LOCAL RULES OF COURT

United States District Court

Middle District of Tennessee

Effective December 1, 2009

AMENDMENTS TO THE LOCAL RULES
1994 TO DATE

1. Rule 1(f) was amended, effective June 1, 1994.

2. Rule 8(a)(6) was amended, effective June 1, 1994.

3. Rule 8(b)(7) was amended, effective March 1, 1994.

4. Rule 9(a)(2) was amended, effective July 21, 1997.

5. Rule 9(d)(5) was rescinded, effective June 1, 1994.

6. Rule 9(g) was adopted, effective July 21, 1997.

7. Rule 11 was amended, effective March 1, 1994.

8. Rule 12(c)(6)(c) was amended, effective June 1, 1994.

9. Rule 13(e) was amended, effective July 21, 1997.

10. Rules 20-27 were adopted as amendments to Rule 20 to establish "Local Rules for an Alternative Dispute Resolution Program," effective December 15, 1997.

11. Rule 28 (originally Rule 21) was adopted, effective March 1, 1994.

12. Rules 1-13 and 20-28, and the Appendices were amended, effective January 1, 2001.

13. Rules 8, 9 and 11, and the Appendices were amended, effective February 15, 2001.

14. Rule 29 on electronic filing was adopted, effective July 5, 2005.

15. Rule 6(a) was amended, effective April 1, 2006.

16. All Rules were renumbered pursuant to Fed. R. Civ. P. 83 and Fed. R. Crim. P. 57, effective June 1, 2006.

17. Time periods in the Rules were revised to conform to amendments to Fed. R. Civ. P. 6 and Fed. R. Crim. P. 45 regarding calculating time periods, effective December 1, 2009. Rule 80.01 was amended, effective December 1, 2009. The previously separate Magistrate Judge Rules were incorporated into the Local Rules as LR 72.01 through 73.01 and LCrR 58.01 & 58.02, effective December 1, 2009.

PURPOSE OF THESE RULES

These Rules are promulgated for the information and edification of the practicing bar with the hope that its members will familiarize themselves with them and thereby come into court with greater feelings of confidence and assurance.

ACKNOWLEDGEMENT

The Court wishes to express its gratitude to the American Bar Association, from whose Code of Professional Responsibility portions of these Rules, particularly Rule 83.03, were drawn. Credit must also be given to various United States District Courts throughout the nation, whose local rules provided a rich and useful source of ideas and models. Special thanks are extended to the practicing bar in the Middle District of Tennessee whose thoughtful comments and constructive suggestions greatly enhanced the workability, conciseness and clarity of these Rules.

CONFLICTS

The Local Rules of Court include Local Civil Rules designated LR and Local Criminal Rules designated LCrR. The Local Civil Rules govern both civil cases and criminal cases to the extent applicable. The Local Criminal Rules control in criminal cases in the event of any conflicts with the Local Civil Rules.

None of the Local Rules herein is applicable to the U.S. Bankruptcy Court, since that court has its own rules.

LOCAL RULES RENUMBERING TABLE

PRIOR LOCAL RULE NUMBER	RENUMBERED LOCAL RULE
Rule 1 – Attorneys	LR 83.01
Rule 2 – Photographing, Broadcasting and Televising	LR 83.02
Rule 3 – Release of Information Concerning Criminal and Civil Proceedings - Rule 3(a) - Rule 3(b) - Rule 3(c) - Rule 3(d)	LR 83.03 & LCrR 2.01 LCrR 2.01(a) LR 83.03(a) LCrR 2.01(b) LR 83.03(b)
Rule 4 – Use of Courtrooms	LR 83.04
Rule 5 – Divisions of Court	LR 77.01 & LCrR 18.01
Rule 6 – Assignment of Cases - Rule 6(a) - Rule 6(b)(1) - Rule 6(b)(2) - Rule 6(b)(3) - Rule 6(b)(4) - Rule 6(b)(5)	LR 40.01 & LCrR 50.01 LR 40.01(a) LCrR 50.01 LCrR 6.01(a) LCrR 6.01(b) LCrR 6.01(c) LCrR 11.01 & LCrR 16.01(c)
Rule 7 – Clerk of the Court - Rule 7(a) – Legal Advice - Rule 7(b) – Removing Case Files - Rule 7(c) – Case Assignments - Rule 7(d) – Advance Payment of Filing Fees - Rule 7(e) – Issuing Summonses and Subpoenas - Rule 7(f) – Entry of Judgment	 LR 77.02 LR 79.01(a) LR 40.01(b) LR 3.01 LR 4.01 & LR 45.01 LR 77.03
Rule 8 – Pleadings, Motions, Briefs, Summonses, Subpoenas, Etc. - Rule 8(a)(1)a - Rule 8(a)(1)b - Rule 8(a)(1)c - Rule 8(a)(2) – Civil Cover Sheet - Rule 8(a)(3) – Corporate Disclosure Statement	 LR 7.03(a) LR 38.01 LR 7.03(b) LR 3.02 LR 7.02

- Rule 8(a)(4) – Certificate of Service	LR 5.01
- Rule 8(a)(5) – Preparation of Summons	LR 4.01(b)
- Rule 8(a)(6) – Service of Process	LR 4.01(c)
- Rule 8(a)(7) – Preparation of Subpoenas for Witnesses	LR 45.01(b)
- Rule 8(a)(8) – Dismissal of Inactive Cases	LR 41.01
- Rule 8(b) – Motions	
- Rule 8(b)(1)	LR 78.01
- Rule 8(b)(2) – Filing	LR 7.01(a)
- Rule 8(b)(3) – Response	LR 7.01(b)
- Rule 8(b)(4) – Motions Pending on Removal	LR 7.01(f)
- Rule 8(b)(5) – Motions in Criminal Cases	LCrR 12.01 & LCrR 16.01(b)
- Rule 8(b)(6) – Motions Relating to Discovery in Civil Cases.	LR 37.01
- Rule 8(b)(7) – Motions for Summary Judgment	LR 56.01
- Rule 8(b)(8) – Motions to Ascertain Status of Case	LR 7.01(c)
- Rule 8(b)(9) – Orders Made Orally in Court	LR 77.03(b)
- Rule 8(b)(10)	LR 7.01(d)
- Rule 8(c) – Briefs	LR 7.01(e)
- Rule 8(d) – Application for a Temporary Restraining Order	LR 65.01
- Rule 8(e) – Petitions for Enforcement of Internal Revenue Summonses	LR 5.04
Rule 9 – Discovery in Civil Cases	
- Rule 9(a) – Interrogatories	LR 33.01
- Rule 9(a)(1)	LR 33.01(a)
- Rule 9(a)(2)	LR 33.01(b)
- Rule 9(a)(3)	LR 33.01(c)
- Rule 9(b) – Request for Admissions and Production of Documents	LR 34.01 & LR36.01
- Rule 9(c) – Filing of Depositions, Interrogatories, Requests for Documents, Requests for Admission	
- Rule 9(c)(1)	LR 5.02
- Rule 9(c)(2)	LR 37.01(b)(1)
- Rule 9(c)(3)	LR 26.01
- Rule 9(d) – Discovery Conference, Discovery Depositions and Evidentiary Depositions	
- Rule 9(d)(1)	LR 37.01(c)
- Rule 9(d)(2)	LR 32.01(a)
- Rule 9(d)(3)	LR 79.01(b)

- Rule 9(d)(4) - Rule 9(e) – Discovery Motions - Rule 9(f) – Subpoena in Aid of Discovery - Rule 9(g) – Subpoena for Production of Documents	LR 32.01(b) LR 37.01 LR 45.01(c) LR 45.01(d)
Rule 10 – Discovery, Motions and Sentencing in Criminal Cases - Rule 10(a) – Discovery in Criminal Cases - Rule 10(b) – Motions in Criminal Cases - Rule 10(b)(1) – Discovery Motions - Rule 10(b)(2) – Pretrial Motions - Rule 10(c) – Sentencing	 LCrR 16.01(a) LCrR 12.01(a) LCrR 16.01(b) LCrR 12.01(b) LCrR 32.01
Rule 11 – Customized Case Management	LR 16.01
Rule 12 – Trial Procedures - Rule 12(a) – Presence of Counsel - Rule 12(b) – Presence of Parties - Rule 12(c) – Witnesses - Rule 12(d) – Objections to Proffered Evidence - Rule 12(e) – Closing Arguments - Rule 12(f) – Requests for Jury Instructions - Rule 12(g) – Relations With a Jury - Rule 12(h) – Post-Verdict Interrogation of Jurors - Rule 12(i) – Proposed Findings of Fact and Conclusions of Law -- Non-Jury Cases - Rule 12(j) – Challenging Jurors During Selection and Composition of Juries - Rule 12(k) – Disposition of Materials – Criminal Cases	 LR 39.01(a) LR 39.01(b) LR 39.01(c) LR 39.01(d) LR 39.01(e) LR 51.01 LR 39.01(f)(1) LR 39.01(f)(2) LR 52.01 LR 47.01 LCrR 16.02
Rule 13 – Judgments, Garnishments and Costs - Rule 13(a) – Entry of Judgments - Rule 13(b) – Payment and Satisfaction of Judgments - Rule 13(c) – Garnishments - Rule 13(d) – Costs - Rule 13(e) – Attorneys' Fees	 LR 58.01 LR 67.01 LR 69.01 LR 54.01(a) LR 54.01(b)
Rule 14 – Exhibits	LR 79.01(c)

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Rule 16 – Court Reporters and Transcripts	LR 80.01
Rule 17 – Rules Pertaining to Bankruptcy Appeals	LR 81.01
Rule 18 – Appeals from the District Court	LR 83.05
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Rule 21 – ADR: Definitions, Procedures and Administration	LR 16.03
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LOCAL CIVIL RULES

LR1.01 - DEFINITIONS

(a) **Action, Finally Determined.** When all appeals are exhausted, or if there is no appeal, when a final judgment is entered in the United States District Court.

(b) **Attorney, Member in Good Standing of Bar.** Any attorney who has been admitted to practice at the specified bar and has not been suspended, expelled, disbarred, or otherwise removed therefrom. Masculine pronouns are used for the sake of simplicity to refer to all attorneys, whether female or male.

(c) **Civil Case.** A civil proceeding docketed in the United States District Court.

(d) **Criminal Case.** A criminal proceeding docketed in the United States District Court or in the office of the United States Magistrate Judge.

(e) **Time.** *Fed. R. Civ. P. 6* and *Fed. R. Crim. P. 45* shall apply to civil and criminal cases respectively in computing any period of time prescribed or allowed by these Rules, unless otherwise provided by the applicable Rule.

(f) **Trial Judge.** The United States District Judge to whom a case has been assigned pursuant to the assignment procedures of this Court or the Magistrate Judge when the case is being tried by the Magistrate Judge pursuant to consent of the parties.

LR1.02 - DEVIATIONS FROM LOCAL RULES

By order entered in any case, the Court may deviate from any provision of any Local Rule of this Court, when appropriate for the needs of the case and the administration of justice.

LR3.01 - ADVANCE PAYMENT OF FILING FEES

(a) **Clerk to Require.** The Clerk shall require advance payment of fees before any civil action, suit, or proceeding (other than those authorized to be brought in forma pauperis) is filed.

(b) **When Fee Not Included.** When a pleading is received for filing and is unaccompanied by either the required filing fee or an application to proceed in forma pauperis, or is accompanied by an application to proceed in forma pauperis which has not been acted upon by the Court, then the Clerk shall note "received" and the date received thereon and immediately notify counsel and/or the party who submitted the pleading that the pleading is held but not filed pending receipt of the required filing fee or an order granting an application to proceed in forma pauperis.

(c) **In Forma Pauperis.** In all cases in which the plaintiff or defendant has been allowed to proceed in the district court in forma pauperis, he shall, upon filing a notice of appeal, file a new affidavit of poverty together with his notice of appeal. In all proceedings brought pursuant to *28 U.S.C. § 2254* and *28 U.S.C. § 2255* and in all proceedings brought pursuant to *42 U.S.C. § 1983* by an inmate of a penal institution, the affidavit of poverty shall be on forms supplied by the Clerk of the Court and approved by this Court.

LR3.02 - CIVIL COVER SHEET

The filing attorney shall prepare and submit a civil cover sheet (Form JS-44) to the Clerk of Court with each civil complaint filed. Civil cover sheets (Form JS-44) and instructions for the preparation thereof are available from the office of the Clerk of the Court.

LR4.01 - SUMMONSES

(a) **Issuance of Summons.** The issuance of summonses shall be in accordance with Rule 4.01(b).

(b) **Preparation of Summons.** With the filing of the complaint, third-party complaint or any other pleadings that require the issuance of a summons, the filing attorney shall prepare and submit three copies of the summons, and upon approval the Clerk shall issue same in accordance with the *Federal Rules of Civil Procedure*.

(c) **Service of Process.** The Marshal will not serve a summons or other civil process unless so required by these Rules, the *Federal Rules of Civil Procedure*, or by order of the Court. In cases in which the Marshal does serve process, under appropriate circumstances, he may do so by certified or registered mail, in accord with Rule 4(e)(1) of the *Federal Rules of Civil Procedure* and Rule 4.04(12) of the *Tennessee Rules of Civil Procedure***.** The Marshal shall attach to his return on such process the return receipt delivered to him by the Postal Service.

LR5.01 - CERTIFICATE OF SERVICE

All things filed with the Court that are required to be served upon a party shall include a certificate of service identifying by name the person served, what was served, method of service and date of service. Time-sensitive papers shall be served by hand-delivery or facsimile.

LR5.02 - FILING OF DEPOSITIONS, INTERROGATORIES, REQUESTS FOR DOCUMENTS, REQUESTS FOR ADMISSION

Pursuant to the provisions of Rule 5(d) of the *Federal Rules of Civil Procedure*, depositions, interrogatories, requests for documents, requests for admissions, and answers and responses thereto shall not be filed with the Clerk's office, except in support of or in opposition to a motion or by order of the Court.

LR5.03 - ELECTRONIC FILING AND SERVICE

(a) **Filing of Documents by Electronic Means.** All attorneys practicing in the Middle District of Tennessee, including those admitted pro hac vice and those authorized to represent the United States, shall, absent good cause shown, register as Filing Users of the Electronic Filing System and file their documents by electronic means as set forth in Administrative Order No. 167, Administrative Practices and Procedures for Electronic Case Filing (ECF). A document filed by electronic means constitutes a written paper for the purposes of these Local Rules, the *Federal Rules of Civil Procedure* and the *Federal Rules of Criminal Procedure.*

(b) **Electronic Service of Filed Documents.** Receipt of the Notice of Electronic Filing generated by the Court's Electronic Case Filing System (CM/ECF) shall constitute service of the electronically filed document on persons registered as Electronic Filing Users.

(1) A certificate of service must be included with all electronically filed documents stating that service was made upon Filing Users through the Electronic Filing System and further stating how service was accomplished on any party or counsel not served through the Electronic Filing System.

(2) Initial documents, such as a complaint and summons in a civil case, must be served in accordance with Rule 4 of the *Federal Rules of Civil Procedure* and not via the Court's Electronic Case Filing System (CM/ECF). Civil complaints, charging documents in criminal cases, and removal documents from State Court must be filed by Filing Users on paper in the traditional manner and not electronically and must be accompanied by a disk or CD-ROM containing the document in PDF format.

LR5.04 - PETITIONS FOR ENFORCEMENT OF INTERNAL REVENUE SUMMONSES

In all cases brought by the United States, pursuant to *26 U.S.C. §§ 7402(b)* and *7604(a)*, to enforce summonses of the Internal Revenue Service, absent exceptional circumstances, a show cause hearing on the petition to enforce shall be held within forty-five (45) days of the date of the filing of the petition. The respondent shall file his response to the petition no later than seven (7) days prior to the date of the show cause hearing.

LR7.01 - MOTIONS

(a) **Filing.** Every motion that may require the resolution of an issue of law, in either civil or criminal cases, when filed shall be accompanied by a memorandum of law citing supporting authorities and, where allegations of fact are relied upon, affidavits or depositions in support thereof. The memorandum submitted in support of a motion shall contain at the outset a short and concise statement of the factual and legal issues which justify the grant of the relief sought. No memorandum shall exceed twenty-five (25) pages without leave of Court.

(b) **Response.** Each party opposing a motion shall serve and file a response, memorandum, affidavits and other responsive material not later than fourteen (14) days after service of the motion, except, that in cases of a motion for summary judgment, that time shall be twenty-one (21) days after the service of the motion, unless otherwise ordered by the Court. Failure to file a timely response shall indicate that there is no opposition to the motion. A reply memorandum may be filed upon leave of Court. Provided, however, the Court may act on the motion prior to the time set forth hereinbefore. In such event, the affected party may file a motion to reconsider within fourteen (14) days, or twenty-one (21) days in the case of a motion for summary judgment, after service of the order reflecting the action of the Judge. The prevailing party shall not respond to a motion to reconsider unless the Court orders a response.

(c) **Motions to Ascertain Status of Case.** At any time, an attorney for any party to a proceeding may file a written motion inquiring of the Court as to the status of the case or

to pending motions, and may include in said motion a statement of reasons why an expedited disposition of the case or motion is deemed necessary or desirable.

(d) **Production of Prisoners.** All motions and orders to produce prisoners for testimony in the United States District Court, or before the United States Magistrate Judge, shall be filed with the Clerk at least fourteen (14) days prior to the date of the hearing. Relief from this Rule may be obtained by an order of the Court.

(e) **Briefs.**

(1) Briefs shall be submitted as provided in Rule 7.03. Briefs shall not exceed twenty-five (25) pages without leave of Court.

(2) Citations to United States Supreme Court decisions shall be to U.S., if therein, otherwise to S.Ct. or L.Ed., in that order of preference. For recent decisions, Westlaw or Lexis citations are acceptable.

(3) Citations to reported state cases shall include at least the "official" state reporter citation and the regional reporter citation where available. For recent decisions, Westlaw and Lexis citations are acceptable. Any citation to state cases other than Tennessee cases shall be accompanied by a copy of the entire text of the opinion.

(4) Citations to federal statutes shall include at least the title and section designation as the statute appears in the United States Codes.

(5) Citations to any federal or state court decisions or administrative opinions not reported in one of the publications of the West Publishing Company shall include Westlaw or Lexis citations and shall be accompanied by a copy of the entire text of the decision.

(6) Failure to comply with the provisions of Rules 7.01(e)(3) or 7.01(e)(5) above may result in nonconsideration by the Court of the cited cases.

(7) Unless otherwise ordered pursuant to Rule 16.01(d)(5), pretrial briefs by each party (multiple parties with the same interest may join in the same pretrial brief) shall be filed with the Clerk at least seven (7) days before trial. Such briefs shall contain the following:

a. A concise statement of the facts;

b. A concise statement of the issues;

c. A statement of the propositions of law upon which counsel relies together with citations of authorities in support thereof; and

d. Those evidentiary rulings counsel anticipates may arise, and the legal authorities counsel relies upon in support of his contention.

(f) **Motions Pending on Removal.** When an action or proceeding is removed to this Court with pending motions on which briefs have not been submitted, the moving party shall comply with Rule 7.01(a) of these Rules within twenty-one (21) days after removal and each party opposing the motion shall then comply with Rule 7.01(b).

LR7.02 - CORPORATE DISCLOSURE STATEMENT

Any non-governmental corporate party shall file a Corporate Disclosure Statement identifying all its parent corporations and listing any publicly held company that owns ten percent (10%) or more of the party's stock. A party shall file the Corporate Disclosure Statement as a separate

document with its initial pleading, or other initial Court filing, and shall supplement the Corporate Disclosure Statement within a reasonable time of any change in the information.

LR7.03 - GENERAL FORM OF PAPERS PRESENTED FOR FILING

(a) **Form.** All pleadings, motions, briefs, and all other papers prepared by counsel and presented for filing shall be on 8-1/2" x 11" paper, one sided, with the first line of typing below the sixth line. All material, except quoted material, shall be double spaced and shall be typed, printed, or prepared by a clearly legible duplicating process and all pages shall be numbered at the bottom. On the first page of each pleading or similar document, the title of the Court shall appear on the eighth line. The name of the District Judge and the Magistrate Judge shall be placed below the case number on all filings subsequent to the Complaint. All pleadings shall be signed as required by Rule 11 of the *Federal Rules of Civil Procedure*, and names shall be typed beneath all signature lines. All exhibits to pleadings shall be paginated progressively beginning with the principal document, and continuing through the last page of the document, including exhibits.

(b) **Copies.** There shall be filed one (1) additional copy of all documents including, but not limited to, complaints, motions, and orders.

LR16.01 - CUSTOMIZED CASE MANAGEMENT

(a) **Purpose of Customized Case Management.** The purpose of customized case management is to provide mandatory, Court-supervised, case management tailored to the individual needs of each case subject to the plan. Management of cases is primarily and ultimately the responsibility of the lawyers acting in the best interests of their clients. Customized case management brings to bear the attention and resources of the Court in initiating case management, supervising its implementation and actively monitoring the progress of each case to assist the parties in achieving the most efficient planning, scheduling, and progression of the case. By early and continued assessment of the case, the Court will facilitate the just, speedy, and less costly disposition of civil actions filed in this District.

(b) **Application of Customized Case Management.**

(1) **Cases Subject to Customized Case Management.**

a. All civil cases not specifically exempted by section (b)(2) of this Rule are subject to customized case management.

b. The presiding judicial officer to whom a case is assigned may subject any of the exempted cases to the coverage of the Plan by order entered on a case-by-case basis.

(2) **Cases Exempt from Customized Case Management.**

a. A District Judge may exempt a case from this Rule if it is of clear benefit to the case;

b. All actions in which one of the parties appears pro se;

c. All prisoner petitions filed under *42 U.S.C. § 1983*, or under *28 U.S.C. § 2254* and *§ 2255;*

d. All actions for judicial review of administrative decisions of government agencies or instrumentalities where the review is conducted on the basis of the administrative record;

e. Prize proceedings, actions for forfeiture and seizures, for condemnation, or for foreclosure of mortgages or sales to satisfy liens of the United States;

f. Bankruptcy appeals filed pursuant to *28 U.S.C. § 158* and bankruptcy cases in which an Article III Judge is required to review proposed findings of fact and conclusions of law of the Bankruptcy Judge in non-core proceedings, under *28 U.S.C. § 157*; provided, however, that cases withdrawn from Bankruptcy Court, pursuant to *28 U.S.C. § 157(d)*, are not exempted from the customized case management plan;

g. Proceedings for admission to citizenship or to cancel or revoke citizenship;

h. Proceedings to compel arbitration or to confirm or set aside arbitration awards;

i. Proceedings to compel the giving of testimony or production of documents under a subpoena or summons issued by an officer, agency or instrumentality of the United States not provided with authority to compel compliance;

j. Proceedings to compel the giving of testimony or production of documents in this District in connection with discovery or for the perpetuation of testimony for use in a matter pending or contemplated in a United States District Court of another District;

k. Proceedings for the temporary enforcement of orders of the National Labor Relations Board; and

l. Civil actions by Veterans Administration or other government agencies for recovery of erroneously paid educational assistance.

