruptcy Rule 8012 is excused for all appeals in this District unless the District Judge to whom the appeal is assigned shall otherwise order.

(v) Motion for Rehearing Eliminated. Bankruptcy Rule 8012 shall not be applicable in this District unless the District Judge shall grant leave to file a motion for rehearing in the order entered on the appeal.

(2) An appeal from a final judgment order or decree of a District Court entered on an appeal or review from the Bankruptcy Court or in a proceeding heard and determined by the District Judge in the first instance shall be taken to the Court of Appeals and governed by the Federal Rules of Appellate Procedure.

(K) COURT FEES AND REGISTRY FUNDS.

(1) The Bankruptcy Clerk is hereby designated as the accountable officer in this judicial district for all monies paid into court in petitions and proceedings pending before or adjudicated by a Bankruptcy Judge in this district. The Bankruptcy Clerk shall receive all such monies for the District Court, shall

deposit them in the name and to the credit of the District Court in accordance with 28 U.S.C. §2041, and shall withdraw them only in accordance with 28 U.S.C. §2042.

(2) The Bankruptcy Court shall collect all fees and costs in petitions and proceedings referred to a Bankruptcy Judge and shall be accountable for them. The Bankruptcy Clerk shall make returns of all fees, costs and other monies collected by him in accordance with procedures prescribed by the Director of the Administrative Office of the United States Courts.

(3) All financial procedures prescribed by the Administrative Office of the United States Courts shall be strictly followed by the Clerk of the Bankruptcy Court and the Clerk of the District Court.

(L) DIVISION OF BUSINESS OF BANKRUPTCY COURT; ASSIGNMENT OF TITLE 11 CASES.

The business of the Bankruptcy Court shall be divided equally among the Bankruptcy Judges on a random basis subject to disapproval by the Chief District Judge. A particular Title 11 U.S.C. case may be reassigned in whole or in part in like manner.

(M) SUPPLEMENTAL BANKRUPTCY COURT LOCAL RULES.

The Bankruptcy Court may adopt supplemental Local Rules not inconsistent with these District Court Rules, the Bankruptcy Rules, or Title 11 or Title 28 of the United States Code.

(N) JURY TRIALS.

The Bankruptcy Judges shall conduct jury trials in all core proceedings in which a party is entitled to trial by jury and a jury is timely demanded and in all non-core proceedings in which a party is entitled to trial by jury and a jury is timely demanded, in which all parties so consent in writing, which consent must be filed at or prior to the first scheduled pretrial in such proceedings, except as otherwise prohibited by the Bankruptcy Amendments and Federal Judgeship Act of 1984, or otherwise ordered by a District Judge.

RULE 46

MEDIATION

(A) GENERAL PROVISIONS.

(1) Purpose. The purpose of this Rule is to provide a supplementary procedure to the Court's existing alternative dispute resolution procedures. It provides for an earlier resolution of civil disputes with resultant savings in time and costs to the litigants and to the Court without sacrificing the quality of justice to be rendered or the right of the litigants to a full trial on all issues not resolved through mediation.

(2) Definitions. Mediation is a process in which an impartial person, the mediator, facilitates communication between disputing parties to promote understanding, reconciliation and settlement.

The mediator is an advocate for settlement and uses the mediation process to help the parties fully explore any potential area of agreement. The mediator does not serve as a judge or arbitrator and has no authority to render any decision on any disputed issue or to force a settlement. The parties themselves are responsible for negotiating any resolution(s) to their dispute.

(B) CERTIFICATION, QUALIFICATIONS AND COMPENSATION OF MEDIATORS.

(1) Certification of Mediators. The judges of this Court shall certify those persons who are eligible and qualified to serve as mediators under this Rule in such numbers as the Court shall deem appropriate. The Court may withdraw certification of any mediator at any time.

(2) Lists of Certified Mediators. The Clerk of Court shall appoint a mediation clerk who shall maintain a list of certified mediators which shall be made available to counsel and the public upon request.

(3) Qualifications of Mediators.