(3) **Exclusions from Customized Case Management.** Upon motion by any party, or upon its own motion, the Court may exclude any case from coverage under customized case management. The parties may not stipulate or agree to exclude a case from the application of customized case management without Court approval.

(c) **Case Management Judge.** Each civil case subject to the Plan shall be assigned to a judicial officer with responsibility and authority for case management. This judicial officer is referred to as the "case management judge" for that case.

(1) Each District Judge to whom cases are assigned shall elect whether the Magistrate Judge to whom the case is randomly assigned or the District Judge will serve as the case management judge for all cases assigned to that District Judge or whether the District Judge will assign cases to the Magistrate Judge on a case-by-case basis.

(2) To the extent that Senior District Judges sit in the division in which a case is filed and to the extent that such Senior District Judges make themselves available as case management judges, an active District Judge may assign cases to a Senior District Judge to serve as case management judge.

(d) Case Management Conferences and Case Management Orders.

(1) Initial Case Management Conference.

a. Timing of Initial Case Management Conference. The case management judge shall schedule and convene a mandatory initial case management conference within sixty (60) days of the date the complaint is filed for the purpose of considering the issues set forth in section (d)(1)(c) and section (d)(2) of this Rule.

1. Notice of the Initial Case Management Conference.

(a) At the time of filing the complaint or notice of removal, the Clerk shall give notice of the date of the initial case management conference to the filing party; and

(b) The filing party shall serve the notice of the initial case management conference on the other parties along with the summons and complaint.

2. Lead trial counsel representing each party who has been served and who has received notice of the case management conference is required to attend the initial case management conference, unless otherwise ordered by the case management judge. Appearance by counsel at the initial case management conference will not be deemed to waive any defenses to personal jurisdiction.

3. Under appropriate circumstances, the first case management conference may be convened prior to any or all appearances of counsel for defendants.

b. Responsibility of Parties Prior to Initial Case Management Conference.

1. Counsel for all parties shall, at the initiative of plaintiff's counsel, confer prior to the initial case management conference to discuss the issues enumerated in section (d)(1)(c) and section (d)(2) below and to determine if any issues can be resolved by agreement subject to approval by the case management judge.

2. Counsel for all parties shall, at the initiative of plaintiff's counsel, prepare a proposed case management order that encompasses the discovery plan required by *Fed. R. Civ. P. 26(f)*, the pertinent issues listed in section (d)(1)(c) and section (d)(2) below, and any issues that can be resolved by agreement. The proposed case management order shall be filed with the Court seven (7) days before the initial case management conference.

c. Issues for Discussion at the Initial Case Management Conference.

1. The status of service of process.

2. The status of responsive pleadings to the complaint.

3. Limitations on discovery:

(a) The staging and timing of discovery for the phases of the case, including settlement, dispositive motions, and trial;

(b) The desirability of limiting discovery to certain claims and the propriety of limitations on the type and extent of

discovery, including but not limited to the number of depositions and number of interrogatories, based on the particular needs and stages of the case and the cost of litigation;

(c) The necessity of any protective order or other limitations on discovery;

(d) The need for a stay of discovery pursuant to section (e)(1) of this Rule; and

(e) Identification of any other disputes that may develop in the course of discovery.

4. Target trial date and projected length of trial.

5. Settlement:

(a) The prospects for settlement; and

(b) The need for and timing of alternative dispute resolution techniques.

6. The need for adopting special procedures due to the complexity of the issues, multiple parties, difficult dispositive issues, or unusual proof problems.

7. To the extent practical at the initial case management conference, and to the extent appropriate for the specific case:

(a) The formulation and simplification of issues, including elimination of frivolous or insubstantial claims or defenses and the formulation of each party's theory of the case;

(b) The identity, number, and names of potential witnesses; the possibility of early depositions of key witnesses, and the necessity for expert witnesses;

(c) If appropriate in cases involving comparative negligence, the identity of persons or entities that may be liable to or may have caused injury to the plaintiff(s) other than those persons or entities named as defendant(s);

(d) The possibility of obtaining admissions of fact and/or stipulations regarding the authenticity of documents that will avoid unnecessary discovery or proof;

(e) The need for counterclaims, cross-claims, third-party claims, amendments to the pleadings, joinder of parties or claims, and/or maintenance of a class action;

(f) The identification of dispositive legal issues and any significant pretrial motions that the parties contemplate filing;

(g) The need for and timing of pretrial motions, including a deadline for the early filing of dispositive motions, and identification of discovery necessary for filing or opposing such dispositive motions;

(h) The scheduling of any other events or deadlines appropriate for the case, and the scheduling of any hearings before the

case management judge on any pending or anticipated motions covered under *28 U.S.C. § 636(b)(1)(A);*

(i) The scheduling of any subsequent case management conferences;

(j) The possibility of consenting to proceed before the Magistrate Judge for any part of or all of the proceedings; and

(k) Any other matters that may aid in the just, speedy and less costly disposition of the case.

(2) **Initial Case Management Order.** As soon as practical after the initial case management conference, the case management judge will enter the initial case management order, which will, to the extent applicable, provide the following:

a. The basis on which the jurisdiction of the Court is invoked and whether the Court's jurisdiction is disputed;

b. The parties' theories of the case and their claims and defenses;

c. Target trial date and the expected length of the trial. All pretrial deadlines shall be consistent with the target trial date;

d. The identification of any issues resolved and those issues still in dispute;

e. The need for counterclaims, cross-claims, third-party claims, amended pleadings, joinder of parties and/or claims, or class action certification, and the need for resolution of any issues arising from Rules 13-15, Rules 17-21, and Rule 23 of the *Federal Rules of Civil Procedure*;

f. Deadlines for filing any dispositive motions and for filing any motions under Rules 13-15, Rules 17-21, and Rule 23. Dispositive motion deadlines shall be set sufficiently in advance of the target trial date to allow for resolution of the dispositive motions in advance of trial. No dispositive motion deadline, including response and reply briefs, shall be later than ninety (90) days in advance of the target trial date;

g. The delineation of the stages of discovery, discovery deadlines, and any limitations on discovery;

h. Any stay of discovery in accordance with section (e)(1) of this Rule and any limitations on discovery;

i. Deadlines for filing any other papers not described above, including but not limited to case management status reports;

j. If appropriate, the scheduling of a settlement conference and/or the time frame for utilizing any ADR program provided by the Court and/or, if agreed upon by the parties, any ADR program not provided by the Court;

k. The scheduling of any necessary hearings on pending or anticipated issues before the case management judge, including but not limited to issues of joinder of parties or claims;

l. The scheduling of subsequent case management conference(s) and the requirement for pre-conference communications among the parties, if appropriate; and

m. Any other matters appropriate to the needs of the case to aid in the just, speedy and less costly disposition of the case.

(3) **Subsequent Case Management Conferences and Subsequent Case Management Orders.** The case management judge will schedule subsequent case management conferences and enter subsequent case management orders as appropriate to resolve remaining issues, to monitor the status of the case, or for any reason tailored to the needs and complexity of the case to aid in the just, speedy and less costly disposition of the case. Subsequent case management conferences may be scheduled in the initial case management order and/or in the discretion of the case management judge or at the request of any party.

(4) **Modifications of Case Management Orders.**

a. The parties are not permitted to modify a case management order by stipulation among themselves without the prior approval of the case management judge.

b. Any party may file a motion to request that the case management judge modify the case management order and/or to request a case management conference with the case management judge at any stage of the proceeding.

c. Upon a motion of any party or sua sponte, the case management judge may modify a case management order without hearing or conference, provided that, except in unusual circumstances, a motion to modify a case management order should not be denied without a prior hearing or conference, either in person, by telephone or by other available means of teleconferencing.

d. Upon motion of any party or sua sponte, the case management judge may convene a case management conference to discuss the impact of the filing of a dispositive motion, not otherwise provided for in the case management order, and the propriety of modifying the case management order.

(5) **Scheduling a Trial Date and Pretrial Conference.** Absent good cause, a trial date shall be scheduled by order of the Trial Judge upon completion of the initial case management conference. The initial case management order required by Rule 16.01(d)(2) shall provide that the case is to be set for trial, the target trial date, dispositive motion deadlines and the expected length of the trial. The case management judge shall forward the initial case management order to the Trial Judge. The Trial Judge shall then enter an order setting trial and pretrial conference dates and any dates for the filing of a proposed pretrial order, jury instructions, verdict forms, witness lists, exhibit lists, stipulations, motions in limine, briefs or other pretrial matters.

(6) **Final Case Management Conference.** After all pretrial matters are resolved, including dispositive motions, the case management judge may schedule a final case management conference to discuss the following:

a. Whether, despite prior settlement and/or other ADR efforts, there remains any chance of settlement and, if so, the case management judge will discuss any other alternative dispute resolution techniques;

b. The possibility of obtaining admissions of fact or stipulations regarding the authenticity of documents, and the need for any pretrial motions in limine; and

c. Any special trial procedural issues resulting from the complexity or unusual nature of the case.

(e) Discovery.

(1) Stays of Discovery.

Discovery is not stayed unless specifically authorized by *Fed. R. Civ. P. 26(d)* or ordered by the case management judge.

(2) Discovery Disputes.

As part of the overall supervision of the progression of the case, the case management judge will resolve any discovery disputes and discovery motions. See also Rules 16.01(f)(2), 26.01, 32.01, 33.01, 34.01, 36.01 and Rule 37.01 below.

(f) Motions.

(1) Dispositive Motions.

a. As a general rule and absent exceptional circumstances, dispositive motions and other motions excepted from the coverage of *28 U.S.C. § 636(b)(1)(A)* will be resolved by the District Judge assigned to the case without referral to a Magistrate Judge.

b. A dispositive motion may be filed at any time during the case if it is filed prior to the deadline provided by the case management order subject, however, to section (d)(4)(d) above, which permits modification of case management orders under certain circumstances.

c. If the Magistrate Judge is the case management judge, the Magistrate Judge shall enter an order giving notice to the District Judge and the parties of the filing of the dispositive motion. The order shall be forwarded to the District Judge and shall also include the following provisions:

1. Whether or not the dispositive motion was provided for in the case management order, whether or not discovery is stayed, and any other factors that might require particularly expedited consideration by the District Judge.

2. A briefing schedule for the response(s) to the dispositive motion and any supplemental filings, such as reply briefs, if appropriate.

Unless another deadline is set by the case management judge in the order or thereafter by the District Judge, the party opposing a dispositive motion has fourteen (14) days in which to file a response to a motion to dismiss and twenty-one (21) days in which to file a response to a motion for summary judgment. If the motion is designated as a motion to dismiss or, alternatively, a motion for summary judgment, the party opposing such motion has twenty-one (21) days to file a response, unless another deadline is set by the case management judge or the District Judge.

(2) Non-Dispositive Motions.

a. The case management judge will rule on all matters not specifically excepted from the coverage of *28 U.S.C. § 636(b)(1)(A).*

b. If such an order is entered by a Magistrate Judge, review by a District Judge must be requested by motion filed within fourteen (14) days of the entry of the order by the Magistrate Judge unless another period of time is set by the case management judge or the District Judge. Failure to request a timely review of a non-dispositive order by a Magistrate Judge shall be a waiver of all grounds for review.

LR16.02 - ADR: STATEMENT OF AUTHORITY AND PURPOSE

(a) Authority. Pursuant to *28 U.S.C. §§ 471, 473(a)(6)* and *475; 28 U.S.C. § 651(a), Fed. R. Civ. P. 16(c)(9), 53* and *83*, and this Court's Civil Justice Expense and Delay Reduction Plan of 1994, as provided in Local Rule 16.02, this Court is authorized to experiment with court-supervised methods of alternative dispute resolution and to determine the type(s) of alternative dispute method(s) that are effective in the speedy, just, prompt and inexpensive resolution of litigation. These Rules create alternative procedures to traditional litigation and define the process to refer appropriate cases to such procedures as well as to monitor the results of these alternative procedures.

(b) Purpose of Alternative Dispute Resolution ("ADR"). The purpose of alternative dispute resolution is to provide a mechanism by which the Court and the parties can consider ADR techniques to aid in resolution of cases by settlement and thereby avoid the expense of trial and delay in adjudication. By use of these techniques, settlements can be facilitated early in the proceedings, thereby reducing otherwise unnecessary time and expense of protracted pretrial proceedings, including discovery and other pretrial preparation. Under these Rules, the Middle District of Tennessee's Alternative Dispute Resolution program provides for judicially conducted settlement conferences, mediation, early neutral evaluation, nonbinding arbitration, and Rule 68 offers of judgment. The Mediation, Early Neutral Evaluation and Nonbinding Arbitration proceedings will be conducted by ADR Panel Members who are appointed by the Court and who will conduct these ADR procedures under the supervision of the Court.

(c) Application of Alternative Dispute Resolution. All cases filed in this District are subject to alternative dispute resolution. These rules, however, are applicable only to an ADR proceeding pursuant to order of reference in a specific case.

(d) Referrals to Alternative Dispute Resolution Proceedings.

(1) Upon motion of the parties or at the initiative of the Court, a District Judge or Magistrate Judge to whom the case is assigned may refer the case for mediation, early neutral evaluation, a settlement conference, nonbinding arbitration, or other nonbinding method of alternative dispute resolution provided by the Court, with or without the consent of the parties. The Order of Reference may include a date by which the ADR proceedings must be concluded.

(2) If appropriate, the Court or ADR neutral shall require that a party or a representative of a party with the authority to settle the action be present for the ADR proceeding except upon good cause shown. A party that is a governmental

entity need not have present at the proceeding the persons who would be required to approve a settlement before it could become final (e.g., the members of a city council or the chief executive of a major agency), but must send to the proceeding a representative who is knowledgeable about the facts of the case and the governmental entity's position.

(e) **Supervisory Power of the Court.** Notwithstanding any provision of this Rule, the District Judge to whom a civil action is assigned, retains full authority to supervise every action that is subject to this Rule consistent with *Title 28 of the United States Code*, the *Federal Rules of Civil Procedure* and Local Rules of Court.

(f) **Sanctions.** To ensure compliance with these Rules, if a party or the party's attorney, without good cause, fails to comply with an Order under these Rules, such as failure to pay the ADR panel member's fee, then pursuant to *Fed. R. Civ. P. 16(f)*, the Court may impose sanctions upon the party or the party's counsel, including but not limited to the payment of reasonable attorney fees, ADR panel member's fees and costs incurred by the reason of the failure to comply with these Rules; contempt; or any other lawful sanction.

(g) **Adherence to Schedule.** Unless the case is settled at the conclusion of the referral to an ADR proceeding, the action shall proceed toward final disposition in accordance with the Scheduling or Case Management Order.

LR16.03 - ADR: DEFINITIONS, PROCEDURES AND ADMINISTRATION

(a) **Definitions.** As used in these Rules, the following terms are defined as follows:

(1) "Alternative dispute resolution proceeding" is any process designed to aid parties in resolving their disputes outside of a formal judicial proceeding, and includes judicial settlement conferences, mediation, nonbinding arbitration, early neutral evaluation, and summary jury trial.

(2) "Judicially Conducted Settlement Conference" is a form of mediation set by order of the Court in which a Judge of the Court presides pursuant to *Fed. R. Civ. P. 16.*

(3) "Mediation" is an informal process in which a neutral person, called a mediator, conducts discussions among the disputing parties designed to enable them to reach a mutually acceptable agreement among themselves on all or any part of the issues in dispute.

(4) "Nonbinding arbitration" is a process in which an ADR neutral or a panel of ADR neutrals, called an arbitrator or an arbitration panel, considers the facts and arguments presented by the parties and renders a written decision that is nonbinding.

(5) "Early Neutral Evaluation" is a process in which an ADR neutral called an evaluator, after receiving brief presentations by the parties summarizing their positions, identifies the central issues in dispute as well as areas of agreement, provides the parties with an assessment of the relative strengths and weaknesses of their case and upon request of the parties, may offer a valuation of the case. Upon request of the parties, the early neutral evaluation process may include mediation.

(6) "Rule 68 Offer of Settlement" is an offer by a party pursuant to *Fed. R. Civ. P. 68* and Local Rule 68.01 to an opposing party to settle a civil action.

(7) "Dispute Resolution Neutrals" and "ADR Panel Members" include Arbitrators, Mediators, or Evaluators who are selected by the Court to conduct an alternative dispute resolution proceeding.

(b) **Qualifications of ADR Panel Members.** An individual may be approved to serve as an ADR panel member by order of the Court, if he or she meets the following qualifications:

(1) must be a lawyer, licensed to practice in the State of Tennessee, and admitted to practice before the United States District Court for the Middle District of Tennessee;

(2) must have practiced law at least five years;

(3) must have had formal training, including at least forty (40) hours of formal ADR training as approved by the Court and such additional training as may be provided by the Court;

(4) must agree that they will be available to conduct at least one ADR proceeding per year without compensation;

(5) must commit to at least one year of service on the ADR Panel;

(6) must agree to participate in the reporting and research requirements of the ADR program as they may be developed; provided, however, that no reporting or research requirement shall require an ADR panel member to divulge any confidence in violation of Local Rule 16.08 regarding Confidentiality and Restrictions on the Use of Information;

(7) must agree to comply with the provisions of these Rules and any Standing Order which may be entered in any Division of this Court for the purpose of implementing this Rule;

(8) must agree to provide to the Court such biographical and other information as the Court may require; and

(9) must agree to take the oath under *28 U.S.C. § 453* that is required of a judicial officer.

(c) **Selection of Non-Panel ADR Provider.** Upon approval of the Court, the parties may select an ADR provider who is not an ADR panel member to provide an ADR service for that case. Any lawyer who has been approved by a federal or state court of this state, for service as a qualified ADR neutral shall be deemed a qualified neutral for ADR proceedings in this District.

(d) **List of ADR Panel Members**. The Clerk of Court or ADR Coordinator shall maintain a list of Court-approved panel members whose names and resumes of their professional experiences shall be available upon request of a party's counsel.

(e) **Compensation of ADR Panel Members.** All ADR Panel members shall be compensated at rates to be agreed upon by the parties and the ADR panel member or as set by the Court. Compensation for any panel member's services shall be borne equally by the parties to the ADR proceeding unless other arrangements are agreed to by the parties or are set by the Court.

(f) **Selection of ADR Panel Members.**

(1) Except for judicially sponsored settlement conferences and Rule 68 offers of judgment, within fourteen (14) days of the Court's order directing a dispute resolution procedure, the parties must either agree on a dispute resolution neutral from the list of court-approved neutrals and submit a neutral's name to the court

for its approval, or notify the court that no agreement has been reached. In the event the parties are unable to agree, the Clerk or ADR coordinator will select at random three neutrals from the list approved by the Court (with one additional such neutral designated for each additional party over two) for the parties' consideration and each party shall have one strike. The Court will enter an order appointing the remaining neutral from the parties' designations.

(2) If the parties are unable to agree, the Judge shall appoint the remaining neutral unless valid and timely objection is made by one of the parties. Objections to the Court's order of appointment must be made by motion for reconsideration within fourteen (14) days of the date of the Court's order. On the motion for reconsideration, the ADR procedure is stayed pending a decision, unless otherwise ordered by the court. If an objection is sustained, the selection process shall be repeated.

(3) A neutral selected by the Court to serve under this process may choose not to serve for any reason, in which case the process, under Rule 16.03(f), will be repeated. If a neutral chosen by the parties is unable or unwilling to serve on the particular case, then the parties shall select another, or if they are unable to agree, the Rule 16.03(f) process will be repeated.

(4) If the parties fail to notify the Clerk of the Court in writing of their agreement on a neutral by the stated deadline, the Court will select three or more neutrals for the parties from which the Court will designate one or more neutral(s) for the ADR proceeding. For good cause shown, a party may seek relief from this provision by filing a motion for such relief in the action.

(5) Persons acting as neutrals pursuant to a court-ordered ADR proceeding are appointed as special masters pursuant to *Fed. R. Civ. P. 53* and shall have immunity to the same extent as a Judge of this Court in the conduct of the ADR proceeding.

(g) **The Administration of the ADR.** The ADR Program shall be administered by the Clerk or his designee, called the ADR Coordinator, in conjunction with the Court's ADR Committee, and with approval of the Court.

LR16.04 - ADR: JUDICIALLY CONDUCTED SETTLEMENT CONFERENCES

(a) **Settlement Judge.** Settlement conferences will be conducted by a District Judge or Magistrate Judge other than the Judge to whom the case is assigned for trial, except when requested and agreed upon by the parties that the Judge to whom the case is assigned should handle the settlement conference or the Judge to whom the case is assigned deems it appropriate to preside over the settlement conference because of the exigencies of the case. The Judge to whom the case is assigned for a settlement conference shall be referred to as the "Settlement Judge."

(b) **Scheduling Settlement Conferences.** A Judge who is assigned to the case may schedule a settlement conference as part of the case management order or as a result of discussions during a case management conference, with or without the consent of any or all parties. A party may file a motion requesting a settlement conference, if a settlement conference is not otherwise provided in the case management order.

(c) **Party Attendance.** The assigned Judge shall require that the parties or their representatives with full settlement authority to attend the settlement conference except upon good cause shown. A party that is a governmental entity need not have present at the proceeding the persons who would be required to approve a settlement before it could become final (e.g., the members of a city council or the chief executive of a major agency), but must send to the conference a representative who is knowledgeable about the facts of the case and the governmental entity's position.

(d) **Settlement Statements.**

(1) **Procedures for Submission.**

a. At least seven (7) days before the settlement conference, each party shall deliver under seal, directly to the courtroom deputy for the Settlement Judge, an ex parte settlement conference statement, which shall specify the party's settlement position.

b. The settlement statement shall be furnished only to the Court and not to any other party.

c. The settlement statement shall not be filed with the Clerk of Court.

(2) **Contents of the Settlement Statement.**

a. The settlement statement shall include a summary of the party's view of the law as to theory of liability or defense, factors compelling or blocking settlement, status of discovery, and identification of any essential or concerned third parties. In addition, each party shall state whether any settlement offer has been made and the terms thereof shall also contain a candid assessment of the strengths and weaknesses of both sides of the case, an appraisal of the issue of liability, the status of the parties' settlement discussions, if any, and an assessment of the economic cost of proceeding to trial.

(1) Plaintiff's settlement statement shall contain an assessment from plaintiff's viewpoint of damages and the strengths and weaknesses of plaintiff's position.