(a) An individual may be certified as a mediator if he or she:

(i) has been admitted to the practice of law for at least five (5) years, and is a member in good standing of the bar of this court; or

(ii) is a professional mediator who would otherwise qualify as a special master, and

(iii) is determined by the Court to be competent to perform the duties of the mediator and has completed appropriate training in the process as the Court may from time to time determine and direct.

(b) Every mediator shall take the oath or affirmation prescribed by 28 U.S.C. § 453 upon qualifying as a mediator.

(c) No person shall serve as a mediator in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist or may in good faith be believed to exist and any mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144. The mediator has a continuing obligation of disclosure.

(d) Any member of the bar who is certified and designated as a mediator pursuant to this Rule shall not for that reason be disqualified from appearing or acting as counsel in any other case pending before this Court.

(4) Compensation of Mediators. Unless provided pro bono, mediators shall be compensated at the rate provided by standing order of the Court. Unless otherwise agreed to by counsel, the cost of the mediator's services shall be born equally by all the parties, payable immediately upon the conclusion of the mediation session. If settlement is not accomplished by mediation, and the case is later concluded by trial or otherwise, the prevailing party, upon motion, may recover as costs in the instant action fees paid to the mediator.

(C) ACTIONS SUBJECT TO MEDIATION.

(1) The Court in its discretion, on its own motion, on the motion of any party, or by stipulation and agreement of the parties may refer any civil action, or any portion thereof, to

mediation under this rule, except administrative reviews and prisoner cases. The Court may excuse from mediation any case arbitrated or to be arbitrated in order to avoid unnecessary compounding of expenses.

(2) Any civil action or claim referred to mediation pursuant to this Rule may be withdrawn from mediation by application to the assigned judge at least ten (10) days prior to the scheduled mediation session upon a determination that the case is not suitable for mediation.

(D) PROCEDURES FOR REFERRAL, SELECTING THE MEDIATOR AND SCHEDULING THE MEDIATION SESSION.

(1) The possibility and appropriateness of mediation under this rule shall be discussed at the initial status/scheduling conference of the case in accordance with Local Rule 17.

(2) In every case in which the court determines that referral to mediation is appropriate pursuant to Section C(1) of this Rule, the Court shall enter an order of referral which shall define the window of time in which the mediation session shall be conducted. The Court intends that mediation under this Rule occur at the earliest practical time in an effort to encourage earlier, less costly resolution.

Referral to mediation under this rule shall not delay or stay other proceedings unless so ordered by the Court.

(3) Within ten (10) days of the order of referral, parties are to select a mediator of their choice from a list of mediators available from the Court and submit the selection to the mediation clerk in the court clerk's office. If no such selection is timely made or if the parties cannot agree upon the mediator, the mediation clerk shall make the selection. The mediation clerk shall work with the selected mediator and counsel of record to set a mutually agreeable date within the time prescribed by the order of referral and an order appointing the mediator and setting the time and place of the session shall issue.

(4) Mediation sessions under this rule may be held in any available court space or in any other suitable location

agreeable to the mediator and the parties. Consideration shall be given to the convenience of the parties and the cost and time of travel involved.

(5) There shall be no continuance of a mediation session beyond the time set in the order of referral except by order of this Court upon a showing of good cause. If any rescheduling occurs within the prescribed time, the mediation clerk must be notified and availability of the place of the hearing considered. Any settlement prior to the scheduled mediation shall promptly be reported to the mediator and the Court.

(E) THE MEDIATION SESSION.

(1) Memorandum for Mediation. At least two (2) days prior to the mediation session, each party shall provide to the mediator and all other parties a memorandum for mediation stating the name and role of each person expected to attend, identity of each person with full settlement authority, and including a concise summary of the parties' claims/defenses/counter-claims, etc., relief sought and contentions concerning liability and damages. The summary shall not exceed five (5) pages and shall not be filed in the case or made part of the court file.

(2) Attendance Required. The lead attorney who will try the case for each party shall appear, and shall be accompanied by one with full settlement authority. The latter will be the parties if natural persons, or representatives of parties which are not natural persons, but may not be counsel (except in-house counsel) or a person who is not directly or actively associated with the party or parties. Other interested parties such as insurers or indemnitors shall attend and are subject to the provisions of this Rule. Only the assigned judge may excuse attendance of any attorney, party or party's representative.