(2) Defendant's settlement statement shall contain an assessment of the plaintiff's damages, defendant's exposure to those damages and the respective strengths and weaknesses of defendant's position.

b. The settlement statement shall contain a statement of the settlement authority extended by the client based on the attorney's written evaluation and opinion, which shall be furnished to the client in sufficient time to obtain express settlement instructions.

(3) **Confidentiality.** No part of any of the contents of the discussions or any statements made or information provided to the Court and/or to any other party or counsel during a settlement conference shall be used by any party or repeated to or otherwise provided to any other person by any party for use in the litigation or any other litigation for any purpose whatsoever or for any other purpose not in connection with the case or any other litigation. This protection includes, but is not limited to, the protection provided by Rules 408 and 409 of the *Federal Rules of Evidence*. Likewise, all disclosures made to the Settlement Judge shall be kept in strict confidence.

LR16.05 - ADR: MEDIATION

(a) **Notice of Time and Place for Mediation.** After a case has been referred for mediation and the Mediator is selected, the ADR Coordinator, in consultation with the mediator and counsel for the parties, shall set the time and place for the hearing and send notice to the mediator at least twenty-one (21) days before the date for mediation conference.

(b) **Conference Statements.** Counsel shall submit a conference statement of their respective views on the dispute in accordance with Appendix 1(b) to these Rules. In addition, this statement shall include a summary of the party's view of the law as to theory of liability or defense, factors compelling or blocking settlement, status of discovery, and identification of any essential or concerned third parties. Each party shall state whether any settlement offer has been made and the terms thereof. All documents deemed critical by counsel for a party on questions of liability and damages shall be submitted to the mediator. The documents may include medical reports, bills, records, photographs, and any other documents supporting the party's claims, including a brief summary of each party's factual and legal positions. The conference statement, documents and information contained therein may be disclosed only with the consent of the producing party.

(c) **Sanctions.** Failure to submit the conference statements, liability and damages documents within the time designated shall result in the imposition of costs of sixty dollars ($60.00) pursuant to *Fed. R. Civ. P. 16(f)* payable to the Clerk of the Court, unless the Mediator waives the imposition of costs for good cause shown.

(d) **Presence of Parties, Evidence.** A party is required to attend or be present at a mediation hearing, unless excused totally, or in part, by the Mediator. No testimony shall be taken or permitted of any party.

(e) **Mediator's Report.** Within fourteen (14) days following the mediation, the Mediator shall file a report on a form provided by the Clerk indicating whether all required parties were present. The report should also indicate: (a) whether the case settled at the conclusion of the conference; (b) whether the Mediation was continued with the consent of the parties; and (c) whether the Mediation was terminated without a settlement. No other information shall appear on the Mediator's report nor, without the consent of all parties, shall any other or additional report or communication regarding the status of the Mediation be provided by the Mediator to the Presiding Judge.

(f) **Notification of Settlement.** When cases are settled or otherwise disposed of before the mediation conference date, it is the duty of plaintiff's counsel to notify immediately the ADR Coordinator of the disposition of the case. If the parties' notice of the disposition of a case is given to the ADR Coordinator at least seven (7) days before the date for the mediation conference, any fees sent to the Clerk of the Court, and payable to the mediators, shall be returned. The parties are responsible for Court and Mediator fees.

(g) **Preparation of Judgment.** If the mediation results in a settlement of the dispute, the plaintiff's counsel shall prepare a judgment, approved as to form by opposing counsel for entry by the Court.

LR16.06 - ADR: EARLY NEUTRAL EVALUATION

(a) **Purpose.** The Early Neutral Evaluation ("ENE") proceeding is conducted by an experienced, objective and neutral attorney, called an evaluator, who generally meets with the parties early in their case to evaluate the case's strengths and weaknesses. Unlike mediation, the Early Neutral Evaluator focuses upon an evaluation of the merits of the claims, defenses, and/or counterclaims, and only with the parties' consent, attempts to negotiate a settlement. ENE differs from nonbinding arbitration in that the evaluator does not render a written decision or declare the prevailing party.

(b) **Procedure.**

(1) Within fourteen (14) days of the Order of Reference, or within the time limits of the Court's Order of Reference, the ADR Coordinator in consultation with the evaluator and counsel for the parties shall fix a specific time, date and place for the evaluation conference. The evaluation session shall be held in a suitable neutral setting, e.g., at the office of the evaluator or in the courthouse. The ADR Coordinator shall provide notice to the parties of the time, date and place for the evaluation conference.

(2) **Written Evaluation Statements.** No later than seven (7) days prior to the evaluation conference each party shall submit directly to the Evaluator, a written evaluation statement. The statement shall include a summary of the party's view of the law as to theory of liability or defense, factors compelling or blocking settlement, status of discovery, and identification of any essential or concerned third parties. Each party shall state whether any settlement offer has been made and the terms thereof. Such statements shall not exceed 15 pages (not counting exhibits and attachments). The written evaluations shall not be filed with the court and shall not be shown to the assigned judge. The conference statement, documents and information contained therein may be disclosed only with the consent of the producing party.

(c) **Attendance at the Evaluation Session.** The parties must attend the evaluation session unless excused by written permission of the assigned evaluator. This requirement reflects the court's view that one of the principal purposes of the evaluation session is to afford litigants an opportunity to articulate their positions and to hear, first hand, both their opponent's version of the matters in dispute and a neutral assessment of the relative strengths of the two sides' cases. A party other than a natural person (e.g., a corporation or association) satisfies this attendance requirement if it is represented at the session by a person (other than outside or in-house counsel) with authority to enter stipulations (of fact, law, or procedure) and to bind the party to the terms of a settlement. In cases involving insurance carriers, representatives of the insurance companies, with the authority to settle, shall attend the evaluation session.

(1) A party that is a governmental entity need not have present at the proceeding the persons who would be required to approve a settlement before it could become final (e.g., the members of a city council or the chief executive of a major agency), but must send to the proceeding a representative who is knowledgeable about the facts of the case and the governmental entity's position.

(2) The evaluation conference may proceed as set forth in Appendix 1(c) to these Rules. Each party shall be accompanied at the evaluation by the lawyer expected to be primarily responsible for handling the trial of the action. A party or lawyer will be excused from attending the evaluation session only upon good cause shown to the assigned evaluator. Any such party or lawyer shall set forth all considerations that support the request. A party or lawyer who is excused from appearing in person at the session shall be available to participate by telephone.

(d) **Order for Entry.** After the evaluation conference, any agreement of the parties as to stipulations, discovery, or the matters relating to case management shall be reduced by the parties to an order for entry by the assigned District Judge or Magistrate Judge.

LR16.07 - ADR: NONBINDING ARBITRATION

(a) **Purpose.** The purpose of nonbinding arbitration is to provide the parties with a brief written decision by an experienced attorney on the merits of the action that declares the prevailing party and states the amount of damages or other necessary relief that should be awarded to the prevailing party. The arbitrator's decision is nonbinding.

(b) **Conference Statement.** At least seven (7) days prior to the date of the arbitration conference, counsel for the parties shall file with the Arbitrator, a written analysis of their claims or defenses, as well as key or critical documents in support of their respective positions. Counsel shall serve these papers upon opposing counsel contemporaneous with the filing of these papers.

(c) **Presence of the Parties.** The procedure for this nonbinding arbitration may be as suggested in Appendix 1(d) to these Rules. Unless otherwise excused by the Arbitrator in writing, all parties, or party representatives, and any required claims professionals (e.g., insurance adjusters) shall be present at the Arbitration Conference with full authority to negotiate a settlement. A party that is a unit of government need not have present at the proceeding the persons who would be required to approve a settlement before it could become final (e.g., the members of a city council or the chief executive of a major agency), but must send to the proceeding a representative who is knowledgeable about the facts of the case and the governmental unit's position. Failure to comply with the attendance requirements may subject a party to sanctions by the Court, pursuant to *Fed. R. Civ. P. 16(f).*

(d) **Incorporation of Arbitration Statutes.** Arbitration conferences under this Rule shall be governed by the provisions of *28 U.S.C. §§ 651* through *658* that are incorporated herein by reference.

LR16.08 - ADR: CONFIDENTIALITY AND RESTRICTIONS ON THE USE OF INFORMATION

(a) **Confidentiality.** All ADR proceedings under these Rules and matters relating thereto, including statements made by any party, attorney, or other participant, are deemed confidential and are inadmissible as evidence to the same extent as discussions of compromise and settlement are inadmissible under Federal Rule of Evidence 408. Any statement at an ADR proceeding may not be reported, recorded, placed into evidence, or

made known to the assigned judge, or construed for any purpose as an admission against interest.

(b) **Subpoenas.** Neither the parties to an ADR proceeding nor any other person in any forum shall attempt to subpoena an ADR panel member or any documents produced or created in connection with, and for the purpose of ADR proceedings without first obtaining leave of this Court to do so.

(c) **Duty of ADR Panel Member.** ADR panel members shall not divulge the details of the information imparted to them in confidence in the course of an ADR proceeding without the consent of the parties, except as otherwise may be required by law. In the absence of a statute to the contrary, an ADR Panel member must treat information revealed in an ADR proceeding as confidential, except for the following:

(1) Information that is statutorily mandated to be reported; or

(2) Information that the parties agree may be disclosed; or

(3) Information that, in the judgment of the ADR Panel member, reveals a danger of serious physical harm either to a party or to a third person.

(d) **Confidentiality of Record.** Mediators, Arbitrators and Evaluators shall maintain the confidentiality in the storage and disposal of records and shall render anonymous all identifying information when materials are used for research, training or statistical compilations.

LR23.01 - CLASS ACTIONS

(a) **Complaint.** In any case to be maintained as a class action:

(1) The complaint shall bear next to its caption the legend "Complaint--Class Action."

(2) The complaint, under a separate heading to be styled "Class Action Allegations," shall state:

a. A reference to the portion or portions of Rule 23 of the *Federal Rules of Civil Procedure* under which it is claimed that the suit is properly maintainable as a class action, and

b. Appropriate allegations thought to justify such claim, including, but not necessarily limited to:

1. The definition and size of the alleged class, including the number or approximate number and the geographic dispersion of the members;

2. The bases upon which the plaintiff (or plaintiffs) claims

i. to be an adequate representative of the class in fact and to be financially able to represent the class;

ii. if the class is composed of defendants, that those named as parties are adequate representatives of the class;

3. The alleged questions of law and/or fact claimed to be common to the class;

4. In actions claimed to be maintainable as class actions under subdivision (b)(3) of Rule 23 of the *Federal Rules of Civil Procedure*, allegations thought to support the findings required by that subdivision; and

5. In actions requiring a jurisdictional amount, the basis of determining that amount.

(b) **Determination.** Within sixty (60) days after the filing of a complaint in a class action, unless this period is extended on motion for good cause appearing, the plaintiff shall move for a determination under subdivision (c)(1) of Rule 23 of the *Federal Rules of Civil Procedure***,** as to whether the case is to be maintained as a class action. In ruling upon such a motion, the Court may allow the action to be so maintained, may disallow and strike the class action allegations, or may order postponement of the determination pending discovery or such other preliminary procedures as appear to be appropriate and necessary under the circumstances. Whenever possible, where it is held that the determination shall be postponed, a date shall be fixed by the Court for the renewal of the motion.

(c) **Applicability.** The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim or crossclaim alleged to be brought for or against a claim.

LR26.01 - MULTI-PARTY OR COMPLEX LITIGATION

In multi-party or complex litigation the parties may apply to the Court for an order permitting service of interrogatories, requests for admissions and requests for production of documents by letter or by such other informal means as may be agreed to by the parties. In multi-party or complex litigation where such an application is made, the parties shall exhibit to such application or motion a proposed order setting forth the proposed means of conducting discovery upon an informal basis, including the proposed procedures for filing, service, responding to, and verification of the discovery contemplated.

LR32.01 - DEPOSITIONS

(a) **Filing.** The original of all depositions that are to be introduced as evidence shall be filed no later than the day of trial with the Clerk of the Court in accordance with Rule 30(f) of the *Federal Rules of Civil Procedure* or as otherwise ordered by the Trial Judge. Such depositions shall not be removed prior to the entry of final judgment absent a Court order signed by the Trial Judge.

(b) **Use of Depositions at Trial.** In jury cases, when a deposition is to be used at trial as the basic testimony of a witness, all counsel offering the deposition shall, at least fourteen (14) days prior to the trial date, advise opposing counsel of those portions of the deposition to be read from a transcript, or played on video, to the jury. Such portions are to be designated by underlining or otherwise marking on the deposition transcript, and if such designations are made on the same copy of the deposition transcript by attorneys representing different interests in the litigation, contrasting colors shall be used. All repetitious and irrelevant questions and answers and all colloquies between counsel--including objections to questions, instruction to the deponent, and impertinent remarks--must be deleted. All objections to portions of the depositions thus prepared must be filed, along with any videos, no later than seven (7) days before trial in accordance with Rule 39.01(d).

LR33.01 - INTERROGATORIES

(a) **Answers.** When answering or objecting to interrogatories, the replying or objecting party shall, as a part of his answer or objection, set forth immediately preceding the answer or objection, the interrogatory with respect to which answer or objection is made.

(b) **Number of Interrogatories.** Interrogatories pursuant to Rule 33 of the *Federal Rules of Civil Procedure* shall be limited to twenty-five (25) such interrogatories. Subparts of a question shall be counted as additional questions for purposes of the overall number. Leave of Court must be obtained to submit interrogatories above twenty-five (25) in number. The twenty-five (25) interrogatories may be submitted in successive sets as long as the aggregate number does not exceed twenty-five (25). Request for leave shall include copies of such additional interrogatories to be submitted, along with a statement of counsel as to the necessity for such information, its relevance, or likelihood to lead to relevant information, and the fact that it cannot be obtained from other sources.

(c) **Supplementation of Answers.** Answers to interrogatories shall be supplemented no later than thirty (30) days before trial, to the end that no evidence within the scope of the interrogatories will be proffered at trial which has not previously been brought to the attention of opposing counsel, absent Court approval. A violation of this Rule, which expands the duty to supplement imposed by Rule 26(e) of the *Federal Rules of Civil Procedure*, may result in the imposition of serious sanctions, including taxing of costs to the culpable party for any delays caused.

LR34.01 - REQUESTS FOR PRODUCTION OF DOCUMENTS

When responding to requests for production of documents, the procedures set forth in Rule 33.01(a) shall apply. Responses to requests for production of documents shall be supplemented no later than thirty (30) days before trial to the end that no evidence within the scope of the requests for production of documents will be proffered at trial which has not previously been brought to the attention of opposing counsel, absent Court approval.

LR36.01 - REQUESTS FOR ADMISSIONS

When responding to requests for admissions, the procedures set forth in Rule 33.01(a) shall apply. Responses to requests for admissions shall be supplemented no later than thirty (30) days before trial to the end that no evidence within the scope of the requests for admissions will be proffered at trial which has not previously been brought to the attention of opposing counsel, absent Court approval.

LR37.01 - DISCOVERY MOTIONS

(a) **Joint Written Statement.** Prior to filing any discovery motion, counsel for the parties shall prepare a joint written statement of the matters at issue in the discovery dispute. The joint statement of issues shall be attached to any discovery motion.

(b) **Motions to Compel.**

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

(2) Motions to compel discovery in accordance with Rules 30, 33, 34, 36, and 37 of the *Federal Rules of Civil Procedure* shall:

(a) Quote verbatim each deposition question, interrogatory, request for admission, or request for production to which objection has been taken;

(b) Include the response and the grounds assigned for the objection (if not apparent from the objection); and

(c) Include the reasons assigned as supporting the motion. The reasons for each objection shall be written immediately following the objection. Such objections and grounds shall be addressed to the specific deposition question, interrogatory, request for admission, or request for production and may not be made generally.

(3) Counsel for a party moving to compel discovery, quash a subpoena, or for a protective order, shall file with the Court, at the time of the filing of the motion, a statement certifying that he has conferred with counsel for the opposing party in a good faith effort to resolve by agreement the issues raised and that counsel have not been able to do so. No such motion shall be considered by the Court absent compliance with this Rule. If certain of the issues have been resolved by agreement, the statement shall specify the issues remaining unresolved.

(c) **Discovery Conference.** A discovery conference will be held when requested pursuant to Fed. R. Civ. P. 16 or LR16.01.

LR38.01 - JURY DEMAND

If demand for jury trial under Rule 38(b) and (c) of the *Federal Rules of Civil Procedure* is made in the complaint or answer, such demand shall be contained in the last paragraph thereof. The phrase "JURY DEMAND" shall appear immediately opposite the style of the case on the first page of the pleading and all subsequent filings.

LR39.01 - TRIAL PROCEDURES

(a) **Presence of Counsel.**

(1) **Duty of Counsel.** In all jury cases, all counsel shall be present at all portions and phases of trial including the time during which the jury is considering its verdict unless excused by the Court.

(2) **Presumed Present.** Unless the contrary affirmatively appears of record, it will be presumed that the parties and their counsel are present at all stages of the trial, or if absent, that their absence was voluntary and constituted a waiver of their presence.

(3) If an unanticipated situation arises during the course of a proceeding requiring that an attorney for any party be examined as a witness and give testimony on the merits, that attorney shall not argue the merits of the case or proceeding, either to the Court or jury, except with the permission of the Court. This provision is not to be construed as in any way restricting the scope or effect of Disciplinary Rules 5-101 or 5-102 of the current *Tennessee Code of Professional Responsibility, Tenn. Sup. Ct. R.8.*

(4) Only one (1) attorney representing each interest in the litigation shall examine or cross-examine an individual witness, and not more than two (2) attorneys for each interest in the litigation shall argue the merits of an action or proceeding, unless the Court shall otherwise permit.

(5) **Decorum:**

a. During Court proceedings all attorneys shall stand when speaking. All objections and comments thereon shall be addressed to the Court. There shall be no oral confrontation between opposing counsel.

b. During Court proceedings neither counsel nor parties may leave the courtroom without prior approval of the Trial Judge.

(b) **Presence of Parties.** All parties, plaintiffs and defendants, shall be present at any trial unless prior approval of the absence of a party is obtained from the Trial Judge.

(c) **Witnesses.**

(1) At the beginning of the trial, counsel shall deliver to the Courtroom Deputy Clerk a list in triplicate of all witnesses expected to testify in the case. In civil cases a copy of the list shall be furnished to opposing counsel. In protracted litigation when many witnesses are expected to testify, the list shall contain an abbreviated statement of the connection of the witness to the litigation.

(2) When a witness takes the stand, the examining attorney shall read such background information as he desires to give concerning the witness and the connection of the witness to the litigation, and then shall solicit a response from the witness as to the correctness thereof. The second question should address the issues in litigation.

(3) During the testimony of a witness, the attorney may not approach the witness box without the Court's approval. All documents and objects to be shown to the witness shall be passed to the witness by the court officer.

(4) When practical, all documentary exhibits shall be prepared in quadruplicate, one each for the witness, the Court, opposing counsel, and the examining attorney.

(5) When a witness is to be examined at length and in detail about an exhibit, duplicate copies may be passed, with Court approval, to each member of the jury for use during the interrogation.

(6) **Expert and Character Witnesses:**

a. No more than three (3) witnesses shall be called in any case to give expert testimony as to any matter, or to impeach or sustain the character of a witness, absent prior approval of the Trial Judge.

b. When possible, opposing counsel shall stipulate prior to trial that an individual who is to testify as an expert witness qualifies as an expert, thereby obviating the necessity for qualification of the witness at trial.

c. As appropriate to the case and as included as part of customized case management under Local Rule 16.01, if applicable, or as otherwise ordered, the case management judge or the Judge before whom the trial is scheduled may require that the direct testimony of an expert witness, other than a medical expert, be reduced to writing and a copy thereof filed and served upon opposing counsel at least seven (7) days before trial or as otherwise provided by the Court. If so ordered, such written statement

shall contain every material fact and/or opinion to which the witness would testify on direct examination if the witness were asked the appropriate questions. When the witness is called to testify at trial, he or she shall be sworn in the usual fashion. The qualifications as an expert shall be recited by the attorney who has called the expert witness. Thereafter, the attorney may interrogate the witness as to the specific qualifications of expertise that have direct bearing on the subject matter of the case. If objection to the witness' qualifications is raised, the objecting party may conduct a *voir dire* as to qualifications outside the presence of a jury. Unless objection is raised to the qualifications of the witness as an expert, the witness shall then read the written statement aloud to the trier of facts. During the reading of the statement, the witness may refer to a mechanical device, drawing, chart, photograph, or other exhibit in order to explain his or her testimony. After the witness has read the prepared statement, the attorney who called the witness may ask additional questions to further explain his opinion. However, the witness may not proffer any opinion not encompassed in the written statement. At the conclusion of the witness' direct examination in the manner described above, opposing counsel shall be given the opportunity to cross-examine the witness in the usual fashion.

d. Expert witness disclosures shall be made timely in accordance with any order of the Court, or if none, in accordance with *Fed. R. Civ. P. 26(a)(2).* Expert witness disclosure statements shall not be supplemented after the applicable disclosure deadline, absent leave of Court. No expert witness shall testify beyond the scope of his or her expert witness disclosure statement. The Court may exclude the testimony of an expert witness, or order other sanctions provided by law, for violation of expert witness disclosure requirements or deadlines. There shall be no rebuttal expert witnesses, absent timely disclosure in accordance with these Rules and leave of Court.

(d) Objections to Proffered Evidence.

(1) Objections to portions of testimony contained in a deposition to be read or played on video at trial in accordance with Rule 32.01(b) shall be filed no later than seven (7) days before trial. All such objections shall be accompanied by a statement certifying that all counsel have conferred in a good faith effort to resolve by agreement the objections and that counsel have not been able to do so. If certain objections have been resolved by agreement, the statement shall specify the objections remaining unresolved.

(2) Objections made in open court in the presence of a jury shall be concisely stated as being "hearsay," "a conclusion," etc., without argument. However, a bench conference may be requested. When an objection is sustained, the aggrieved party may make a proffer of evidence out of the presence of the jury.

(e) Closing Arguments. In the argument before a jury in civil or criminal cases not more than two (2) counsel may be heard on behalf of each interest involved in the lawsuit. Where two (2) counsel participate for one interest, the time allotted to that interest may

be apportioned between them at their discretion, provided that the initial portion of the argument for the plaintiff or prosecution shall include a full summation of all issues.

(f) Jurors.

(1) Relations With a Jury. All attempts to curry favor with juries are unprofessional. Suggestions of counsel regarding the comfort or convenience of jurors, and propositions to dispense with argument or peremptory challenges, shall be made to the Court out of the jury's hearing. Before and during the trial, an attorney shall avoid conversing or otherwise communicating with a juror on any subject, whether pertaining to the case or not.