(3) Default. Subject to the approval of the mediator, the mediation session may proceed in the absence of a party, who, after due notice, fails to be present. Sanctions may be imposed by the Court on any party who, absent good cause shown, fails to attend or participate in the mediation session in good faith in

accordance with Local Rule 17(E).

(4) Good Faith Participation and the Process. Parties and counsel commit to participate in good faith, without any time constraints and to put forth their best efforts toward settlement. Typically, the mediator meets initially with all parties to the dispute and their counsel in joint session and then separately in caucus. The process permits the mediator and the parties to explore the needs and interests underlying the stated positions, generate and evaluate alternative settlement proposals or potential solutions as well as interests that may be outside the scope of the stated controversy or which could not be addressed by judicial actions. The parties participate in crafting a resolution of the dispute.

(5) Confidentiality. Mediation is regarded as a settlement procedure and is confidential and private. No participant may disclose, without consent, any confidential information acquired during mediation. There shall be no stenographic or electronic record, e.g., audio or video, of the mediation process.

The mediator may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

(6) Conclusion of the Mediation Session. The mediation shall be concluded:

(a) by resolution and settlement of the dispute by the parties, or

(b) by adjournment for future mediation by agreement of the parties and the mediator, or

(c) upon declaration of impasse by the mediator that future efforts to resolve the dispute are no longer worthwhile.

If the mediation is adjourned by agreement for further mediation, the additional session shall be concluded within the

time ordered by the court.

(F) MEDIATION REPORT; NOTICE OF SETTLEMENT OR TRIAL.

(1) Immediately upon conclusion of the mediation, the mediator shall file a mediation report with the Clerk of Court indicating only whether the case settled, settled in part, or that the case did not settle.

(2) In the event the parties reach an agreement to settle the case, each lead counsel shall promptly notify the Court and promptly prepare and file the appropriate dismissal or closing papers.

(3) If the mediation session does not conclude in settlement of all the issues in the case, the case will proceed toward trial pursuant to the scheduling orders entered in the case.

APPENDIX I

OATH OF ATTORNEY

I do solemnly swear:

I will support the Constitution of the United States and the Constitution of the State of Oklahoma. I will maintain the respect due to courts of justice and judicial officers.

I will be bound by the Model Rules of Professional Conduct of the American Bar Association and will conduct myself in compliance therewith at all times.

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land.

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with business except from the client or with the client's knowledge and approval.

I will abstain from all offensive personalities, and advance no facts prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged.

I will never reject from any consideration personal to myself the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice. So help me God.

APPENDIX II

INFORMATION AND INSTRUCTIONS

FOR FILING COMPLAINT UNDER 28 U.S.C. § 1331
(FEDERAL QUESTION STATUTE)

The attached form is to assist you in the preparation of a complaint seeking relief under 28 U.S.C. § 1331. In order for your complaint to be considered by the district court, it must be typewritten or legibly handwritten. All questions must be answered clearly and concisely in the appropriate space on the form. If necessary, you may use up to two additional pages (8½" x 11") to complete part "C" of the complaint, clearly stating the count to which the continued statement applies. If there is more than one defendant you should clearly indicate which of the acts alleged is attributable to each defendant.

An original and one copy of the complaint must be provided for the Court and one copy for each of the persons (defendants) you wish to sue. In addition, we must serve two copies on the Attorney General of the United States and one copy upon the United States Attorney. For example, if you name two defendants you must file an original and six copies of the complaint. You should keep an additional copy of the complaint for your own records. All copies of the complaint must be identical to the original.

Your complaint must be signed and the Declaration under penalty of perjury must be completed and signed by you. You are cautioned (warned) that any false statement of a material fact may serve as a basis for prosecution and conviction for perjury. You should therefore exercise care to assure that all answers are true, correct, and complete.

The complaint must be accompanied by a filing fee of $120.00. If you cannot afford to prepay this fee, you may request permission to proceed in forma pauperis by completing the attached request and declaration setting forth information regarding your inability to prepay costs and fees. The Declaration under penalty of perjury at the bottom of page 2 must be completed and signed by you. In addition, you must have an authorized officer complete the

certificate, indicating the amount of money and securities on deposit to your credit in any account in its institution.

The Clerk of the Court will not file your complaint unless it conforms to these instructions and the forms provided.

When your complaint is completed, it should be mailed with the necessary copies and filing fee or request and declaration to proceed in forma pauperis to the Clerk of the United States District Court, whose address is:

ROBERT D. DENNIS, CLERK
UNITED STATES DISTRICT COURT
UNITED STATES COURTHOUSE
200 NW 4TH STREET, ROOM 1210
OKLAHOMA CITY, OKLAHOMA 73102

ATTN: PRO SE/WRIT CLERK

_____
(Present and Prior Names)

_____
(Institutional Register No.)

_____

_____
(Address and Name of Institution
Where Presently Incarcerated)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

_____
(Full and Correct Name)
Plaintiff,

v.

_____

_____

_____,

Defendant(s).

CASE NO._____

(To be supplied by the Clerk)

_____

COMPLAINT PURSUANT TO
28 U.S.C. § 1331

A. JURISDICTION

1) _____ presently resides at _____
(Plaintiff)

_____
(Mailing address or place of confinement)

_____

2) Defendant _____
(Name of first defendant)
presently resides at _____

and is employed as _____
(Position and title, if any)
At the time the claim(s) alleged in this complaint arose, was this defendant acting in his official capacity as an employee of the United States?

Yes _____ No _____ Explain:_____

_____

_____

_____

3) Defendant _____ presently resides at
(name of second defendant)
_____ and is
(present address)
employed as _____. At the
(Position and title, if any)
time the claim(s) alleged in this complaint arose was this defendant acting in his official capacity as an employee of the United States?

Yes _____ No _____ Explain: _____

_____

_____

(Use the back of this page to furnish the above information for additional defendants.)

4) Jurisdiction is invoked pursuant to 28 U.S.C. § 1331. (If you wish to assert jurisdiction under additional statutes, you should list them below, and explain their significance.)

_____

_____

B. NATURE OF THE CASE

1) Briefly state the background of your case.

C. CLAIM(S)

1) I allege that my claim(s) arises under the Constitution or laws of the United States and that the following facts form the basis for my allegations: (If necessary you may attach up to two additional pages (8½" x 11") to explain any allegation or to list additional supporting facts. Do not attach copies of pleadings, or briefs from other cases or other memoranda unless requested by the Court.)

A) (1) Count I: _____

_____

_____

(2) Supporting Facts: (Include all facts you consider important, including names of persons involved, places and dates. Describe exactly how each defendant is involved. State the facts clearly in your own words without citing legal authority or argument.)

B) (1) Count II: _____

_____

_____

(2) Supporting facts:

C) (1) Count III:_____

_____

_____

(2) Supporting facts:

D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

1) List all other lawsuits you have filed in any federal or state court as well as any criminal action which in any way relates to the claim(s) involved in this action.

a) Parties to previous lawsuit

Plaintiffs:_____

Defendants:_____

b) Name of court and docket number_____

_____

c) Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?)_____

_____

d) Issues raised_____

e) Approximate date of filing lawsuit_____

f) Approximate date of disposition_____

Appendix II-i - Continued

a) Parties to previous lawsuit

Plaintiffs:_____

Defendants:_____

b) Name of court and docket number_____

_____

c) Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?)_____

_____

d) Issues raised_____

e) Approximate date of filing lawsuit_____

f) Approximate date of disposition_____

a) Parties to previous lawsuit

Plaintiffs:_____

Defendants:_____

b) Name of court and docket number_____

_____

c) Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?)_____

_____

d) Issues raised_____

e) Approximate date of filing lawsuit_____

f) Approximate date of disposition_____

(attach additional sheets as necessary to complete Part D)

2) I have previously sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part C. Yes _____ No _____ If your answer is "Yes," briefly describe how relief was sought and the results. If your answer is "No," briefly explain why administrative relief was not sought.

E. REQUEST FOR RELIEF

1) I believe that I am entitled to the following relief:

_____
Signature of Attorney (if any)

DECLARATION UNDER PENALTY OF PERJURY

I declare (or certify, verify, or state) under penalty of perjury that the foregoing [Complaint] is true and correct. 28 U.S.C. § 1746; 18 U.S.C. §§ 1621, et seq.