(2) Post-Verdict Interrogation of Jurors. No attorney, party, or representative of either may interrogate a juror after the verdict has been returned without prior approval of the court. Approval of the Court shall be sought only by an application made by counsel orally in open court, or upon written motion which states the grounds and the purpose of the interrogation. If a post-verdict interrogation of one or more members of the jury should be approved, the scope of the interrogation and other appropriate limitations upon the interrogation will be determined by the Judge prior to the interrogation.

LR40.01 - ASSIGNMENT OF CIVIL CASES

(a) Civil Cases. Civil cases shall be assigned on a random selection basis.

(b) Responsibility of Clerk. The Clerk shall be responsible for the preparation and maintenance of case assignments among the several District Judges in accordance with the current assignment procedures.

LR41.01 - DISMISSAL OF INACTIVE CASES

A civil action that has been on the docket for six (6) months without any responsive pleading or other court proceedings taken therein shall be dismissed as a matter of course, but the dismissal shall be without prejudice to refile or to move the Court to set aside the order of dismissal for just cause.

LR45.01 - SUBPOENAS

(a) Issuance of Subpoenas. The issuance of subpoenas shall be in accordance with Rules 45.01(c) and 45.01(d) and *Fed. R. Civ. P. 45*.

(1) The Clerk shall issue subpoenas to pro se parties pursuant to *Fed. R. Civ. P. 45* only upon written motion made and order entered by the Court.

(b) Preparation of Subpoenas for Witnesses. The United States Marshal will not serve subpoenas for witnesses in civil cases unless so required by these Rules, the *Federal Rules of Civil Procedure***,** or by order of the Court. Should an attorney deliver subpoenas for witnesses in civil cases to another individual for service, such subpoenas shall be delivered along with an advance of such funds as may be required, and otherwise in accordance with the *Federal Rules of Civil Procedure***,** fourteen (14) days prior to the trial date. If the foregoing requirement has not been met, a motion for continuance grounded

upon failure of a witness to be served or to appear shall not be granted except upon a showing of extenuating circumstances.

(c) **Subpoenas in Aid of Discovery.** Whenever a party in a civil action seeks to obtain a subpoena for purposes other than to require attendance at a hearing or a trial, then the party seeking issuance of the subpoena shall file and serve a notice to take the deposition of the person or entity to be subpoenaed before the subpoena is issued.

(d) **Subpoenas for Production of Documents.** Whenever a party in a civil action issues a subpoena for the production of documents to a person not a party to the action pursuant to Rule 45 of the *Federal Rules of Civil Procedure*, the party issuing the subpoena shall promptly serve a copy of the subpoena upon every other party to the action. Each party to the action in which such a subpoena is served, shall have the right to inspect and copy documents produced pursuant to such a subpoena, absent an order of the Court to the contrary.

LR47.01 - SELECTION OF JURORS

Challenging Jurors During Selection and Composition of Juries. In the course of jury selection during a civil trial, a juror or jurors once passed and not challenged may not later be challenged by any party prior to the completion of the impaneling of the jury. All civil juries shall be composed of at least six (6) persons.

LR51.01 JURY INSTRUCTIONS

Requests for Jury Instructions. All requests for jury instructions shall be filed in accordance with the deadlines established in the case management order or by the Trial Judge. If no such deadline has been set, jury instructions shall be filed no later than 9:00 a.m. on the trial date. The requests must contain citations of supporting authorities made in conformance with Rule 7.01(e). Supplemental and additional instructions may be submitted to the Court prior to final argument by counsel.

LR52.01 - FINDINGS BY THE COURT

Proposed Findings of Fact and Conclusions of Law--Non-Jury Cases. The Trial Judge may require that prior to trial there be submitted proposed findings of fact and conclusions of law. Absent an order so requiring, each party shall submit proposed findings of fact and conclusions of law twenty-one (21) days after a trial is concluded, or the trial transcript is complete, whichever is later. For good cause the time period may be lengthened or shortened.

LR54.01 - COSTS AND ATTORNEYS' FEES

(a) **Costs.** If counsel for the litigants in a civil case are able to agree on costs, they need not file a cost bill with the Clerk. If counsel cannot agree, a cost bill, with supporting documentation, shall be filed by the prevailing party with the Clerk within thirty (30) days from the entry of the judgment in the case. A copy of said bill of costs shall be served on opposing counsel. A statement shall appear thereon that the bill of costs will be presented to the Clerk on a day and hour certain, but no sooner than seven (7) days from the date of service. If opposing party does not file written objections within the seven (7) day period, the Clerk shall allow all costs claimed. If objections are filed, the

Clerk shall give at least seven (7) days notice and thereafter shall assess the costs. After the assessment of costs by the Clerk, notice thereof shall be given to counsel as to the proposed action of the Clerk. Thereafter, within seven (7) days, either party may appear before the Clerk and except to the Clerk's proposed action. After such exceptions, the Clerk shall make a final determination of the court costs. The action of the Clerk may be reviewed by the Court by motion served within seven (7) days after the action of the Clerk. The Clerk shall deny any bill of costs which does not have thereon a certificate of service and a time certain when it will be presented to the Clerk.

(b) Attorneys' Fees

(1) Attorneys' Fees After Entry of District Court Judgment. Unless otherwise provided by statute or order of the Court, a motion for an award of attorneys' fees and related nontaxable expenses shall be filed within thirty (30) days from the District Court's entry of final judgment in the case.

(2) Attorneys' Fees After any Appeal. Unless otherwise provided by statute or order of the Court, a motion for an award of attorneys' fees and related nontaxable expenses for appellate and Supreme Court litigation in the case shall be made within thirty (30) days of the entry of the Sixth Circuit mandate and, if applicable, thirty (30) days from the denial of a petition for certiorari or other final decision of the Supreme Court.

(3) Requirement for Supporting Documents; Deadline for Objections; Oral Hearing. A motion for an award of attorneys' fees shall be supported by a memorandum brief as to the authority of the court to make such an award, and as to why the movant should be considered the "prevailing party," if such is required for the award. The motion shall also be supported by an affidavit of counsel setting out in detail the number of hours spent on each aspect of the case, the rate customarily charged by counsel for such work, the prevailing rate charged in the community for similar services, and any other factors which the Court should consider in making the award. Within fourteen (14) days after filing of the motion, the party or parties against whom the award is requested shall respond with any objections thereto and accompanying memorandum setting forth why the award is excessive, unwarranted, or unjust. Either party may request an oral hearing on the motion and objections.

LR56.01 - MOTIONS FOR SUMMARY JUDGMENT

(a) Time for Response. Motions for summary judgment pursuant to Rule 56 of the *Federal Rules of Civil Procedure* shall be in accordance with that Rule except that the party opposing the motion shall have twenty-one (21) days after service of the motion in which to serve a response, unless otherwise ordered by the Court.

(b) Concise Statement of Facts. In order to assist the Court in ascertaining whether there are any material facts in dispute, any motion for summary judgment made pursuant to Rule 56 of the *Federal Rules of Civil Procedure* shall be accompanied by a separate, concise statement of the material facts as to which the moving party contends there is no genuine issue for trial. Each fact shall be set forth in a separate, numbered paragraph. Each fact shall be supported by specific citation to the record. After each paragraph, the

word “response” shall be inserted and a blank space shall be provided reasonably calculated to enable the non-moving party to respond to the assertion that the fact is undisputed.

(c) **Response to Statement of Facts.** Any party opposing the motion for summary judgment must respond to each fact set forth by the movant by either (i) agreeing that the fact is undisputed; (ii) agreeing that the fact is undisputed for the purpose of ruling on the motion for summary judgment only; or (iii) demonstrating that the fact is disputed. Each disputed fact must be supported by specific citation to the record. The response must be made on the document provided by the movant or on another document in which the non-movant has reproduced the facts and citations verbatim as set forth by the movant. In either case, the non-movant must make a response to each fact set forth by the movant immediately below each fact set forth by the movant. If the movant has not provided sufficient space to enable the non-movant to respond, the non-movant may attach a separate sheet or sheets of paper. Such response shall be filed with the papers in opposition to the motion for summary judgment. In addition, the non-movant's response may contain a concise statement of any additional facts that the non-movant contends are material and as to which the non-movant contends there exists a genuine issue to be tried. Each such disputed fact shall be set forth in a separate, numbered paragraph with specific citations to the record supporting the contention that such fact is in dispute.

(d) **Reply Statement.** If the non-moving party has asserted additional facts, the moving party shall respond to these additional facts by filing a reply statement in the same manner and form as specified in section (b) and (c) above. The reply of the moving party shall be filed within fourteen (14) days of the filing of the response of the non-moving party.

(e) **Arguments.** All arguments in support of or in opposition to a motion for summary judgment shall be made as specified in Rule 7.01(a) and 7.01(b).

(f) **Definition of Record.** For purposes of this Rule, the term "record" shall include deposition transcripts, answers to interrogatories, affidavits, and documents filed in support of or in opposition to the motion or documents otherwise in the Court file.

(g) **Failure to Respond.** Failure to respond to a moving party’s statement of material facts, or a non-moving party’s statement of additional facts, within the time periods provided by these Rules shall indicate that the asserted facts are not disputed for purposes of summary judgment.

LR58.01 - ENTRY OF JUDGMENTS

Entry of Judgments. Absent a contrary direction by the Court, all judgments shall be entered by the Clerk of the Court.

LR65.01 - APPLICATIONS FOR TEMPORARY RESTRAINING ORDER

(a) **Written Motion.** Each application for a Temporary Restraining Order (TRO) shall be made by written motion, except where extraordinary circumstances render an oral motion the only method reasonably practicable.

(b) **Written Complaint and Memorandum.** Each motion shall be accompanied by a written complaint and memorandum of law, which shall be filed with the Clerk of the Court in the usual manner. The Clerk shall thereupon assign the case to a particular

Judge, in accordance with Rule 40.01. After such assignment the Clerk shall submit the application to the Judge in the usual manner.

(c) **Fed. R. Civ. P. 65.** An application for a TRO shall be made in strict compliance with Rule 65 of the *Federal Rules of Civil Procedure***.** Absent extraordinary circumstances, counsel shall certify in the application for a TRO what efforts have been made to contact opposing counsel or parties concerning the substance of the application and the scheduling of the hearing.

(d) **Scheduling of Hearing**. If it is necessary to schedule an emergency hearing for a TRO in conjunction with the filing of a new case, counsel shall, if possible, telephone the Clerk's Office in advance to request the scheduling of a hearing.

LR67.01 - DEPOSIT IN COURT

(a) **Acceptance by Clerk.** Except with respect to garnishments, litigation in which the United States is a party, or in which there is recovery by a minor or incompetent, the Clerk shall not, unless authorized by order of the Court, accept payment of judgments. Counsel shall, however, upon receipt of payment of a judgment, satisfy the Clerk's docket therefor or file a certificate of receipt of payment.

(b) **Deposit or Registry Fund Orders.** All orders presented to the Court with reference to the deposit or registry funds in interest-bearing accounts shall contain the following provisions:

IT IS ORDERED that counsel presenting this order serve a copy thereof on the Clerk of this Court or his Chief Deputy personally. Absent the aforesaid service, the Clerk is hereby relieved of personal liability relative to compliance with this order.

IT IS FURTHER ORDERED that counsel designate the financial institution in downtown Nashville, Tennessee, for deposit of said funds and designate the type of account or savings to be used.

IT IS FURTHER ORDERED that counsel designate the name, address, and social security number of the individual, or individuals, who are to receive the monies in the order of disbursement of funds. Corporations, associations and all others will supply the employer identification number with the correct title and address.

(c) **Guardians.** Where money has been paid into the Clerk's office on behalf of a minor or incompetent, a guardian shall be qualified under state law within thirty (30) days, and the Clerk shall thereupon disburse the funds to said guardian.

LR68.01 - ADR: RULE 68 OFFERS OF JUDGMENT

(a) **Purpose.** The Court hereby incorporates by Local Rule, the following legal principles that are derived from precedents of the Supreme Court and Sixth Circuit on *Fed. R. Civ. P. 68*. The purposes of this Local Rule are to promote the use of Fed. R. Civ. P. 68 that authorizes an offer of judgment by a party against whom a claim is asserted and to encourage the compromise and settlement of litigation.

(b) **Timing.** Under Rule 68, a party may offer to have judgment entered based upon a recommended settlement figure of an arbitrator, or evaluator, or at the conclusion of an unsuccessful mediation. Such a party may make an offer of judgment at anytime up to

fourteen (14) days prior to trial. A defendant can make a Rule 68 offer of judgment on any counterclaim or cross-claim asserted against the plaintiff.

(c) **Rejection of Offer.** If the adverse party rejects the offer of judgment and if the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the post-offer costs incurred by the offeror after the offer was made. This provision, in essence, shifts the risk of going forward with the lawsuit to the offeree who becomes exposed to the prospects of being saddled with the substantial expense of trial.

(d) **Costs**

(1) Costs under Fed. R. Civ. P. 68, includes all costs that may be awarded under a relevant federal statute giving rise to the action or claim. Thus, absent congressional expressions to the contrary, where the underlying federal statute governing the action defines costs to include attorneys' fees, such fees shall be included as costs for the purpose of Rule 68. For example, Congress expressly included attorneys' fees as costs available to a plaintiff in a *42 U.S.C. § 1983* suit, and such fees are subject to the cost shifting provisions of Rule 68.

(2) If, in a federal action that provides for an award of attorneys' fees to the prevailing party, the plaintiff rejects an offer of judgment under Rule 68, proceeds to trial and wins a judgment less favorable than the offer, the defendant is not liable for the plaintiff's attorneys' fees, even though the federal statute awards to the prevailing party fees as a part of costs. Thus, the plaintiff in such a case faces an additional risk by rejecting that offer of judgment, because although plaintiff may reject the offer and then subsequently prevail on the merits of the case, if plaintiff receives a less favorable judgment at trial than defendant's offer, plaintiff would then be required to bear his or her own attorneys' fees which but for the defendant's offer of judgment, would not have been permissible under the applicable statute.

(3) Where an offer of judgment has been rejected and the subsequent award is less than the offer, the District Court must award costs to the party making the offer.

(4) Where the offer of judgment is accepted, the Clerk is required to enter judgment under Rule 68 that is deemed a Final Order of Judgment subject to appeal.

(5) A Rule 68 judgment is deemed a consent judgment and will only be altered upon a showing of an existence of fraud or a mutual mistake of fact.

(6) Where the issue of liability has been determined by summary judgment or by any other proceeding, either party may make an offer of judgment under Rule 68.

(7) In order for an offer of judgment to be effective under Rule 68, such offers shall be reduced to writing. If the offer of judgment recites the costs, or specifies an amount for costs, and the plaintiff accepts the offer, judgment will be deemed necessarily to include costs. If the offer does not expressly state that costs are included in the offer and an amount for costs is not specified, the Court will be obliged by the terms of Rule 68 to include an additional amount which, in its discretion, it determines to be sufficient to recover the costs of the action. In either case, however, the offerer shall be deemed to agree that judgment be entered against the offerer, both for damages caused by the challenged conduct and costs of the action.

(8) Any acceptance of an offer of judgment must be unconditional, but a rejection of an offer does not preclude a subsequent offer.

LR69.01 - EXECUTION

Garnishments. Garnishment procedure conforms with Tennessee state law. It shall be the duty of the United States Marshal serving the garnishment summons upon the employer garnishee to obtain on the U.S. Marshal Form 285 an acknowledgement of service of the garnishment summons signed by the employer garnishee, if a corporation, company or business entity. If the employer garnishee or officer refuses to sign the Form 285, the Marshal shall sign and return to the Court a sworn statement on the Form 285 that the summons was duly served but the employer garnishee or the officer of the employer garnishee refused to sign an acknowledgement of service.

LR72.01 - MAGISTRATE JUDGE DUTIES

(a) **Scope of Duties – Generally - 28 U.S.C. § 636(b)(3) and (4)**. Magistrate Judges are authorized and designated to exercise all jurisdiction expressly permitted by law and not inconsistent with Article III of the United States Constitution. Magistrate Judges also may determine any preliminary matters and conduct any necessary evidentiary hearings or other proceedings arising in the exercise of their jurisdiction. This Rule shall be construed broadly to fully implement the authority of Magistrate Judges in the District under the order of reference.

(b) **Assignment of Duties and Delegation of Responsibilities**. The Chief Judge of the District will coordinate and supervise the assignment of duties and delegation of responsibilities to the Magistrate Judges.

(c) **Performing Duties for the District Judges**. In performing duties for the District Judges, the Magistrate Judges shall conform to all applicable provisions of the federal statutes and rules, to the local procedural rules of the District Court, and to the requirements specified in the order of reference from a District Judge.

(d) **Prisoner Cases Under 28 U.S.C. §§ 2254 and 2255.** Magistrate Judges may perform the duties imposed upon judicial officers by the rules governing proceedings in the United States District Courts under 28 U.S.C. §§ 2254 and 2255. In so doing, a Magistrate Judge may issue any preliminary orders and conduct any necessary evidentiary hearings or other appropriate proceedings. Unless a Magistrate Judge is exercising authority pursuant to 28 U.S.C. § 636(c), the Magistrate Judge shall not issue an order disposing of an application filed under 28 U.S.C. §§ 2254 or 2255, but shall submit to the District Judge a report containing proposed findings of fact, conclusions of law, and recommendations for disposition of the application.

LR72.02- NONDISPOSITIVE MATTERS

(a) **Determination of Nondispositive Pre-Trial Matters.** Pursuant to 28 U.S.C. § 636(b)(1)(A) and Fed.R.Civ.P. 72(a), Magistrate Judges are authorized to, and where designated under LR16.01 or otherwise, shall hear and determine all nondispositive pre-

trial matters pending before the Court to the extent permitted by law, except as limited by the Local Rules or the orders of a District Judge.

(b) Objections to Orders of Magistrate Judges on Nondispositive Matters.

1. Motions for Review. Objections to decisions of Magistrate Judges on nondispositive matters in civil cases shall be in accordance with Fed.R.Civ.P. 72(a) by way of a "motion for review." The motion for review shall be served and filed in accordance with Rules 5 and 7 of Fed. R. Civ. P. Such motions shall be filed within fourteen (14) days after service of the order to which objection is raised, unless a different period of time is specified. The motion for review shall state with particularity that portion of the order for which review is sought and shall be accompanied by sufficient documentation including, but not limited to, briefs, affidavits, pertinent exhibits, and if necessary, transcripts of the record to apprise the District Judge of the basis for the appeal. The order of the Magistrate Judge may be modified or set aside if it is clearly erroneous or contrary to the law or in the interests of justice.

2. Response. Any other party wishing to respond shall file a response within fourteen (14) days after being served with a copy of the motion for review.

3. Stay of Order. There shall be no stay of an order entered by a Magistrate Judge absent a stay granted by the Magistrate Judge or the District Judge.

LR72.03 - DISPOSITIVE MATTERS

(a) Recommendations Regarding Case-Dispositive Motions and Other Dispositive Matters. Pursuant to 28 U.S.C. § 636(b)(1)(B), and Fed.R.Civ.P. 72(b) upon designation from a District Judge, a Magistrate Judge is authorized to conduct hearings, including evidentiary hearings and other necessary proceedings, and to submit to the District Judge a report containing proposed findings of fact, conclusions of law, and recommendations for disposition of the following matters: (1) motions excepted from the jurisdiction granted to Magistrate Judges under 28 U.S.C. § 636(b)(1)(A), including case-dispositive motions; (2) applications for post-trial relief made by individuals convicted of criminal offenses; and (3) prisoner petitions challenging conditions of confinement.

To the extent permissible under Article III of the United States Constitution, a District Judge also may refer any other pre-trial or post-trial motions or other matters to a Magistrate Judge for a report and recommendation.

(b) Objections to a Report and Recommendation of a Magistrate Judge on a Dispositive Motion.

1. Objections. Objections to a report and recommendation of a Magistrate Judge on a dispositive motion shall be made within fourteen (14) days after service of the report and recommendation, in accordance with Fed.R.Civ.P. 72(b). Such objections shall be written and in the form of a motion for *de novo* determination by the District Judge and shall state with particularity the specific portions of the Magistrate Judge's report or proposed findings or recommendations to which an objection is made and shall be accompanied by sufficient documentation including, but not limited to, briefs, affidavits, pertinent exhibits, and if necessary,

transcripts of the record to apprise the District Judge of the basis for the objection. A memorandum of law shall accompany such objections.

2. **Response**. Any other party wishing to respond shall file a response within fourteen (14) days after being served with a copy of such objections.

3. **Additional Proceedings**. The District Judge shall make a *de novo* determination of the matter and may conduct a new hearing, take additional evidence, recall witnesses, recommit the matter to the Magistrate Judge for further proceedings and consideration, conduct conferences with counsel for the affected parties, and receive additional arguments, either oral or written, as the District Judge may desire.

LR72.04 - WAIVER.

Failure of a party to file a timely motion for review of nondispositive matters or to timely object to a report and recommendation of a Magistrate Judge in dispositive matters, or to file an appeal in criminal matters, may constitute a waiver of any right to raise the matter in further proceedings.

LR72.05 - CONTEMPT AUTHORITY - 28 U.S.C. § 636(e).

Magistrate Judges may exercise contempt authority pursuant to 28 U.S.C.§ 636(e)(1)-(5) and shall certify any other contempts to the District Judge under 28 U.S.C. § 636(e)(6).

LR72.06 - SUBSEQUENT ORDERS OF THE DISTRICT JUDGE.

The District Judge may issue orders which supersede or countermand prior orders of the Magistrate Judge where necessary in the interest of justice.

LR72.07 - TRANSCRIPTION OF THE RECORD.

If transcripts are necessary for a review, objections, or appeals under LR72 or LCrR58, the moving party shall, within fourteen (14) days from the service upon opposing counsel of the objections, request for review or appeal, arrange for the transcription of so much of the record as the parties shall designate. The District Judge may direct any other portions of the record deemed necessary by the District Judge to be transcribed.

LR73.01 - CONDUCT OF TRIALS AND DISPOSITION OF CIVIL CASES BY MAGISTRATE JUDGES UPON CONSENT OF THE PARTIES - 28 U.S.C. § 636(c).

(a) **Consent**. Upon the consent of the parties and the entry of an order of transfer by a District Judge, Magistrate Judges are hereby specifically designated, pursuant to 28 U.S.C. § 636(c), to conduct trials and otherwise dispose of any civil case that is filed in this Court. After an order of transfer is entered in a case, a Magistrate Judge may conduct any and all proceedings in the case, including the conduct of a jury or non-jury

trial, and may order the entry of a final judgment in accordance with 28 U.S.C. § 636(c), and Fed.R.Civ.P. 73. In the course of conducting such proceedings, a Magistrate Judge may hear and determine any pre-trial and post-trial motions, including case-dispositive motions.