Executed at _____ on _____, 19___.
(Location) (Date)

_____
(Signature of Plaintiff)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

_____,	CASE NO. _____
v.	(To be supplied by the Clerk)
_____,	
_____	MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* AND SUPPORTING DECLARATION (PURSUANT TO 28 U.S.C. 1915 AND 28 U.S.C. 1746)

I hereby apply for leave to: (check one)

☐ Commence this action for habeas corpus/civil rights relief

☐ Pursue this action under 28 U.S.C. §2255 or Rule 35, F.R.Crim.P.

without prepayment of fees and costs or giving security therefor.

In support of my application, I state that the following facts are true:

1) I am the party initiating said action and I believe that I am entitled to relief.

2) The nature of said action is: _____
_____
_____
_____

3) I am unable to prepay the costs of this action or give security therefor because of my poverty.

4) I have no assets or funds which could be used to prepay the fees or costs, except: _____

_____

_____

(Write "none" above if you have nothing; otherwise list your assets)

5) Are you presently employed? Yes ☐ No ☐

(a) If the answer is "Yes," state the amount of your salary or wages per month, and give the name and address of your employer

_____

_____

(b) If the answer is "No," state the date of last employment and the amount of the salary and wages per month which you received _____

_____

_____

6) Have you received within the past twelve months any money from any of the following sources?

(a) Business, profession or form of self-employment?

Yes ☐ No ☐

(b) Rent payments, interest or dividends? Yes ☐ No ☐

(c) Pensions, annuities or life insurance payments?

Yes ☐ No ☐

(d) Social Security, Veterans Administration, disability pensions, workmen's compensation or unemployment benefits?

Yes ☐ No ☐

(e) Gifts or inheritances? Yes ☐ No ☐

(f) Any other sources? Yes ☐ No ☐

If the answer to any of the above is "Yes," describe each source of money and state the amount received from each during the past twelve months _____

_____

_____

7) Do you own any cash, or do you have money in a checking or savings account? Yes ☐ No ☐ (include any funds in prison accounts)

If the answer is "Yes," state the total value of the items owned _____

_____

_____

8) Do you own real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)? Yes ☐ No ☐

If the answer is "Yes," describe the property and state its approximate value _____

_____

_____

9) You may state briefly any additional financial or other information regarding your ability to pay the costs of this action (for example, persons who are dependent on you for support) _____

_____

_____

I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury.

I DECLARE (OR CERTIFY, VERIFY, OR STATE) UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. 28 U.S.C. §1746. 18 U.S.C. §1621.

Executed at _____ on _____
(Location) *(Date)*

_____
(Signature)

CERTIFICATE
(If Applicable)

I hereby certify that on _____ the movant herein had cash and securities in the amount of $_____ on account to his credit at the penal institution where he is confined. I further certify that movant likewise has the following securities to his credit according to the record of said _____

_____

_____

_____

_____
Authorized Officer of Penal Institution

_____ _____
(Date) *(Title)*

ORDER

In reliance upon the representations and information set forth in the above motion, declaration and certificate, it is ordered that:

☐ The movant herein is permitted to file and maintain this action to conclusion without prepayment of fees or costs.

☐ The movant herein is permitted to file this action without prepayment of fees or costs, however any further proceedings in this matter must be specifically authorized in advance by the court.

☐ This motion for leave to proceed *in forma pauperis* is denied.

_____
United States District Judge

_____, 19___

APPENDIX III

EXHIBIT SHEET

Page No._____of_____Pages

Case No._____Style_____vs._____

Judge_____C.R. Deputy_____Reporter_____

_____Exhibits

Exhibit Number	Description of Exhibit	Date Adm.	Disposition

NOTE: Use this form for both
STATUS REPORT
(complete to extent possible at time filed)
and
FINAL PRETRIAL ORDER
(complete fully)

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

_____ Plaintiff,	)	
vs.	)	CIV- _____
_____ Defendant.	)	

(STATUS REPORT)
or
(FINAL PRETRIAL ORDER)
(use title as appropriate)

Date of Conference: _____, 19 _____.