(b) **Written Notice to the Parties**. The Clerk shall give a written notice to the parties of their opportunity to consent to the exercise by a Magistrate Judge of civil jurisdiction as authorized by this Rule. The Clerk shall furnish the notice and a consent form to plaintiff's counsel at the time the complaint is filed and upon the appearance of each defendant. At the initiative of plaintiff's counsel, all parties shall consider the possibility of consenting to a Magistrate Judge's jurisdiction.

(c) **Non-Consent of the Parties**. If all parties do not consent to a transfer of jurisdiction to a Magistrate Judge, no consent form will be filed with the Clerk and no party will reveal to the Clerk or any judge the position of any party on the issue of consent.

(d) **Order of Reference**. If all parties or the remaining parties following disposition of the case with respect to all non-appearing defendants consent to further proceedings before a Magistrate Judge, an order of reference shall be prepared for the District Judge to whom the case has been assigned. No civil action shall be referred to a Magistrate Judge pursuant to this Rule until the District Judge has signed an order of reference.

(e) **Vacating an Order of Reference**. Once an order of reference has been entered as provided in subsection (d) of this Rule, no party may withdraw his consent. An order of reference may be vacated by a District Judge upon the Judge's own motion, for good cause shown, or upon motion of a party who can demonstrate extraordinary circumstances.

(f) **Additional Party After Reference.**

1. In the event an additional party is brought in or joined in a civil action referred to a Magistrate Judge as provided in this Rule, the party bringing in or joining an additional party shall additionally cause a copy of the consent form to be served on each additional party. Counsel for all parties shall then confer and shall file a new consent form, if all parties agree. The new form must be filed within thirty (30) days after the appearance of such additional party.
2. If the parties fail to file a form consenting to further proceedings before the Magistrate Judge within thirty (30) days, the Magistrate Judge shall return the case file to the referring District Judge for the entry of an order vacating the order of reference. If all parties consent to further proceedings before the Magistrate Judge, then the order of reference previously entered remains valid and binding without the necessity of entry of another order by the District Judge.

(g) **Appeals from Consent Cases Under 28 U.S.C. § 636(c)**. Appeals in consent cases shall be to the Court of Appeals as provided in Fed.R.Civ.P. 73(c) as if from the judgment of a District Judge.

LR77.01 - DIVISIONS OF COURT

(a) **Three Divisions.** The Middle District of Tennessee consists of three (3) divisions as set forth in *28 U.S.C. § 123.*

(b) **Criminal Cases.** All criminal cases in the District shall be tried in the Nashville Division unless the Trial Judge transfers the case to another division.

(c) **Civil Cases.** All civil cases shall be tried in the division where the case is filed unless the Trial Judge transfers the case to another division.

LR77.02 - LEGAL ADVICE

The Clerk and the employees of the Clerk's Office desire to be of help to litigants and attorneys. However, interpreting the Rules of Procedure and giving legal advice are not permitted functions. Notice is hereby given to litigants and attorneys that the Clerk and the Clerk's employees assume no responsibility for information respecting applicable procedural rules, substantive law, or interpretation of Local Rules of Court.

LR77.03 - ENTRY OF JUDGMENT

(a) **Entry of Judgment by Clerk.** All judgments shall be entered by the Clerk, in accordance with Rule 58.01 of these Rules.

(b) **Orders Made Orally in Court.** Unless the Court directs otherwise, all orders, including findings of fact and conclusions of law, orally announced in court shall be prepared in writing by the attorney for the prevailing party and lodged with the Clerk within seven (7) days thereafter, and copies thereof shall be served on all parties.

LR78.01 - MOTION DAY

There shall be no motion day. All motions shall be in writing and shall be decided by the Court without oral hearings unless otherwise ordered by the Court. If any attorney feels that oral argument is particularly desirable on a given motion, he may accompany the motion with a separate written motion so requesting and stating the reasons justifying a hearing.

LR79.01 - REMOVING CASE FILES, PAPERS AND EXHIBITS

(a) **Removing Case Files.** No case files shall be removed from the office of the Clerk or Deputy Court Clerk without an order from the Court. An individual seeking to remove a file shall first prepare and submit an appropriate order to the Judge for his signature. Retention of removed files shall in no instance exceed seven (7) days, absent extenuating circumstances, and then only by Court order. The Clerk shall remove any and all transcripts, depositions or court reporter work products from the file before allowing the file to be removed from the office of the Clerk. The provisions of this section shall not be deemed to alter the provisions of Rule 80.01(d) of these Rules.

(b) **Depositions.** After a judgment in a civil action becomes final or the case is otherwise finally closed, the Clerk may give written notice to counsel who filed any depositions that the depositions must be retrieved by a date certain or the depositions will be destroyed. If such depositions are not retrieved in accordance with this Rule, they may be destroyed by the Clerk.

(c) **Exhibits.** After final determination of any action, counsel or parties shall have thirty (30) days within which to withdraw exhibits. In the event the exhibits are not withdrawn, the Clerk shall, without notice, destroy or otherwise dispose of the exhibits.

LR80.01 - COURT REPORTERS AND TRANSCRIPTS

(a) **Official Court Reporters' Time.** The time of the Official Court Reporters is allocated in the following order of priority:

- **(1)** serving the court;
- **(2)** preparation of transcripts for appeals in criminal cases;
- **(3)** preparation of transcripts for appeals in civil cases; and
- **(4)** preparation of transcripts for attorneys.

(b) **Payment for Transcripts.** Any attorney ordering a transcript of testimony, whether for appeal or otherwise, obligates himself personally for the payment of the fee therefor to the Court Reporter. However, the foregoing does not apply to those instances in which the fees are to be paid by the United States of America pursuant to legislative authority. Except in those cases in which the cost of a transcript is funded pursuant to the Criminal Justice Act, the Court Reporter may require prepayment for a transcript ordered by an attorney.

(c) **Prompt Ordering - Transcripts on Appeal.** All transcripts, or portions of transcripts, of proceedings in Court shall be ordered from the Official Court Reporter in writing within the time prescribed by the *Federal Rules of Appellate Procedure* when applicable. Forms for this purpose may be obtained from the Clerk.

(d) **Certified Daily Transcripts - Notice Required.** Any party wishing to obtain a certified daily transcript of a Court proceeding shall provide notice to the Court at least fourteen (14) days prior to the scheduled date of the proceeding. Notice shall be provided by the filing of a Notice of Request for Certified Daily Transcript with the Clerk's Office utilizing the CM/ECF system. The Clerk's Office will notify the appropriate Court Reporter following the filing of such a notice and the party will then be contacted by the Court Reporter to make arrangements for the production of the certified daily transcript.

LR81.01 - RULES PERTAINING TO BANKRUPTCY APPEALS

(a) **Summary Affirmance.** Failure by an appellant to comply with the provisions of either Rule 8006, 8007 or 8009 of the *Bankruptcy Rules***,** *Title 11 of the United States Code Annotated***,** will result in summary affirmance of the opinion of the Bankruptcy Judge.

(b) **Oral Argument.** Oral argument is not permitted absent a specific order of the Court.

LR83.01 - ATTORNEYS

(a) **Roll of Attorneys.** The bar of this Court shall consist of those persons heretofore admitted to practice in this Court and those who may hereafter be admitted in accordance with this Rule.

(b) **Eligibility.**

- **(1)** To be eligible for admission to the bar of this Court, an attorney must be a member in good standing of the bar of the State of Tennessee unless he is otherwise exempt as provided in (2) herein.
- **(2)** The eligibility requirement in (1), *supra*, will not apply to an attorney who has been employed less than twelve (12) months as an attorney in the Office of the United States Attorney or the Office of the Federal Public Defender provided that

said attorney is a member of the bar of a United States District Court and has made application for admission to the bar of the State of Tennessee.

(c) Procedure for Admission.

(1) Each applicant for admission to the bar shall file with the Clerk a written petition, on the form provided by the Clerk, setting forth his residence and office addresses, his general and legal education, and the other courts to which he has been admitted to practice. The petition shall be signed by two members in good standing of the bar of this Court who recommended his admission.

(2) The Clerk will examine the petition and the accompanying recommendation, and, if they are in compliance with this Rule, the petition will then be presented to a Judge of this Court. The petitioner will make suitable arrangements thereafter with the Clerk for his appearance and admission in open court or in chambers in accordance with this Rule.

(3) When a petition is called, one of the members of the bar of this Court shall move the admission of the petitioner. When admitted, the petitioner shall take an oath in the following form:

> Do you solemnly swear that you will conduct yourself as an attorney of this Court, according to law, and that you will support and defend the Constitution of the United States, so help you God?

(4) The petitioner, after taking the foregoing oath, will then sign the roll of attorneys in the division where admitted and will pay to the Clerk the prescribed enrollment fee.

(d) Permission to Practice in a Particular Case. Any member in good standing of the bar of any other District Court of the United States who is not a resident of this district and who does not maintain an office in this district for the practice of law, may be permitted to appear and participate in a particular case in this Court subject to the following provisions:

(1) No later than the first pleading filed in this Court, the attorney must certify his good standing as a member of the bar of another United States District Court. In cases where an attorney enters a case subsequent to the first pleading filed, he must certify his good standing no later than the first pleading or motion upon which his name appears. Certification of good standing shall be made by filing a certificate of good standing from a United States District Court. The non-resident attorney shall be admitted to practice in a particular case on written motion made and order entered by the Court.

(2) The United States Attorney and Assistant United States Attorneys for the Middle District of Tennessee shall be admitted to the bar of the Court before they are permitted to practice before this Court. Any other attorney representing the United States Government, or any agency thereof, may appear and participate in particular actions or proceedings in his official capacity without a petition for admission, provided he is a member of the bar of a District Court of the United States.

(3) All corporations chartered to do business as profit or nonprofit organizations must be represented by an attorney duly admitted or authorized to practice before this

Court. Except by leave of Court, the Clerk of the Court will not accept the filing of pleadings by such corporations unless such organizations are represented by counsel.

(e) Disbarment and Discipline.

(1) Any member of the bar of this Court may for good cause shown, and after an opportunity has been given him to be heard, be disbarred, suspended from practice for a definite time, reprimanded, or subjected to such other discipline as the Court may deem proper.

(2) Whenever it has been made to appear to this Court that any member of the bar has been disbarred or suspended from practice by law by the Disciplinary Board of the Supreme Court of Tennessee or the courts or disciplinary bodies of any other state, or has been convicted of any crime involving moral turpitude in this Court or any other court, he shall be suspended forthwith from practice before this Court, and unless he shows good cause to the contrary within thirty (30) days from the date of such suspension, the Court may impose such further discipline as it deems proper.

(3) Except as otherwise provided by these Rules, any person who, before his admission to the bar of this Court or during his disbarment or suspension, exercises in this Court in any action or in any proceeding pending in this Court any of the privileges as a member of such bar, or pretends to be entitled to do so, is guilty of contempt of this Court and subjects himself to appropriate punishment therefore.

(4) The standard of professional conduct of the members of the bar of this Court shall include the current *Tennessee Code of Professional Responsibility, Tenn. Sup. Ct. R. 8.* A violation of any of the disciplinary rules contained in the Code in connection with any matter pending before this Court shall subject the offending attorney to appropriate disciplinary action. In this regard, this Court may from time to time appoint grievance committees to investigate any complaints made to it alleging improper professional conduct of any member of the bar in any way connected with his practice in this Court. In such case the committee appointed shall operate under the directions of the Court and shall take such actions as directed by the Court in the order appointing it. In the alternative, such complaints may be forwarded by the Court to the appropriate disciplinary authority of the state courts. This Rule shall not apply to *Disciplinary Rule 7-107*, which is superseded as a Rule of this District by Rule 83.03 of these Rules and LCrR2.01.

(5) In the discretion of the Court, a permanent disciplinary committee may be appointed.

(f) Appearance by Attorney.

(1) Representation of Parties in Civil Cases. Any attorney representing a party in any civil action shall file a separate Notice of Appearance with the Clerk of the Court, except that an attorney who has signed the original complaint, petition, or notice of removal is not required to file a Notice of Appearance. The Notice of Appearance shall be filed by the attorney promptly upon undertaking the representation and before or contemporaneously with the filing of any paper,

other than a complaint, petition, or notice of removal, by such attorney. Failure to file a separate Notice of Appearance may result in an attorney not receiving copies of orders issued by the Court.

(2) **Representation of Witnesses in Civil Actions or Witnesses, Defendants, or Prospective Defendants in Criminal Proceedings.** An attorney representing a witness in any civil action or criminal proceeding, including a grand jury proceeding, or representing a defendant or prospective defendant in a grand jury proceeding shall file a separate Notice of Appearance with the Clerk of the Court. The Notice shall be filed by the attorney promptly upon undertaking the representation and prior to the attorney's appearance on behalf of his or her client at any hearing or grand jury session. When the appearance is in connection with a grand jury session, the separate Notice of Appearance shall be filed with the Clerk in such a manner as to maintain the secrecy requirements of grand jury proceedings. For the purposes of this Rule, an attorney shall be deemed to be appearing for and representing a witness or party if he or she is present within the Courthouse and advising such witness or party prior to entering the chambers of the grand jury or is interviewing witnesses of the grand jury before or after their appearance.

(3) **Service List.** If more than one attorney associated with a law firm has filed a Notice of Appearance or has signed the complaint, petition, or notice of removal, the attorneys from that law firm shall file a designation of which attorney should be included on the service list. Absent such designation, the Clerk shall send copies of orders and notices only to the attorney in the law firm who filed a Notice of Appearance first or only to the attorney in the law firm whose signature appears first on the complaint, petition, or notice of removal. The Clerk shall not send copies of orders or notices to more than one lawyer in any law firm. Provided, however, that the Clerk shall send copies of orders or notices to more than one lawyer representing any party, if such lawyers are in separate law firms.

(4) Each attorney retained by a defendant in a criminal case shall, within seven (7) days after being retained, or within seven (7) days after process is served on his client, whichever occurs later, notify the Clerk in writing of his appearance as attorney of record and shall furnish a copy of said notice to the United States Attorney. Counsel becoming associates with counsel already of record in a criminal case or being substituted for counsel then of record in the case, upon being associated with or replacing counsel or upon being retained by a party or parties to the case, shall notify the Clerk in writing of his appearance in the case. Counsel so registered as counsel of record will not be relieved of such responsibility except upon order of the Court as hereinafter prescribed.

(5) Whenever a party has appeared by attorney, he may not thereafter appear or act in his own behalf in the action or proceeding, or take any step therein, unless an order of substitution shall first have been made by the Court, after notice to the attorney by such party and to the opposing party; provided, that the Court may in its discretion hear a party in open court, notwithstanding the fact that he has appeared or is represented by an attorney.

(6) No attorney shall withdraw his appearance in any action or proceeding, either civil or criminal, except by leave of the Court as hereinafter prescribed.

(7) When an attorney dies, or is removed or suspended or ceases to act as attorney as hereinafter prescribed, a party to any action or proceeding for whom he is acting as attorney must, before any further proceedings are had in the action on his behalf, appoint another attorney or appear in person, unless such party is already represented by another attorney. Failure of a party to so act or to appear in person and to furnish his address to the Clerk shall constitute a default on the part of said party.

(g) **Withdraw as Attorney of Record.** Any attorney representing a party desiring to have the attorney's name stricken of record shall file a Motion to Withdraw, which shall set forth the reasons for the withdrawal request and shall certify that such attorney has given due notice to his client of his intention to withdraw from the case, and shall specify the manner of such notice to the client, attaching a copy of the notice. Such notice to the client shall be given at least fourteen (14) days prior to the Motion to Withdraw being filed, unless the Court directs otherwise. The Motion to Withdraw shall be ruled on by the Trial Judge, unless the Court directs otherwise. Ordinarily counsel will not be allowed to withdraw if such withdrawal will delay the trial of the case.

(h) **Resident Associates in Civil Causes--Notices.**

(1) If none of the counsel appearing on behalf of a party in any civil case is a resident of or has his principal law office in the State of Tennessee, the Clerk of the Court shall immediately notify said counsel that there shall be joined of record by written appearance, within fourteen (14) days thereafter, associate counsel qualified to practice in the United States District Court for the Middle District of Tennessee who is a resident of this state or has his principal law office therein, in default of which, all pleadings filed on behalf of such party may be stricken by the Court, either upon motion or upon the Court's own initiative.

(2) Every requirement in these Rules or in any order of the Court for the giving of notice to any party or counsel may, unless otherwise specifically provided, be complied with by giving the prescribed notice to the party's counsel of record residing in Tennessee or having his principal law office in Tennessee.

(3) Counsel, where admitted and entitled to practice in the courts of the Middle District of Tennessee, shall not become an attorney of record in any case or proceeding in this Court unless personally retained by the litigant or client, or associated by counsel personally retained by the litigant or client. By becoming an attorney of record, counsel represents, absent prior approval of the Trial Judge, that he will be prepared to conduct the trial of the cause.

LR83.02 - PHOTOGRAPHING, BROADCASTING AND TELEVISING

(a) **Prohibitions.**

(1) The taking of photographs, the airing of radio or televising of TV broadcasts, or transmission of verbal communications by unauthorized transmitting devices from the floors of the Courthouse occupied by the Courts during the progress of or in connection with judicial proceedings or grand jury proceedings, including

proceedings before a United States Magistrate Judge, whether or not court is actually in session, is prohibited; provided that photographing and/or broadcasting in connection with naturalization hearings, ceremonial occasions, or other special proceedings will be permitted with the approval of the Chief Judge of the Court.

(2) Unauthorized transmitting devices shall not include cellular telephones, pagers, or laptop computers provided they have been screened and cleared through x-ray machines at the entrances to the building and/or subjected to visual inspection by designated security officers. Provided further, however, no such cellular telephones, pagers, or laptop computers shall be allowed inside any petit jury room, grand jury room, courtroom, or Judge's Chambers without the express permission of the Judge.

(b) **Enforcement.** In order to facilitate the enforcement of paragraph (a) above, no photographic, broadcasting, television, sound, or recording equipment or unauthorized transmitting devices (other than the recording equipment of the United States Magistrate Judge and the official Court Reporters, transmitting devices used by the General Services Administration Protective Services Officers, and any equipment used within the United States Attorney's office and the United States Marshal's office), will be permitted on the floors of the Courthouse occupied by the Courts, except where necessary as visual or auditory aids in the presentation of evidence during the course of a trial, or as otherwise provided by court order. Each Judge, in connection with all cases pending in this district, shall issue such orders under this Rule or the succeeding Rule regarding the matter of free press and fair trial as might seem proper under the circumstances of each case.

LR83.03 RELEASE OF INFORMATION CONCERNING CIVIL PROCEEDINGS

(a) **By Attorneys Concerning Civil Proceedings.**

(1) An attorney or law firm associated with a civil action shall not during its investigation or litigation make or participate in making any extrajudicial statement, other than a quotation from or reference to public records that a reasonable person would expect to be disseminated by means of public communication if there is a serious and immediate threat that such dissemination will interfere with a fair trial.

(2) Comment relating to the following matters is presumed to constitute a serious and immediate threat to a fair trial, and the burden shall be upon one charged with commenting upon such matters to show that his comment did not pose such a threat:

a. Evidence regarding the occurrence or transaction involved;

b. The character, credibility, or criminal record of a party, witness, or prospective witness; or

c. The performance or results of any examinations or tests or the refusal or failure of a party to submit to an examination or test.

(b) **Provision for Special Orders in Widely Publicized and Sensational Cases.** In widely publicized cases 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 a party 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 that the Court may deem appropriate for inclusion in such an order.

LR83.04 - USE OF COURTROOMS

Only for Court Business. The various courtrooms of the United States District Court are solely for trials, hearings, and transactions of other Court business. The courtrooms will not be utilized for any other purpose unless approved by the Court. The Chief Judge shall approve any other use for the courtrooms.

LR83.05 - APPEALS FROM THE DISTRICT COURT

Designation of Record. Counsel for appellants shall prepare the Designation of Record on Appeal within fourteen (14) days after notice of appeal is filed.

LR83.06 - AMENDMENTS

These Rules may be amended, supplemented or deleted, in whole or in part, at any time by appropriate action.

LOCAL CRIMINAL RULES

LCrR2.01 - RELEASE OF INFORMATION CONCERNING CRIMINAL PROCEEDINGS

(a) **By Attorneys Concerning Criminal Proceedings.** No attorney or law firm shall release or authorize the release of information or a personal or professional opinion that a reasonable person would expect to be disseminated by means of public communication, in connection with pending or imminent criminal litigation with which said attorney or law firm is associated, if there is a serious and immediate threat that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice. Any statement specifically prohibited by subsections (1), (2), or (3) of this section shall be presumed to constitute a serious and immediate threat to the fair administration of justice. An attorney charged with making such a statement may exonerate himself by showing that his statement did not pose such a threat.

(1) With respect to a grand jury or other pending investigation of any criminal matter, an attorney for the government participating in or associated with the investigation shall refrain from making any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication, except such information as is contained in the public records or such statement as is necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

(2) 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, an attorney or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication, relating to that matter and concerning:

a. The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the attorney 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, an attorney 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;

b. 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;

c. The performance of any examination or tests or the accused's refusal or failure to submit to an examination or test;

d. The identity, testimony, or credibility of prospective witnesses, except that the attorney or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;

e. The possibility of a plea of guilty to the offense charged or to a lesser offense; or

f. Any opinion as to the accused's guilt or innocence, or as to the evidence in the case.

The foregoing shall not be construed to preclude the attorney 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, that 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 requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him.

(3) During the trial of any criminal matter, including the period of selection of the jury, no attorney or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview, relating to the trial or to the parties or issues in the trial, that a reasonable person would expect to be disseminated by means of public communication, except that the attorney or law firm may quote from or refer without comment to public records of the Court in the case.

(4) 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 attorney from replying to charges of misconduct that are publicly made against him.

(b) **By Courthouse Personnel.** All courthouse personnel, including the Marshal, Deputy Marshals, Court Security Officers, the Court Clerk, Deputy Court Clerks, Probation Officers, Court Reporters, Law Clerks, and Secretaries, among others, are prohibited from disclosing to any person, without authorization by the Court, information relating to a pending criminal proceeding that is not part of the public record of the Court. This Rule specifically forbids the divulging of information concerning arguments and hearings held in chambers or otherwise outside the presence of the public.

LCrR6.01 - THE GRAND JURY

(a) **Chief Judge.** The Chief Judge, or his designee, shall be in charge of the grand jury.

(b) **Returns.** Returns by the grand jury may be made to any district judge or to a full-time magistrate judge, and they are specifically designated to receive such returns.

(c) **Under Seal.** All matters pertaining to the grand jury, including, but not limited to, orders recalling the grand jury for service, motions and orders pursuant to Rule 6(e) of the *Federal Rules of Criminal Procedure***,** notices of disclosure pursuant to Rule 6(e) of the *Federal Rules of Criminal Procedure***,** orders to produce prisoners for testimony before the grand jury, motions for immunity orders, immunity orders, and orders to return

evidence, shall be placed and maintained under seal by the Clerk of the Court absent a specific order from a district judge to the contrary.

LCrR11.01 - PLEAS

Any copies of correspondence between the government and defense counsel in any criminal case directed to the Clerk concerning plea bargain negotiations pursuant to Rule 11 of the *Federal Rules of Criminal Procedure* will not be filed by the Clerk unless attached to a motion and memorandum of authorities. Should copies of such correspondence be lodged with the Clerk, the Clerk is directed to destroy them.

LCrR12.01 - MOTIONS

(a) **Motions.** Reference is made to the Speedy Trial Plan adopted by this Court and made an Appendix to these Rules. The procedures specified therein shall be followed, except as otherwise provided in these Rules or order of the Court. In addition, no discovery motion, or motions for disclosure of impeaching information, favorable evidence, existence and substance of promises of immunity, leniency, or preferential treatment, Brady material and/or Giglio material shall be filed in any criminal case unless accompanied by a written statement of counsel certifying that counsel for the moving party, or the moving party if not represented by counsel, has conferred with opposing counsel or party, as the case may be, in an effort in good faith to resolve by agreement the subject matter of the motion, but has not been able to do so. In addition, the written statement shall specify the information that has been made available by the moving party to opposing counsel or party and by the opposing party to the moving party or counsel prior to the filing of the motion. The motion and response may, at the election of the parties, be filed under seal.

(b) **Pretrial Motions.** All pretrial motions, except motions regarding discovery under *Fed. R. Crim. P. 16* or Local Criminal Rule 16.01(a)(2), shall be filed within twenty-eight (28) days of arraignment, absent leave of Court. Each such pretrial motion shall be accompanied by a memorandum and shall include the certification required by Local Criminal Rule 12.01(a). A memorandum in response shall be filed within fourteen (14) days after the motion is filed and served, unless the Court orders otherwise.

LCrR16.01 - DISCOVERY AND INSPECTION

(a) **Discovery in Criminal Cases.**

(1) **Speedy Trial Plan.** Discovery matters in criminal cases shall be governed by the procedures set forth in the plan adopted by this District pursuant to the Speedy Trial Act of 1974, which is incorporated herein and made an Appendix hereto, except as otherwise provided in these Rules or order of the Court.

(2) **Standing Discovery Rule.** On or before fourteen (14) days from the date of the arraignment of a defendant, the parties shall confer and the following shall be accomplished:

a. The government shall permit the defendant to inspect and copy, or shall supply copies of, all items listed below that are within the possession, custody, or control of the government, or the existence of which is known or by the exercise of due diligence may become known to the government:

1. Written or recorded statements made by the defendant.

2. The substance of any oral statement that the government intends to offer in evidence at trial made by the defendant before or after his arrest in response to interrogation by a then known to be government agent.

3. Recorded grand jury testimony of the defendant relating to the offenses charged.

4. The defendant's arrest and conviction record.

5. Books, papers, documents, photographs, tangible objects, buildings, or places which the government intends to use as evidence at trial to prove its case in chief, or were obtained from or belonging to the defendant.

6. Results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known to the attorney for the government, and which are material to the preparation of the defense or are intended for use by the government as evidence in chief at the trial.

b. Upon receipt by the defendant of materials in a.5 and a.6 from the government, the defendant shall permit the government to inspect and copy the following items, or copies thereof, or supply copies thereof, which are within the possession, custody, or control of the defendant, the existence of which is known or by the exercise of due diligence may become known to the defendant:

1. Books, papers, documents, photographs, or tangible objects which the defendant intends to introduce as evidence in chief at trial; and

2. Any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case which the defendant intends to introduce as evidence in chief at trial, or which were prepared by a defense witness who will testify concerning the contents thereof.

c. If the defendant intends to rely upon the defense of insanity at the time of the alleged crime, or intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether he/she had the mental state required for the offense charged, he/she shall give written notice thereof to the government.

d. The government shall reveal to the defendant and permit inspection and copying of all information and material known to the government which may be favorable to the defendant on the issues of guilt or punishment

within the scope of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), and United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976).

e. The government shall obtain the record of prior convictions of any alleged informant who will testify for the government at trial so that the record will be available to the defendant at trial.

f. The government shall state whether defendant was identified in any lineup, showup, photo spread, or similar identification proceeding, and produce any pictures utilized or resulting therefrom.

g. The government shall advise its agents and officers involved in this case to preserve all rough notes.

h. The government shall advise the defendant of its intention to introduce during its case in chief evidence pursuant to *Fed. R. Evid. 404(b).*

i. The government shall state whether the defendant was an aggrieved person, as defined in *18 U.S.C. § 2510(11)*, of any electronic surveillance, and if so, shall set forth in detail the circumstances thereof.

j. The government shall, upon request, deliver to any chemist selected by the defense, who is presently registered with the Attorney General in compliance with *21 U.S.C. §§ 822* and *823*, and *21 C.F.R. § 3101*, a sufficient representative sample of any alleged contraband which is the subject of the indictment, to allow independent chemical analysis of such sample with appropriate safeguards for the preservation of evidence.

k. Upon request, the government shall permit the defendant, his counsel, and any experts selected by the defense to inspect any automobile, vessel, or aircraft allegedly utilized in the commission of any offenses charged. Government counsel shall, if necessary, assist defense counsel in arranging such inspection at a reasonable time and place, by advising the government authority having custody of the thing to be inspected that such inspection has been ordered by the Court.

l. Upon request, the government shall provide the defense, for independent expert examination, copies of all latent fingerprints or palm prints which have been identified by a government expert as those of the defendant.

m. The parties shall make every possible effort in good faith to stipulate to all facts or points of law the truth and existence of which is not contested and the early resolution of which will expedite the trial.

n. The parties shall collaborate in preparation of a written statement to be signed by counsel for each side, generally describing all discovery material exchanged, and setting forth all stipulations entered into at the conference. No stipulation made by defense counsel at the conference shall be used against the defendant unless the stipulation is reduced to writing and signed by the defendant and his/her counsel.

It shall be the continuing duty of counsel for both sides to immediately reveal to opposing counsel all newly discovered information or other material within the scope of this Rule.

Upon a sufficient showing, the Court may at any time, upon motion properly filed, order that the discovery or inspection provided for by this Rule be denied, restricted, or deferred, or make such other order as is appropriate. It is expected by the Court, however, that counsel for both sides shall make every good faith effort to comply with the letter and spirit of this Rule.

(b) **Motions.** Motions regarding discovery under *Fed. R. Crim. P. 16*, or Local Criminal Rule 16.01(a)(2), shall be filed within fourteen (14) days after a discovery request is denied or the discovery is otherwise due pursuant to Local Criminal Rule 16.01, *Fed. R. Crim. P. 16* or order of the Court. Each discovery motion shall be accompanied by a memorandum and shall include the certification required by Local Criminal Rule 12.01(a). A memorandum in response shall be filed within fourteen (14) days after the motion is filed and served, unless the Court orders otherwise. See also Rule 12.01.

(c) **Correspondence.** Any copies of correspondence between the government and defense counsel in any criminal case directed to the Clerk concerning discovery matters under Rule 16 of the *Federal Rules of Criminal Procedure* will not be filed by the Clerk unless attached to a motion and memorandum of authorities. Should copies of such correspondence be lodged with the Clerk, the Clerk is directed to destroy them.

LCrR16.02 - DISPOSITION OF MATERIALS

In all criminal cases all materials (including grand jury transcripts) produced and furnished to the defense pursuant to the provisions of the Jencks Act, *18 U.S.C. § 3500*, or *Brady v. Maryland*, 373 U.S. 83 (1963), shall be returned to the United States Government or destroyed following the completion of the trial, sentencing of the defendant, or completion of the direct appellate process, whichever occurs last. If the materials are destroyed, a letter so certifying shall be furnished to the United States Government.

LCrR18.01 - PLACE OF TRIAL

All criminal cases in the District shall be tried in the Nashville Division unless the Trial Judge transfers the case to another division.

LCrR32.01 - SENTENCING

(a) **Initial Disclosure**. Upon a finding of guilt or at the conclusion of the hearing on the petition to enter a plea, a sentencing hearing date shall be set at least eighty (80) days from the finding of guilt or hearing on the petition to enter a plea. Should the Probation Officer not be able to complete the Presentence Report within the allotted time, the Chief United States Probation Officer or designee shall request additional time from the Court in writing and shall serve such written request on all attorneys of record.

(b) **Presentence Interview.** After a finding of guilt, the Probation Officer shall give notice and a reasonable opportunity to the defense counsel to attend any interview initiated by the Probation Office with the defendant. If undue delay is caused by counsel's unavailability, the Probation Officer shall proceed with the interview after giving notice to defense counsel.

The attorneys shall confer with the Probation Officer during the Presentence investigation process with a view toward resolving any disputed facts or factors. All parties shall communicate in a timely manner so that errors can be corrected and disputed issues fairly addressed.

Counsel shall schedule a time to meet with the Probation Officer to discuss the Presentence Report, giving adequate time for counsel and the United States Probation Office to investigate and make preliminary calculations. It shall be the responsibility of counsel for each party to schedule a meeting with the Probation Officer or, at the election of the parties, a joint meeting with counsel for both sides and the Probation Officer.

When the Presentence Report is completed, the United States Probation Office shall furnish a copy of the report to the attorneys of record. The defendant's attorney shall deliver a copy of the Presentence Report to the defendant and conduct an in-person review of the Presentence Report with his client.

(c) **Objections**. Within fourteen (14) days after receiving the Presentence Report, the defendant's attorney and the attorney for the government shall communicate in writing to the Probation Office, and to each other, any objections to material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the Presentence Report.

After receiving objections, the Probation Officer may meet with the defendant, defense counsel, and attorney for the government to discuss the objections. The Probation Officer may also conduct a further investigation and revise the Presentence Report as appropriate. Within seven (7) days of receiving the objections, the Probation Officer shall disclose to all parties any changes or unresolved factual disputes or objections in the report. At least seven (7) days prior to sentencing, the defendant's attorney and the attorney for the government shall file (not under seal unless ordered by the Court upon motion) with the Clerk, with a copy to the United States Probation Office and opposing counsel, a pleading entitled, "Position of the (Government or Defendant) With Respect to Sentencing Factors" containing only unresolved matters previously raised with all parties in writing.

(d) **Final Disclosure.** The United States Probation Office shall transmit to the sentencing Judge at least seven (7) days before the sentencing date the Presentence Report with guideline computations, an addendum indicating any unresolved factual disputes or objections by the parties with respect to the application of the guidelines, the Probation Officer's recommendations on disputed matters, and such material shall also be furnished to the defense counsel and the attorney for the government.

(e) **Sentencing Hearing.** The Judge, before imposing sentence, shall conduct such hearing as may be deemed necessary to resolve any disputed factors or facts and shall allow the attorney for the government and the defense attorney reasonable opportunity to comment either orally or in writing upon the Probation Officer's determination and on other matters relating to the appropriate sentence. Pleadings alleging that facts are reasonably in dispute shall not be raised unless the parties have conferred with each other and with the United States Probation Office in a good faith effort to resolve such disputed matters.

The Court shall announce its findings concerning factors or facts relating to the appropriate sentence. Following such announcement, unless counsel for either party requests additional time or the Court upon its own motion decides additional time is necessary, the Court shall in accordance with *Fed. R. Crim. P. 32(A)(1*) afford the attorney for the government and the attorney for the defendant, as well as the defendant, an opportunity to address the Court concerning the appropriate sentence. The Court, following the imposition of any sentence, shall notify the defendant of his right to appeal in accordance with *Fed. R. Crim. P. 32(A)(2).*

Absent a motion by either attorney granted by the Court or an order by the Court on its own motion, Presentence Reports provided to the attorneys may be retained by them.

The Court, with the consent of the parties or when the interest of justice requires, may modify this Rule on a case-by-case basis in order to carry out prompt and fair sentencing under the Sentencing Reform Act and in compliance with *Fed. R. Crim. P. 32.*

LCrR50.01 - PROMPT DISPOSITION

The Speedy Trial Plan, heretofore adopted by this Court, and made an Appendix hereto, is a part hereof as fully as if copied verbatim herein.

LCrR 58.01 - SCOPE OF MAGISTRATE JUDGE DUTIES - CRIMINAL MATTERS - 28 U.S.C. § 636(a).

Magistrate Judges are authorized and designated to exercise all of the powers and duties prescribed by 28 U.S.C. § 636(a) in criminal matters. Trials of criminal cases before the Magistrate Judges shall be in accordance with Fed.R.Crim.P. 58.

LCrR 58.02 - APPEALS IN CRIMINAL MATTERS.

(a) **Misdemeanor and Petty Offense**. Appeals in criminal matters shall be made to the District Judge within fourteen (14) days of entry of judgment, and shall be in accordance with Fed.R.Crim.P. 58(g)(2) for misdemeanors and petty offenses handled by the Magistrate Judge.

(b) **Release and Detention Orders**. Review and appeals of release or detention orders shall be in accordance with 18 U.S.C. § 3145.

APPENDICES

to

Local Rules of Court
Middle District
of Tennessee

Effective December 1, 2009

APPENDIX 1 - Alternative Dispute Resolution

APPENDIX 1(a) Ethical Guides for Evaluators, Mediators and Arbitrators

Guide 1, General Rules:
(a) The principal guide for ethical rules and considerations for Mediators, Arbitrators and Evaluators under these rules is 28 U.S.C. § 455 that applies to judicial officers. Section 455 has two principal substantive subsections. Subsection (a) requires a judicial officer to disqualify himself "in any proceeding in which his impartiality might reasonably be questioned." Parties may waive objection to grounds for disqualification under Subsection 455(a) only if the possible grounds for the question about impartiality are fully disclosed. A ground for disqualification under Subsection 455(b), however, cannot be waived under any circumstances.
(b) A Mediator, Arbitrator or Evaluator who believes that there might be a reasonable basis for questioning his or her impartiality under Subsection 455(a), must disclose the basis for such belief in a letter sent simultaneously to all counsel in the referred action. If none of the lawyers to whom this disclosure is made files a written objection with the Court with a copy to the Mediator, Arbitrator or Evaluator within ten calendar days of receiving the letter, then there is no need for the assigned Mediator, Arbitrator or Evaluator to withdraw. If the Court receives a timely notice of objection, the Court will appoint a different ADR panel member.

Guide 2, Disqualification under Subsection 455(a): There are five situations that clearly trigger ethical considerations under Section 455(a). In these circumstances, disqualification is automatic, unless the parties freely consented after full disclosure of facts giving rise to any conflict of interest.
(a) An appointed arbitrator, mediator or evaluator represents a party in another case in which one of the lawyers who would appear at the ADR proceeding also represents a party.
(b) Where one of the lawyers who would appear at the ADR proceeding is involved in another case in which one of the lawyers in the neutral's firm (but not the neutral) is representing a party, disqualification is not automatic.
(c) If the Arbitrator, Mediator or Evaluator represents in some other case one of the parties who would appear at the ADR proceeding, or the Arbitrator, Mediator or Evaluator has been engaged by such a party to perform some other kind of service (e.g., to provide business advice).
(d) In the past, the Arbitrator, Mediator or Evaluator represented in some other case one of the parties who would appear at an ADR proceeding, or in the past the Arbitrator, Mediator, or Evaluator was engaged by such a party.
(e) A lawyer in the firm in which the Arbitrator, Mediator or Evaluator currently works represents in some other case one of the parties who would appear at the ADR proceeding, or such a lawyer is now or has been in the past engaged by such a party to perform any other kind of service.

Guide 3, Disqualification under Subsection 455(b): The principal grounds for mandatory disqualification under Subsection (b), include where the Arbitrator, Mediator, or Evaluator
(a) is biased or prejudiced concerning a party to this case;
(b) has personal knowledge of evidentiary facts that are disputed in this case;
(c) serves or has served as a lawyer in the case;

(d) has one or more of the persons listed below serving as a lawyer in this case or is a party to this case or is an officer, director, or trustee of a party to this case, or a material witness in the case - i.e., children, parents, siblings, grandchildren, grandparents, great grandchildren, great grandparents, uncles and aunts, nieces and nephews;
(e) has a partner or an associate in his or her firm who is serving or has served as a lawyer in this case;
(f) has a lawyer with whom he or she has had a private practice in the past, or who was associated with that lawyer, or who is likely to be a material witness in the case;
(g) was "in governmental employment," and the Arbitrator, Mediator or Evaluator offered advice or served as a material witness with respect to this case, or expressed an opinion about the merits of this case;
(h) has directly or indirectly, or as a fiduciary, or his or her spouse, or any of the neutral's minor children who live with the neutral, have a financial interest in this case or in any party to it; or
(i) has directly, or indirectly, or as a fiduciary, or any of the persons listed in subsection (4) of this Rule, had any kind of interest (financial or otherwise) that could be substantially affected by the outcome of this case.

Guide 4, Additional Disclosure by Panel Members:
(a) In addition to the above circumstances, the Arbitrator, Mediator or Evaluator shall fully disclose to all parties any other matter that may give rise to a potential conflict of interest.
(b) A lawyer acting as a Mediator, Arbitrator, or Evaluator in any matter under these Rules shall explain to the parties that the Arbitrator, Mediator or Evaluator is not representing any of them and that traditional protections of representation such as the attorney-client privilege will not apply to the ADR proceeding. The Mediator, Arbitrator or Evaluator shall explain the applicable confidentiality rules for the proceeding and the extent of any required reporting.

Guide 5, Conduct at ADR Proceedings: In addition to the principles of Subsection 455(a) and (b), the following ethical considerations also apply to any Arbitrator, Mediator or Evaluator under this Rule:
(a) The Arbitrator, Mediator or Evaluator should maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias either by appearance, word or by action, and a commitment to serve all parties as opposed to a single party. The Arbitrator, Mediator or Evaluator should refrain from entering or continuing any dispute if he or she perceives that participation as an Arbitrator, Mediator or Evaluator would be a clear conflict of interest. The Arbitrator, Mediator or Evaluator should also disclose any circumstances that may create or give the appearance of a conflict of interest and any circumstances that may raise a question as to the ADR panel member's impartiality. The duty to disclose is a continuing obligation throughout the process.
(b) Arbitrators, Mediators or Evaluators shall not use information disclosed during the ADR proceeding for private gain or advantage nor shall an ADR panel member seek publicity from his or her participation in any specific ADR activity in an effort to enhance his or her position.
(c) Without the consent of all parties, a neutral shall not subsequently establish a professional relationship with any of the parties in the matter which is the subject matter of the proceedings. A neutral shall not subsequently establish a professional relationship with any of the parties in an

unrelated matter under circumstances which would raise legitimate questions about the integrity of the ADR process. The provision on unrelated matters shall not apply to persons practicing law with such neutral. Chinese walls may be used where appropriate to avoid any appearance of impropriety or sharing of any sensitive information which might raise legitimate questions about the integrity of the ADR process. By agreement in writing, parties to ADR proceedings may provide otherwise as to limitations on the role of the neutral subsequent to the ADR proceeding.

(d) Any Arbitrator, Mediator or Evaluator is barred from taking contingency fees, or fees other than provided by these Rules, that would give him or her a stake in the substantive outcome of the ADR proceeding.

(e) Only Mediators and Evaluators are permitted to have ex parte conferences with the parties or counsel.

(f) In any personal advertisement, an Arbitrator, Mediator or Evaluator shall not make any claims about his or her participation in the ADR program of the District Court other than the simple statement that the neutral is a member of the ADR panel of this Court.

(g) A Mediator or Evaluator may suggest to any pro se litigant that such party should consult with independent counsel for legal advice and describe the advantages of seeking this counsel.

(h) A Mediator or Evaluator may draft a settlement agreement, but must advise and encourage all parties to seek independent legal counsel before executing it.

Guide 6, Maintaining Records for Conflicts: To maximize the detection of circumstances that might give rise to concerns about ethical conflicts, each Arbitrator, Mediator or Evaluator must enter the relevant data about each action referred to him or her under these rules, and the identities of parties and counsel into his or her firm's system for clearing for conflicts of interests. That system should alert the ADR Panel member if, after originally clearing an ADR referral, a new matter that creates concerns about conflicts is accepted by some other lawyer in his or her firm.

APPENDIX 1(b) Suggested Conference Protocol for Mediation

(a) Submission of Conference Statements and Documents: At least seven (7) days before the mediation conference**,** each party shall submit an ex parte separate conference statement which shall specify their respective settlement positions. Each statement is to be furnished only to the Mediator and not to the other side. The statements shall not be filed with the Clerk of the Court. In their respective statements, plaintiff(s) and defendant(s) shall make a candid assessment of the strengths and weaknesses of both sides of the case and shall make an appraisal of the issue of liability and a status of the parties' settlement discussions, if any. Plaintiff's statements shall contain an assessment from plaintiff's viewpoint of plaintiff's damages and the strengths and weakness of plaintiff's position. Defendant's statement shall contain an assessment of the plaintiff's damages, defendant's exposure to those damages, and their respective strengths and weaknesses of defendant's position. Nothing in the way of a jury speech shall be contained in the mediation conference statements. Each statement shall contain an assessment of the economic cost of proceeding to trial.

Each conference statement shall contain a statement of the settlement authority extended by the client based on the attorney's written evaluation and opinion which shall be furnished to the respective clients in sufficient time to obtain express settlement instructions.

(b) Presentations: A party's initial presentation to a mediator shall be limited to thirty (30) minutes a side unless there are multiple parties or unusual circumstances warranting additional time. Statements by counsel in a brief or in summary presentation are inadmissible in any court or evidentiary proceeding. The Federal Rules of Evidence do not apply at the mediation conference. Factual information having a bearing on the question of damages must be supported by documentary evidence whenever possible. The mediator may request information on the applicable insurance limits and the status of settlement negotiations.

(c) Additional Conference: The mediator may schedule additional mediation conferences.

(d) Mediator's Duties: At the mediation conference, the Mediator has the following responsibilities:

(1) to assist the parties in identifying areas of agreement and, where feasible, enter stipulations;

(2) to explore with the parties, their contentions and evidence;

(3) to encourage each party to estimate, where feasible, the likelihood of liability and the dollar range of damages;

(4) to assist the parties in identifying alternative and innovative approaches to settlement;

(5) to determine whether a follow-up session would contribute to the case management process or to the likelihood of settlement; and

(6) to advise the parties, if appropriate, about the availability of another ADR process that might assist in resolving the dispute.