Appearing for Plaintiff:_____

Appearing for Defendant:_____

JURY TRIAL DEMANDED _____ **NONJURY TRIAL** _____

I. BRIEF PRELIMINARY STATEMENT. State summarily the facts and positions of the parties. (Suitable for use as the statement of the case in jury selection)

II. JURISDICTION. The basis on which the jurisdiction of the Court is invoked.

III. STIPULATED FACTS. List stipulations as to all facts that are not disputed or reasonably disputable, including jurisdictional facts.

Examples:

A. All parties are properly before the Court;
B. The Court has jurisdiction of the parties and of the subject matter;
C. All parties have been correctly designated;
D. Etc.

IV. DISPUTED FACTS. Those facts not stipulated to, which are legitimately in dispute and as to which opposing counsel expects to present contrary evidence at trial or genuinely challenges on credibility grounds.

Examples:

A. Was plaintiff injured and damaged by the negligence of the defendant?

B. What amount, if any, is plaintiff entitled to receive of defendant as compensatory damages?

C. Etc.

V. LEGAL ISSUES. State separately, and by party, each disputed legal issue and the authority relied upon.

Examples:

A.

B.

VI. CONTENTIONS AND CLAIMS FOR DAMAGES OR OTHER RELIEF SOUGHT.

A. Plaintiff:

Examples:

1. As to liability.
2. As to damages.
3. Etc.

B. Defendant:

Examples:

1. As to liability.
2. As to damages.
3. Etc.

VII. EXHIBITS. (The following exclusionary language **MUST** be included).

Exhibits not listed will not be admitted by the Court unless good cause be shown and justice demands their admission.

A. Plaintiff:

Number (Pre-marked for trial)	Title/Description *Examples:*	Objection	Federal Rule of Evidence Relied Upon
1	Police Report	Hearsay	803(8)
2	Photo of plaintiff	None	

B. Defendant:

Number (Pre-marked for trial)	Title/Description *Examples:*	Objection	Federal Rule of Evidence Relied Upon
1	Photo of scene	None	
2	Scale model	None	

VIII. WITNESSES. (The following exclusionary language **MUST** be included)

No unlisted witness will be permitted to testify as a witness in chief except by leave of Court when justified by exceptional circumstances.

A. Plaintiff:

Name	Address	Proposed Testimony

B. Defendant:

Name	Address	Proposed Testimony

IX. ESTIMATED TRIAL TIME: For liability _____ For damages _____

X. BIFURCATION REQUESTED: Yes ____ No ____

XI. POSSIBILITY OF SETTLEMENT:

Good _____ Fair _____ Poor _____

XII. ***FOR STATUS REPORTS ONLY***
(Not For Final Pretrial Orders)

A. Possibility of Court-Annexed Arbitration - Local Rule 43.

Include a statement as to the eligibility of this case for mandatory arbitration and/or whether you wish to consent to arbitration under Local Rule 43. In accordance with 28 U.S.C. §652(a)(2) and Local Rule 43(B)(2)(c), this statement should also include any necessary certification as to amount of damages.

B. Mediation Requested. Yes ____ No ____

C. Parties Consent to Trial by Magistrate Judge. Yes ____ No ____

D. Management Plan Requested. Standard _____ Specialized _____

All parties approve this order and understand and agree that this order supersedes all pleadings, shall govern the conduct of the trial and shall not be amended except by order of the Court.

_____
Counsel for Plaintiff

_____
Counsel for Defendant

APPROVED this _____ day of _____, 19___.