Upon agreement of the parties, the Mediator may act as an Evaluator.

APPENDIX 1(c) Protocol for Early Neutral Evaluation

Evaluation Statements: No later than seven (7) days prior to the evaluation conference, each party shall submit directly to the Evaluator a written evaluation statement. Such statements shall not exceed 15 pages (not counting exhibits and attachments). The written evaluations shall not be filed with the court and shall not be shown to the assigned judge.

(a) Evaluation statements may include any information that counsel deems useful, but they must:

(1) identify the person(s), in addition to counsel, who will attend the session as a representative of the party with the decision-making authority;

(2) describe briefly the substance of the action;

(3) list each witness who will testify in support of a claim or defense and state in summary what the witness will say; each attorney shall attach to their written evaluation statements copies of documents out of which the action arose (e.g., contracts), which would materially advance the purposes of the evaluation session (e.g., medical or expert reports or documents by which special damages might be determined);

(4) state the legal or factual issues, the early resolution of which might appreciably reduce the scope of the dispute or contribute significantly to settlement negotiations; and

(5) identify the discovery that promises to contribute most to equipping the parties for meaningful settlement negotiations.

(b) Parties may identify in these statements persons connected to a party opponent, e.g., a representative of a party opponent's insurance carrier) whose presence at the evaluation session would improve substantially the prospects for making the session productive; the fact that a person has been so identified, however, shall not, by itself, result in an order compelling that person to attend the ENE session.

(c) Procedure at the Evaluation Session:

(1) The evaluators possess considerable discretion in structuring the evaluation sessions, but the sessions shall be informal. The Federal Rules of Evidence shall not apply. There shall be no formal examination or cross examination of witnesses.

(2) In each case**,** the evaluator shall:

a. permit each party (through counsel or otherwise) to make an oral presentation of its position;

b. assist the parties in identifying areas of agreement and, where feasible, enter stipulations;

c. assess the relative strengths and weaknesses of the parties' contentions and evidence, and explain as carefully as possible the reasoning of the evaluator that supports these assessments;

d. estimate, where feasible, the likelihood of liability;

e. help the parties devise a plan for sharing the important information and/or conducting the key discovery that will equip them as expeditiously as possible to enter into meaningful settlement discussions or to posture the case for disposition by other means;

f. determine whether a follow-up session would contribute to the case management process or to settlement;

g. upon request of the parties, to give an evaluation of the probable outcome if the case is tried as to the dollar value of each claim and counterclaim;

h. if the parties are interested, and upon agreement of the parties, act as a mediator or otherwise assist in settlement negotiations either before or after presenting his or her evaluation, and explore the possibility of settling the case;

i. advise the parties, if appropriate, about the availability of another ADR process that might assist in resolving the dispute; and

j. report, in writing within fourteen (14) days after the ENE conference, to the ADR Coordinator: the fact that the ENE process was completed, any agreements reached by the parties, and the Evaluator's recommendation, if any, as to future ADR processes that might assist in resolving the dispute.

APPENDIX 1(d) Protocol for Nonbinding Arbitration

(a) In addition to the procedure set forth in the Arbitration statutes, 28 U.S.C. §§ 651 through 658, at an arbitration conference under these rules, the Arbitrator may also adopt the following measures:

(1) Permit each party to make a brief oral presentation of its position, without interruption, through counsel or otherwise, at the opening and closing of the arbitration hearing;

(2) Allow each party to call two witnesses and such additional witnesses as the Arbitrator deems necessary to reach a decision;

(3) Require, prior to the arbitration conference, counsel to confer with regard to physical exhibits, including documents and reports, and reach such agreement as is possible as to the use of such exhibits;

(4) Admit only evidence that would be admissible at trial upon the merits. Attorneys may summarize and comment upon the evidence, but counsel may only make factual representations supportable by reference to discovery materials, including depositions, stipulations, signed statements of witnesses, or other documents, or by a representation, as an officer of the court, that counsel personally spoke to the witness and is repeating what the witness stated to counsel; and

(5) Discourage objections, but entertain them if, in the course of presentation, counsel goes beyond the limits of propriety in presenting statements as to evidence or argument thereon.

(b) After counsel's presentations, the Arbitrator will be given fourteen (14) days to provide an abbreviated written decision on the merits.

(c) Although the Arbitrator's decision is nonbinding, counsel may stipulate that the Arbitrator's decision will be deemed a final determination on the merits and the judgment may be entered thereon. The parties may stipulate to such other use of the decision that will aid in the resolution of the case.

(d) The statements at the conference, other than clearly discoverable matters and evidence, as well as the Arbitrator's decision, shall be confidential and shall not be disclosed by any person except as provided in Rule 16.08 of these Rules.

APPENDIX 1(e) Suggested Duties of the ADR Coordinator

As the Administrator of the ADR Program, the ADR Coordinator may:

(a) oversee training for the ADR panel members;

(b) collect and maintain biographical data with respect to members of the ADR Panel to permit assignments commensurate with the experience, training, and expertise of the panelists and make the list of Panelists and the biographical data available to parties and counsel;

(c) prepare applications for funding of the ADR Program by the United States government and other parties;

(d) prepare reports required by the United States government or other parties with respect to the use of funds in the operation and evaluation of the program; and

(e) develop and maintain such forms, records, docket control, and data as may be necessary to administer and evaluate the program.

APPENDIX 2 – Speedy Trial Plan

PLAN FOR PROMPT DISPOSITION

OF CRIMINAL CASES

Final Plan pursuant to Speedy Trial
Act of 1974, as amended,
Title 18 U.S.C. §§ 3165(c), (e)(3)

United States District Court
Middle District of Tennessee

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

PLAN FOR PROMPT DISPOSITION OF CRIMINAL CASES

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IN THE UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF TENNESSEE

Plan for Prompt Disposition of Criminal Cases under the Speedy Trial Act of 1974, as Amended.

I

Introductory Material

A. 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), 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. §§ 5036, 5037), the judges of the United States District Court for the Middle District of Tennessee 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.

B. The members of the Speedy Trial Planning Group for the Middle District of Tennessee are :

Honorable L. Clure Morton
Chief Judge
United States District Court

Honorable Thomas A. Wiseman, Jr.
United District Court Judge
United States District Court

Honorable John T. Nixon
United District Court Judge
United States District Court

Honorable Kent Sandidge, III
United States Magistrate

Honorable Hal D. Hardin
United States Attorney

Don E. Savage
Chief United States Probation Officer

Julia B. Cross (Mrs.)
United States District Court Clerk

William J. Evins, Jr.
United States Marshal

William H. Farmer
Federal Public Defender

John E. Buffaloe, Jr.
Attorney

Joseph Martin, Jr.
Attorney

John S. Stanton
Reporter

C. This Plan will be printed and copies will be made available for public inspection in the Office of the United States District Court Clerk, 800 United States Courthouse, Nashville, Tennessee 37203. Copies may be obtained in person, or by mail addressed to the Clerk at the above address

II

Statement of Time Limits and Procedures for Implementing Them

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), 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. §§ 5036, 5037), the judges of the United States District Court for the Middle District of Tennessee 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:

1. Applicability.

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

(b) 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.

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*18 U.S.C. § 3172 defines offense as "any Federal criminal offense which is in violation of any Act of Congress . . ."

2. 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 section 5 should be given preference over other criminal cases. (§ 3164(a)).

3. Time Within Which an Indictment or Information Must be Filed.

(a) 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. (§ 3161 (b))

(b) 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 (a), such period shall be extended an additional 30 days. (§ 3161(b))

(c) 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 (i) is held in custody solely for the purpose of responding to a Federal charge; (ii) is delivered to the custody of a Federal official in connection with a Federal charge; or (iii) appears before a judicial officer in connection with a Federal charge.

(d) Related Procedures.

(1) 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.

(2) 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.

4. Time Within Which Trial Must Commence.

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

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

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

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

(§ 3161(c)(1))

(b) 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 witnesses or other factors resulting from passage of time make trial within 70 days impractical. The extended period shall not exceed 180 days. (§§ 3161(d)(2), (e))

(c) 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. (§ 3161(i))

(d) 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:

(1) 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. (§ 3161(d)(1))

(2) 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. (§ 3161(h)(6))

(3) If the original indictment or information was dismissed on motion of the United States Attorney 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.* (§ 3161(h)(6))

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.

(e) Measurement of Time Periods. For the purposes of this section:

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*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.

(1) 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.

(2) 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.

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

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

(5) In the event a defendant does not personally appear before a judicial officer in this district, but instead waives personal appearance at arraignment and enters a plea of not guilty by submitting an executed form captioned "Waiver of Personal Appearance at Arraignment and Entry of Plea of Not Guilty" to the U. S. Magistrate, for the purposes of the Speedy Trial Act of 1974 as amended, defendant's first appearance in this district will be determined to be on the date the submitted form is marked "File" by the Clerk.

(f) Related Procedures.

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

(2) The court shall have sole responsibility for setting cases for trial. 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. (§ 3161(a))

(3) Individual calendars shall be managed so that it will be reasonably anticipated that every criminal case set for trial well 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.

(4) 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.

(5) At the time of the filing of a complaint, indictment, or information described in paragraph (4), 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.

(6) Pre-trial motions, except motions for discovery under Rule 16, Federal Rules of Criminal Procedure, shall be filed within ten days after arraignment. Each motion will be accompanied by a brief. The Government shall respond to each of such motions within ten days after filing. Motions for discovery under Rule 16, Federal Rules of Criminal Procedure, must contain a certificate that the request for discovery has theretofore been made of the United States Attorney and denied. Requests for discovery material shall be made of the United States Attorney within ten days after arraignment, and motions for denied material shall be made within ten days after such denial.

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

If the Court determines that a hearing is necessary on a pretrial motion, it shall set a date therefor as soon as practicable. In any event, any pre-trial motion which has not been disposed of by order of the Court within twenty days after response has been made thereto, shall be set for hearing by the clerk, without further order of the Court.

(8) At least three days before trial date, the attorney for each defendant and the United States Attorney shall file a certificate with the clerk to the effect that all intended witnesses have been subpoenaed and government employees who are witnesses for the government have been notified as required by administrative procedure.

5. Defendants in Custody and High- Risk Defendants.*

(a) Time Limits. Notwithstanding any longer time periods that may be permitted under sections 3 and 4, the following time limits will also be applicable to defendants in custody and high-risk defendants as herein defined:

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

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*If a defendant's presence has been obtained through the filing of a detainer with 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).

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

(§ 3164(b))

(b) 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.

(c) Measurement of Time Periods. For the purposes of this section:

(1) 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.

(2) 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.

(3) A trial shall be deemed to commence as provided in sections 4(e)(3) and 4(e)(4).

(d) Related Procedures.

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

(2) 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.

(3) 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 permission of the court.

6. Exclusion of Time From Computations.

(a) Applicability. In computing any time limit under section 3, 4, or 5, the periods of delay set forth in 18 U.S.C. § 3161(h) shall be excluded. Such periods of delay shall not be excluded in computing the minimum period for commencement of trial under section 7.

(b) 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.

(c) Stipulations.

(1) 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.

(2) 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. § 3161(h)(7), whether time has run against the defendant entering into the stipulation.

(3) 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.

(d) Pre-Indictment Procedures.

(1) 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 section 3, 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. § 3161(h)(8), he shall file a written motion with the court requesting such a continuance.

(2) 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. 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_.

(3) The court may grant a continuance under 18 U.S.C. § 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.

(e) Post-Indictment Procedures.

(1) In the event that the court continues a trial beyond the time limit set forth in section 4 or 5, the court shall determine whether the limit may be recomputed by excluding time pursuant to 18 U.S.C. § 3161(h). By general order of the court the clerk may compute excludable time as it is defined in 18 U.S.C. § 3161(h) when starting and ending times of events that generate excludable time are clearly set forth in the case file.

(2) If it is determined that a continuance is justified, the court shall set forth its findings in the records, either orally or in writing. If the continuance is granted under 18 U.S.C. § 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 a 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.

7. 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 section 4(d), 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 in all cases schedule trials so as to permit defense counsel adequate preparation time in the light of all the circumstances. (§ 3161(c)(2))

8. Time Within Which Defendant Should be Sentenced.

*(a) Time Limit. A defendant shall ordinarily be sentenced within [45] days of the date of his conviction or plea of guilty or nolo contendere. On the order or motion of the judge, the sentencing of a defendant may be delayed beyond the forty-five

* The Speedy Trial Act does not establish time limits governing the period between conviction and sentencing, but the district courts may wish to do so. The time limit set forth in brackets in this section is a suggested limit, and not a maximum permissible limit.

days of the date of his conviction, plea of guilty or nolo contendere. When sentencing is delayed beyond the forty-five day period, the reason for the delay is to be set forth in the record.

(b) 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.

9. Juvenile Proceedings.

(a) 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. § 5036.

(b) Time of Dispositional Hearing. If a juvenile is 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. § 5037(c).

10. Sanctions.

(a) 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. §§ 3162 and 3164.*

(b) High-Risk Defendants. A high-risk defendant whose trial has not commenced within the time limit set forth in 18 U.S.C. § 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. (§ 3164(c))

(c) Discipline of Attorneys. In a case in which counsel (1) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial, (2) files a motion solely for the purpose of delay which he knows is frivolous and without merit, (3) 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 (4) otherwise willfully fails to proceed to trial without justification consistent with 18 U.S.C. § 3161, the court may punish such counsel as provided in 18 U.S.C. §§ 3162(b) and (c).

(d) Alleged Juvenile Delinquents. An alleged delinquent in custody whose trial has not commenced within the time limit set forth in 18 U.S.C. § 5036 shall be entitled to dismissal of his case pursuant to that section unless the Attorney General shows that

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* Dismissal may also be required in some cases under the Interstate Agreement on Detainers, 18 U.S.C., Appendix.

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.

11. 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. § 3161(j).

12. Procedures and Innovations that Have Been Adopted by the District Court to Expedite the Disposition of Criminal Cases in Accordance with the Speedy Trial Act.

(a) United States District Court Clerk.

(1) In addition to maintaining such statistical data as is required by the Administrative Office of the United States Courts, the clerk will from time to time report to other members of the Planning Group each case in which there is a failure to comply with any time limit set forth herein.

(2) Notice of arraignment shall not be sent out by the clerk until the clerk has been advised by the marshal that a warrant has been executed or summons served.

(3) A copy of the psychiatric evaluation of a defendant who has been sent for observation and study is to be furnished by the clerk to the United States Attorney, defendant's attorney, defendant and the

United States Probation Office. The Clerk will keep the psychiatric evaluation report under seal.

(4) By general order of the court, the clerk may compute excludable time as it is defined in 18 U.S.C. § 3161(h) when starting and ending times of events that generate excludable time are clearly set forth in the case file.

(b) United States Attorney and United States Marshal.

(1) The United States Marshal shall forward forthwith to the United States Attorney at the close of each bi-weekly period a report form (USA Form 172) listing thereon all persons in custody and indicating the date and place of their detention. Thereafter, within five days of the close of the reporting period, the United States Attorney shall complete the report, indicating the judge to whom each case has been assigned. The "Reason for Detention" column shall include an explanation in any case for which the defendant's status appears to be inconsistent with the time limits set forth in this statement. A copy of the report shall be furnished to each judge of the court.

(2) When a defendant is to be transferred pursuant to Rule 40, the United States Marshal shall arrange to have the defendant promptly transferred to this district.

(3) The United States Marshal will, on a daily basis, furnish to the clerk, in writing, the names of

defendants taken into custody by arrest or served with a summons. He will also furnish, on a daily basis, the names of pre-trial defendants released from custody of the marshal.

(4) All process to be served must first be documented in the office of the United States Marshal. Upon completion of service, process must be returned to the marshal regardless of agency making the service.

(c) Sealed Indictments.

(1) Single defendant Indictments. A form order is to be used ordering the indictment to be unsealed on the date of execution of the warrant for arrest of the defendant. A copy of the indictment in a sealed envelope is to accompany the warrant.

(2) Multiple Defendant Indictments. A copy of the indictment in a sealed envelope is to accompany each warrant of arrest. When an arrested defendant is brought before the magistrate, the magistrate may remove the indictment from the envelope for his use in the preliminary examination of the defendant. Upon completion of the preliminary examination, the indictment is to be returned to the envelope and the indictment remains sealed. Upon notification in writing by the United States Attorney to unseal, even though all defendants may not have been arrested, the indictment will be unsealed by the magistrate.

(d) Arraignments.

Arraignments are to be before the United States Magistrate. The magistrate will notify the United States Attorney, United States Marshal and the United States Probation Officer of the date arraignments are scheduled. A defendant, following the filing of an indictment or information (except information charging commission of a felony) may waive personal appearance before the United States District Judge or Magistrate and enter a plea of not guilty by submission of properly executed form designed for this purpose. A defendant charged with a felony in an information must make a personal appearance in the absence of an indictment as a waiver of indictment must be made in open court if defendant is to be prosecuted on an information charging commission of a felony.

(1) On a not guilty plea, the magistrate will notify the clerk who distributes case to the Judge for case to be set and notice sent. If defendant indicates an intention to plead guilty, the magistrate will send defendant forthwith to any sitting judge who will take the guilty plea. Trials will be interrupted for this purpose. If a judge is not immediately available, the magistrate will notify the clerk who will arrange for the defendant to be taken before a judge as soon as one is available to take the plea. If a United States Probation Officer is not in the courtroom when a defendant is brought

from the magistrate's courtroom to enter a plea of guilty, the sentencing will not be set for three weeks unless the defendant resides outside the state, in which event, the sentencing will not be set for four weeks.

(2) In the event after date set for defendant's appearance before the magistrate it is learned that defendant desires to plead guilty which results in the defendant's being taken directly to a judge, the magistrate is to be notified so a bench warrant will not be issued by the magistrate when the defendant fails to appear as scheduled.

(e) Pre-sentence Reports.

When it becomes known that a defendant desires to change a not guilty plea to guilty, in order that the pre-sentence report will be available, the trial date will be set after the United States Attorney's Office, the United States Probation Office, and the judge's courtroom deputy determine a suitable date.

(f) Bonds.

If bond is set for a defendant by the judge, the amount and conditions of the bond are put on a form signed by the judge. The defendant, along with the form, is taken to the Clerk's Office so bond can be posted.

(g) Public Defender.

The Administrative Guidelines Implementing Criminal Justice Plan have been adopted following the appointment of a Federal Public Defender for the Middle District of Tennessee.

(h) The members of the Speedy Trial Planning Group will meet on a monthly basis to discuss and resolve problems that may arise in achieving the prompt disposition of criminal cases.

(i) Forms.

(1) "Report of Proceedings before United States Magistrate"(DJ Form 105). The United States Magistrates shall forward copies of their report of proceedings to the clerk immediately upon completion.

(2) "Report of Persons in Custody Pending Indictment, Arraignment, or Trial, etc., for the Bi-Weekly Period Ending_____" (USA Form 172). This form is to be forwarded to the United States Attorney by the United States Marshal at the close of each bi-weekly period. A copy shall be furnished to each judge. Details regarding use of this form appears in No. 12 (b)(1) of this section.

(3) "Defendant Information Relative to a Criminal Action - in U. S. District Court " (AO Form 257). This form is to be used by the United States Attorney's Office in furnishing information to the clerk concerning a criminal case.

(4) "Petition to Enter Plea of Guilty". This form is to be used by the Court in taking defendant's guilty plea.

(5) "Notice of Sentencing Date". This form is to be used when appropriate. Copies are to be furnished to defendant, defendant's attorney, United States Attorney, United States Marshal, United States Probation Office, and Clerk's file.

(6) Form order to be used on single defendant sealed indictments. Use of this form order directs that the indictment be unsealed on the date of execution of the warrant for arrest of defendant named in the indictment. This is referred to in No. 12 (c)(1) of this section.

(7) Form to be used when bond for defendant is set by the judge. This is referred to in No. 12 (f) of this section.

(8) "Order Granting Extension of Time or Continuance". Form to be used by Judge when order issued to mark the reason for extension of time due to excludable delay in either of the two procedural intervals.

(9) "Waiver of Personal Appearance at Arraignment and Entry of Plea of Not Guilty". Form to be used when defendant waives personal appearance before the United States Magistrate and enters a plea of not guilty. This is referred to in 12 (d) of this section.

13. Effective Dates.

(a) 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. §3162 and reflected in sections 10(a) and (c) of this plan shall apply only to defendants whose cases are commenced by arrest or summons on or after July 1, 1980 and to the indictments and informations filed on or after that date.

(b) 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.

(c) 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.

(d) If a defendant was in custody on August 2, 1979, solely because he was awaiting trial, the 90-day period under section 5 shall be computed from that date.

III

Summary of Experience Under the Act Within the District

A. Progress toward meeting the permanent time limits.

A review of the Fifth report on the Implementation of Title I of the Speedy Trial Act of 1974 (February 28, 1970) reflects that for the period from July 1, 1978 through June 30, 1979 out of a total of two hundred and three (203) defendants who began the indictment to arraignment interval, only one was not arraigned within the ten-day time limit.

The above mentioned report reflects that for the same period (July 1, 1978 through June 30, 1979) out of a total of two hundred and eight (208) defendants who began the arraignment to trial interval, the permanent time limit of sixty (60) days was met in all but three cases; the transitional time limits of eighty (80) days was met in two of those cases and in only one case was the time limit not met. The elapsed time from arraignment to trial or disposition in that one instance was in the eighty-one (81) to one hundred (100) day period.

In regard to the arrest to indictment interval, according to the same report for the July 1, 1978 through June 30, 1979 period, the permanent time limit of thirty (30) days was met for all eighty-two (82) defendants who began this interval.

Table 1 (statistical tables, Section VIII) which reflects processing time for defendants whose cases were terminated during the

one year period from January 1, 1979 through December 31, 1979 contains the following information:

Arrest to Indictment Interval: Indictments for all defendants who began this interval during the one year period, seventy-nine (79) prior to July 1 and twenty-three (23) on or after July 1, were filed within the thirty (30) day time limit.

Indictment to Trial or other Disposition Interval: Out of a total of two hundred and seventeen (217) defendants who began the interval (one hundred and seventy-six (176) prior to July 1 and forty-one (41) on or after July 1) all but two (2) were brought to trial within the seventy (70) day period. The elapsed time between indictment and trial or other disposition for these two (2) was in the eighty-one (81) to one hundred (100) day period. The interval for both of these cases began prior to July 1, 1979.

A review of JS-3 forms for closed cases in 1979 resulted in the indentification of only one case in which time limits were exceeded. This case is commented on in sub-section D of this section (III).