_____
UNITED STATES DISTRICT JUDGE

APPENDIX V

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

_____ Plaintiff,	)	
vs.	)	Case No. _____
_____ Defendant.	)	TRACK: _____

SCHEDULING ORDER

Date _____ Time _____ To _____

Judge _____ Clerk _____ Total _____

JURY TRIAL DEMANDED _____ **NONJURY TRIAL** _____ Trial Docket _____

Appearing for Plaintiff: _____

Appearing for Defendant: _____

THE FOLLOWING DEADLINES ARE SET BY THE COURT

(May not be extended except by Court order pursuant to Local Court Rule 14)

1. Motions to join additional parties to be filed by _____

2. Motions to amend pleadings to be filed by _____

3. Plaintiff to submit to defendant final list of **witnesses** in chief, together with addresses and brief summary of expected testimony where witness has not already been deposed*_____

   Submission of **expert witness(es)** _____

4. Defendant to submit to plaintiff final list of **witnesses** in chief, together with addresses and brief summary of expected testimony where witness has not already been deposed*_____

   Submission of **expert witness(es)** _____

5. Plaintiff to submit to defendant final **exhibit** list (if exhibit is nondocumentary, a photograph or brief description thereof sufficient to advise defendant of what is intended will suffice)* _____

6. Defendant to submit parties final **exhibit** list (if exhibit is nondocumentary, a photograph or brief description thereof sufficient to advise plaintiff of what is intended will suffice)*_____

7. Discovery to be completed by _____

8. Plaintiff's final contentions to be submitted to defendant's counsel by _____

9. Defendant's final contentions to be submitted to plaintiff's counsel by _____

10. All dispositive motions to be filed by_____

11. All stipulations to be filed by _____

12. Motions in limine to be filed by _____

13. Requested jury instructions to be submitted on or before _____

14. Joint Statement of case to be submitted on or before _____

15. Requested voir dire to be submitted by: _____

16. Trial Briefs to be filed by _____

17. NON JURY CASES ONLY: Proposed findings and con-clusions of law to be submitted no later than _____

18. Any objections to the above trial submissions to be filed 5 days thereafter.

19. Final pretrial order approved by all counsel to be submitted to the Court by _____

20. Plaintiff's counsel is directed to initiate settlement discussions with defendant _____ and report status of such discussions to the Court no later than _____

21. Supplemental Status Conference to be set _____

22. Final Pretrial to be set _____

23. This case is hereby assigned to the **Special Management Track.** ☐

A **Joint Specialized Case Management Plan** shall be filed by _____ and include the following topics:

(1) Identification of lead and liaison counsel and the responsibilities of each; (2) suggestions for maintaining confidentiality; (3) a description of, and the sequence of, discovery to be had under relevant provisions of the Federal Rules of Civil Procedure; (4) in class action cases, a proposed timetable for class issue discovery, briefing, and hearing; (5) a timetable for the filing and service of dispositive motions under Fed.R.Civ.P. 12 and/or Fed.R.Civ.P. 56; (6) proposals relating to the addition of parties, bifurcation, and special needs concerning service of process; and (7) subjects bearing upon the administration of the case, including consideration of the appointment of a special master to administer discovery, resolving initial discovery disputes, identifying a custodian of exhibits, and serving notices and court orders to multiple parties when necessary.

24. This case is referred to Mandatory Arbitration under Local Rule 43 ☐.

This case is referred to Consensual Arbitration under Local Rule 43 ☐.

The proposed Arbitration Hearing date is _____.

The Court exempts the case from Arbitration ☐.

25. This case is referred to Mediation under Local Rule 46 ☐.

A Mediation Session will be held between _____ and

_____

26. The parties consent to trial by a magistrate judge. ☐

27. IT IS ORDERED that all exhibits intended to be offered herein be premarked at least _____ days before the commencement of the trial. The Clerk will supply labels for this purpose.

28. Other: _____

_____

BY ORDER OF THE COURT.
ROBERT D. DENNIS, CLERK

By: _____
Deputy Clerk

* The exchange of witnesses required by numbers 3 and 4 above shall be by letter with two copies of the letter of transmittal to be submitted to the Clerk of this Court for filing. Except for good cause shown, no witness shall be permitted to testify in chief for any party unless such witness' name was listed in the letter of transmittal. The exchange of exhibits required by numbers 5 and 6 above shall also be accomplished via a letter of transmittal with a copy thereof to be furnished to the Clerk for filing. If upon receipt of such final exhibit list a party does not make written objection thereto within five (5) days, he is deemed to have waived all objection to said exhibit or exhibits. If written objection is so filed, the basis of same shall be spelled out in detail by way of brief. Further, in the event of objection both sides shall, in the pretrial order, state the rule or rules upon which they rely.

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