B. Problems encountered.

The requirements of the Speedy Trial Act to meet specified time limits have resulted in an administrative burden and pressure being placed on the staffs of the United States Attorney and United States Marshal as well as the District Court Clerk. Record keeping requirements of the Act have placed an additional workload on the Clerk's office. One Planning Group member stated that the costs of administering the Act outweigh the benefits.

Problems are anticipated in involved or multi-defendant cases due to time limits to prepare for trial. Unlimited time (subject only to the Statute of Limitations) is permitted for investigation and case preparation by the prosecutor prior to the filing of an indictment, if no arrest made; however, once the speedy trial clock starts, the defendant is limited in time to prepare for defense.

C. Incidence of, and reasons for, requests or allowances of extensions of time beyond the District's standards (18 U.S.C. § 3166 (b)(1),(4)).

None.

D. If there have been cases not in compliance with the time limits for indictment and commencement of trial under 18 U.S.C. § 3167 (b) and (c), the reasons why the exclusions were inadequate to accomodate reasonable periods of delay (18 U.S.C. § 3167(b)).

A review of JS-3 forms for defendants terminated in the year beginning January 1, 1979 and ending December 31, 1979 indicates that the time limit for interval two (indictment to arraignment) was exceeded for one defendant. Indictment for this defendant was filed on January 9, 1979 and arraignment was held on February 22, 1979, total of forty-four (44) days which amounts to thirty-four (34) days in excess of the ten (10) day time limit. The trial or other disposition was held on April 10, 1979, a total of forty-seven (47) days from arraignment and a total of ninety-one (91) days from indictment. From a review of the JS-3 forms no other

incident of net procedural time limits being exceeded were found for the calendar year of 1979.

The delay in this instance was due to clerical error (oversight) and was not due to any inadequancy of exclusions of the Speedy Trial Act.

E. The effect on criminal justice administration of the prevailing time limits (18 U.S.C. § 3166(b)(9).

The requirement of meeting time limits under the Act has had an influence in the declination of complicated cases because of the time pressure. Worthwhile delay whicn could be beneficial to the administration of justice is made more difficult. The need to meet time limits sometimes prevents both the prosecution and the defense having enough time to investigate new issues raised after indictment. Guilty pleas are sometimes encouraged due to defendant's realizing the trial will not be delayed.

A general effect of the Act is that arrests are being withheld until cases are ready for trial which results in higher standards of proof before an arrest.

The system, operating under the Speedy Trial Act, penalizes the defendant more than the government. The government can control the timing of its actions, the defendant cannot.

One effect of the Speedy Trial Act is to place a burden on the defendant which the defendant does not want. The Federal Public Defender in this District, a member of the Speedy Trial Planning Group, stated that no client of his has ever asked for a speedy trial. Another member of the Planning Group stated that

due to the complexities in administering the Act that justice is delayed and costs increased.

F. The effect of compliance with the time limits on the civil calendar (18 U.S.C. § 3166(b)(9)).

Compliance with the time limits has a serious effect on the civil calendar by causing delay of civil cases as a result of giving necessary priority to criminal cases. Some civil cases are repeatedly continued in order for criminal cases to be tried. Civil plaintiffs on occasion have dropeed out in multi-plaintiff civil cases due to the delay. Prior to the enactment of the Speedy Trial Act, civil cases were usually tried on the date scheduled, even though priority was being given to criminal cases. Since enactment of the Speedy Trial Act, more civil cases are being 'bumped' or passed because of the need to try criminal cases within the Speedy Trial time limits. Also more federal civil cases are being settled due to the delay, usually to the detriment of the plaintiff.

The consensus of the Speedy Trial Planning Group is that the Speedy Trial Act has provided restraints without providing the tools to deal with the problem in regard to civil cases. It was also the opinion of the Planning Group that the Speedy Trial Act causes as much shuffling of criminal cases as civil cases.

A review of table 6 (Section VIII-Statistical Tables) reflects the following:

In the 1978 calendar year seven hundred forty-five (745) civil cases were pending at the start of the year, seven hundred forty (740) were filed and seven hundred twenty-eight (728) were

pending at the end of the year, resulting in a decrease of seventeen (17) pending cases (2.3% decrease).

In 1979 seven hundred twenty-eight (728) civil cases were pending at the start of the year, eight hundred eighteen (818) cases were filed and seven hundred fifty-one (751) were pending at the end of the year, resulting in an increase of twenty-three (23) cases (3.2% increase).

Based on the above figures, seven hundred and fifty-seven (757) civil cases were closed in 1978 and seven hundred ninety-five (795) civil cases were closed in 1979, an increase of thirty-eight (38) cases closed in 1979 against an increase of seventy-eight (78) cases filed in the same period.

For comparison purposes a review was made of the record of civil cases pending, opended and closed in 1975. This review reflects that at the start of 1975 four hundred and ninety-seven (497) civil cases were pending, five hundred and eighty-seven (587) were filed, five hundred and fifty (550) were closed and five hundred and thirty-four (534) were pending at the end of 1975. This resulted in an increase of thirty-seven (37) civil cases in the year 1975 (7.4% increase).

The number of pending civil cases on January 1, 1980 was seven hundred and fifty-one (751) as compared to four hundred and ninety-seven (497) on January 1, 1975, an increase of three hundred and fifty-four (354) (51% increase).

G. Frequency of use of sanctions under 18 U.S.C. § 3164 (release from custody or modification of release conditions) (18 U.S.C. § 3166 (b)(3)).

None.

IV

Statement of Procedures and Innovations That Have Been Adopted by the District Court to Expedite the Disposition of Criminal Cases in Accordance with the Speedy Trial Act (18 U.S.C.§ 3167 (b)).

Sub-section 12 in Section II (Statement of Time Limits and Procedures for Implementing Them) sets forth the procedures, innovations and use of forms adopted by the Judges of the Middle District of Tennessee to expedite the disposition of criminal cases. This sub-section includes procedures and use of forms adopted and which were set forth in both the Transitional Plan and the Plan which was expected to be the final Plan under the Speedy Trial Act prior to Amendments to the Speedy Trial Act which were approved August 2, 1979.

In order to avoid unnecessary duplication there will be set forth in this section only those procedures and forms which were adopted by the District Court subsequent to approval of the second Plan which took effect on July 1, 1979. These are:

(1) By general order of the Court, the Clerk may compute excludable time as it is defined in 18 U.S.C. 3161(h) when starting and ending times of events that generate excludable time are clearly set forth in the case file. (Reference: Section II, 12. (a)(4), Page 21).

(2) A defendant, following the filing of an indictment or information (except information charging commission of a felony)

may waive personal appearance before the United States District Judge or Magistrate and enter a plea of not guilty by submission of properly executed form designed for this purpose. A defendant charged with a felony in an information must make a personal appearance in the absence of an indictment as a waiver of indictment must be made in open court if defendant is to be prosecuted on an information charging commission of a felony. (Reference: Section II, 12.(d), Page 23).

(3) A form captioned "Waiver of Personal Appearance at Arraignment and Entry of Plea of Not Guilty" has been approved for use in this district. (Reference: Section II, 12.(i)(9), Page 26).

V

Statement of Additional Resources Needed, if Any, to Achieve Compliance with the Act (18 U.S.C. § 3166(d))

A. By the Court.

(1) Judgeships. None.

(2) United States Magistrates. A second full-time magistrate will be needed now that this District has three full time judges.

(3) Supporting staff.

(a) District Court Clerk's Office. With three full time judges for this District and the expected addition of a senior judge it is expected that up to three additional clerks will eventually be needed.

(b) United States Probation Office. None.

B. By the United States Attorney. None.

C. By the Public Defender. None.

D. By the United States Marshal. None at present. In the event the work load increases substantially in view of three full time judges in this District, additional deputies may be needed.

VI

Recommendations for Changes in Statutes, Rules, or Administrative Procedures (18 U.S.C. §§ 3166(b)(7), (d), (e))

A. Statutes.

The recommendation of the Speedy Trial Planning Group is that the Speedy Trial Act be repealed based on the following two reasons:

(1) Costs of administering the program outweigh the benefits, and

(2) There is a strong possibility the Act is unconstitutional as it may impair the defendant's ability to select counsel of his choice.

B. Rules.

None.

C. Administrative Procedures.

The Planning Group recommended that a 'second look' be taken of the administration of the Speedy Trial Act in two years to determine if there is a need to extend time limits and to eliminate some record-keeping.

VII

Incidence and Length of, Reasons for, and Remedies for Detention Prior to Trial (18 U.S.C. § 3166(b)(6)).

In order to minimize detention of defendants to only those considered in the best interest of the proper administration of justice, it is the policy in the Middle District of Tennessee that surety bonds are recommended only for those defendants considered likely to flee, who have past records of failure to appear, are considered dangerous to self or community, or who have no community ties.

In the Middle District of Tennessee for the twelve month period, July 1, 1978 through June 30, 1979 (Fifth Report on Implementation of Title I of the Speedy Trial Act of 1974), ninety-five out of a total of two hundred and seventy-nine defendants were held in pre-trial detention. None of these defendants were detained in excess of ninety days not subject to exclusions.

Statistical table 3 (Section VIII of Plan) reflects the following information:

For the six month period from July 1, 1979 through December 31, 1979, seventeen out of a total of eighty-six defendants were held in pre-trial detention. None of these defendants were detained in excess of ninety days not subject to exclusions.

VIII

Statistical Tables

Table #1
Processing Time . . . . . .1/1/79 thru 12/31/79

Table #2
Incidence Of & Reasons for Delay. . . . . .7/1/79 thru 12/31/79
7/1/78 thru 6/30/79

Table #3
Pretrial Detention. . . . . .7/1/79 thru 12/31/79

Table #4
Criminal Dispositions . . . . . .1/1/79 thru 12/31/79

Table #5
Matters Presented for Prosecution . . . . . .1/1/79 thru 12/31/79

Table #6
Status of Civil Calendar. . . . . .1/1/78 thru 12/31/78
1/1/79 thru 12/31/79

DISTRICT
TENNESSEE, MIDDLE

SPEEDY TRIAL DATA ANALYSIS (18 U.S.C. 3166(c)(1))

PROCESSING TIME

Processing time for defendants whose cases were terminated during one year period
January 1, 1979 through December 31, 1979

TABLE 1

HOW LONG IT TOOK TO BRING INDICTMENTS ON CRIMINAL DEFENDANTS

NUMBER OF *NET DAYS THAT ELAPSED TO INDICTMENT OR INFORMATION FROM ARREST OR SERVICE OF SUMMONS

INTERVAL ONE (ARREST TO INDICTMENT) — SUBDIVIDED BY WHEN INTERVAL BEGAN	NO. OF DEFENDANTS TERMINATED	SAME DAY		1 to 30 days		31 to 35 days		36 to 45 days		46 to 60 days		61 to 90 days		91 to 120 days		121 days & over	
		DEF'S REPORTED	%	DEF'S REPORTED	%	DEF'S REPORTED	%	DEF'S REPORTED	%	DEF'S REPORTED	%	DEF'S REPORTED	%	DEF'S REPORTED	%	DEF'S REPORTED	%
Before 1 July '79	79	52	65.8	27	34.2	-	-	-	-	-	-	-	-	-	-	-	-
On/After 1 July '79	23	19	82.6	4	17.4	-	-	-	-	-	-	-	-	-	-	-	-

HOW LONG IT TOOK TO BRING CRIMINAL DEFENDANTS# TO TRIAL

Number of *Net Days that Elapsed to Commencement of Trial (or other disposition) from Indictment or (if later) First Appearance

INTERVAL TWO (INDICTMENT TO TRIAL) — SUBDIVIDED BY WHEN INTERVAL BEGAN	NO. OF DEFENDANTS TERMINATED	SAME DAY		1 to 30 days		31 to 70 days		71 to 80 days		81 to 100 days		101 to 120 days		121 to 180 days		181 days & over	
		DEF'S REPORTED	%	DEF'S REPORTED	%	DEF'S REPORTED	%	DEF'S REPORTED	%	DEF'S REPORTED	%	DEF'S REPORTED	%	DEF'S REPORTED	%	DEF'S REPORTED	%
Before 1 July '79	176	3	1.7	71	40.3	100	56.8	-	-	2	1.1	-	-	-	-	-	-
On/After 1 July '79	41	-	-	26	63.4	15	36.6	-	-	-	-	-	-	-	-	-	-

HOW LONG IT TOOK TO SENTENCE CRIMINAL DEFENDANTS

NUMBER OF DAYS TO SENTENCE DATE FROM DATE OF CONVICTION

SENTENCING INTERVAL — FOR ALL PERSONS TERMINATED & SENTENCED DURING THE 12 MOS. PERIOD	SAME DAY		1 to 30		31 to 45		46 to 60		61 & over	
	NO. DEF'S	%	No.	%	No.	%	No.	%	No.	%
190	86	45.3	30	15.8	46	24.2	9	4.7	19	10.0

*NET MEANS GROSS DAYS LESS DAYS OF EXCLUDABLE TIME UNDER 18 USC 3161(h).

THESE FIGURES DO NOT INCLUDE DEFENDANTS WHO BEGAN THE INTERVAL DURING THIS TIME BUT WHOSE CASES WERE PENDING AS OF DECEMBER 31, 1979.

DEFENDANT FIGURES DO NOT INCLUDE PETTY OFFENDERS, AND ALSO DO NOT INCLUDE: JUVENILES, APPEALS FROM U.S. MAGISTRATE DECISIONS, RULE 20 TRANSFERS OUT OF DISTRICT, PRETRIAL DIVERSION DISPOSITIONS, AND REMOVALS FROM STATE COURTS.

SPEEDY TRIAL DATA ANALYSIS – 18 U.S.C. 3166(b)(2)

INCIDENCE OF AND REASONS FOR DELAY

DISTRICT: TENNESSEE, MIDDLE

REPORT PERIOD: X 6 Months (July thru Dec '79) — TOTALS

			% OF "A"
**TERMINATED DEFENDANTS REPORTED DURING PERIOD	86	(A)	
DEFENDANTS WITHOUT EXCLUDABLE TIME	60	(B)	69.8
DEFENDANTS WITH EXCLUDABLE TIME	26	(C)	30.2
INCIDENTS OF EXCLUDABLE TIME	36	(D)	

TABLE 2

LENGTH OF EXCLUDABLE DELAY PERIOD (NO. OF DAYS)

CODE	#REASON Under 18 USC 3161	0 to 10 dys	11 to 21	22 to 42	43 to 84	85 to 120	121 + days	SUB-TOTALS OF "D"	% OF "D"	INTERVAL IN WHICH EXCLUDABLE DELAY OCCURRED*** ONE	TWO
A	Examination or hearing for mental or physical incapacity—(h)(1)(A)	0	0	0	0	0	0	0	0	0	0
B	NARA examination—(h)(1)(B)	0	0	0	0	0	0	0	0	0	0
C	State or federal trials on other charges—(h)(1)(D)	0	0	1	0	0	0	1	2.8	0	1
D	Interlocutory appeals—(h)(1)(E)	0	0	0	0	0	0	0	0	0	0
*E	Motions (from filing to hearing or prompt disposition)—(h)(1)(f)	3	1	0	1	0	0	5	13.9	0	5
F	Transfers from other districts (per FRCP rules 20, 21 & 40)—(h)(1)(G)	0	0	0	0	0	0	0	0	0	0
G	Motion is actually under advisement—(h)(1)(J)	0	0	0	0	0	0	0	0	0	0
H	Misc. proceedings: probation or parole revocation, deportation, extradition—(h)(1)	0	0	0	1	0	0	1	2.8	0	1
*6	Transportation from another district or to/from examination or hospitalization in ten days or less—(h)(1)(H)	0	0	0	0	0	0	0	0	0	0
*7	Consideration by court of proposed plea agreement—(h)(1)(I)	0	0	0	0	0	0	0	0	0	0
I	Prosecution deferred by mutual agreement—(h)(2)	0	0	0	1	0	1	2	5.6	1	1
M	Unavailability of defendant or essential witness—(h)(3)(A & B)	0	0	1	0	0	4	5	13.9	0	5
N	Period of mental or physical incompetence of defendant to stand trial—(h)(4)	0	0	1	0	0	0	1	2.8	0	1
O	Period of NARA commitment or treatment—(h)(1)(C) & (E)	0	0	0	0	0	0	0	0	0	0
P	Superseding indictment and/or new charges—(h)(6)	0	0	0	0	0	0	0	0	0	0
R	Defendant awaiting trial of co-defendant when no severance had been granted—(h)(7)	0	0	0	0	0	0	0	0	0	0
	"Ends of justice continuance, per 3161 (h)(8)" — T: if more than one reason or none of reasons below given in support (A & B)	1	0	6	1	5	7	20	55.6	0	20
	T1: Failure to continue would stop further proceedings or result in miscarriage (B)(i)	0	0	0	0	0	0	0	0	0	0
*T	T2: Case unusual or complex (B)(ii)	0	0	0	0	0	0	0	0	0	0
	T3: Indictment following arrest cannot be filed in 30 days (B)(iii)	0	0	0	0	0	0	0	0	0	0
	T4: Continuance granted in order to obtain or substitute counsel, or give major time to prepare	0	0	0	0	0	0	0	0	0	0
U	Time up to withdrawal of guilty plea—3161(i)	0	0	0	1	0	0	1	2.8	0	1
W	Grand jury indictment time extended 30 more days—3161(b)	0	0	0	0	0	0	0	0	0	0
L	More than 1 exclusion with days aggregated	0	0	0	0	0	0	0	0	0	0
	TOTAL	4	1	9	5	5	12	36	100.0	1	35

#Paragraph and subsection of 18 USC 3161, Speedy Trial Act of 1974, as amended, are shown with reason for delay below.

*An exclusion category newly created or modified by Aug. '79 amendment.
**DEFENDANT FIGURES DO NOT INCLUDE: Juveniles, Appeals from U.S. Magistrate decisions, Rule 20 transfers out of district, pretrial diversion dispositions, removals from State courts and any petty offenses proceeded by information.
***Interval one: Arrest to Indictment; Interval two: Indictment to Trial.

SPEEDY TRIAL DATA ANALYSIS

INCIDENCE OF AND REASONS FOR DELAY

During July 1, 1978 thru June 30, 1979

TOTALS FOR

TENNESSEE
MIDDLE

			% OF "A"
**TERMINATED DEFENDANTS REPORTED DURING PERIOD	279	(A)	
DEFENDANTS WITHOUT EXCLUDABLE TIME	209	(B)	74.9
DEFENDANTS WITH EXCLUDABLE TIME	70	(C)	25.1
INCIDENTS OF EXCLUDABLE TIME	99	(D)	

*REASON Under 18 USC 3161	LENGTH OF EXCLUDABLE DELAY PERIOD (NO. OF DAYS) 1 to 10 days	11 to 21	22 to 42	43 to 84	85 to 120	121 + days	SUB-TOTALS OF "D"	% OF "D"	***INTERVAL IN WHICH EXCLUDABLE DELAY OCCURRED ONE	TWO	THREE
A. Examination or hearing for mental or physical incapacity–(H)(1)(A)	2	1	1	1	1	1	7	7.1	0	0	7
B. NARA examination–(H)(1)(B)	0	0	0	0	0	0	0	0	0	0	0
C. State or federal trials on other charges–(H)(1)(C)	0	0	0	1	0	0	1	1.0	0	0	1
D. Interlocutory appeals–(H)(1)(D)	0	0	0	0	0	0	0	0	0	0	0
E. Hearings on pretrial motions–(H)(1)(E)	7	2	0	0	0	0	9	9.1	0	0	9
F. Transfers from other districts (per FRCP rules 20, 21 & 40). (H)(1)(F)	0	0	0	0	0	0	0	0	0	0	0
G. Motion is actually under advisement. (H)(1)(G)	1	0	5	0	0	0	6	6.1	0	0	6
H. Misc. proceedings: probation or parole revocation, deportation, extradition. (H)(1)	0	0	0	0	0	0	0	0	0	0	0
I. Prosecution deferred by mutual agreement. (H)(2)	0	0	0	3	0	3	6	6.1	2	0	4
M. Unavailability (includes fugitive) of defendant or essential witness. (H)(3)(A)(B)	1	0	0	3	0	0	4	4.0	0	0	4
N. Period of mental or physical incompetence of defendant to stand trial. (H)(4)	1	0	0	3	0	0	4	4.0	0	1	3
O. Period of NARA commitment or treatment. (H)(5)	0	0	0	0	0	0	0	0	0	0	0
P. Superseding indictment and/or new charges. (H)(6)	0	0	0	0	0	0	0	0	0	0	0
R. Defendant awaiting trial of co-defendant when no severance has been granted. (H)(7)	0	0	2	5	0	2	9	9.1	0	0	9
T. Continuances granted in the ends of justice. (H)(8)	5	7	11	21	7	2	53	53.5	1	4	48
U. Time up to withdrawal of guilty plea (i)	0	0	0	0	0	0	0	0	0	0	0
W. Grand jury indictment time extended 30 more days. (B)	0	0	0	0	0	0	0	0	0	0	0
TOTALS	17	10	19	37	8	8	99	100.0	3	5	91

*Paragraph and subsection of 18 USC 3161, Speedy Trial Act of 1974, are shown with reason for delay below.
**DEFENDANT FIGURES DO NOT INCLUDE: Juveniles, Appeals from U.S. Magistrate decisions, Rule 20 transfers out of district, pretrial diversion dispositions, removals from State courts and any petty offenses proceeded by information.
***Interval one: Arrest to Indictment, Interval two: Indictment to Arraignment, Interval three: Arraignment to Trial.

Prepared by: Administrative Office of U.S. Courts

DISTRICT

TENNESSEE, MIDDLE

SPEEDY TRIAL DATA ANALYSIS 3166(b)(6) & (c)(6)

PRETRIAL DETENTION

TABLE 3

REPORT PERIOD { 6 MONTHS – 1 JULY '79 THRU 31 DECEMBER '79

CASES CLOSED DURING REPORT PERIOD

	A	% OF A
NUMBER OF DEFENDANTS TOTAL NO. OF DEFENDANTS DISPOSED OF DURING PERIOD OF REPORT	86	
DETAINEES DEFENDANTS DETAINED AFTER INITIAL APPEARANCE BEFORE A JUDGE OR MAGISTRATE FOR PERIODS OF CUSTODY TIME NOT SUBJECT TO EXCLUSIONS PER 3161(h)	B 17	19.8

DEFENDANTS GROUPED BY LENGTH OF NET* TIME IN CONTINUOUS DETENTION STATUS

NUMBER OF DETAINEES	NUMBER OF NET DAYS					
	1 to 10	11 to 30	31 to 90	91 to 120	121 to 150	151 Plus
	5	3	9	0	0	0
% OF BOX B	29.4%	17.6 %	52.9 %	.0 %	.0%	.0%

*"NET" IS GROSS TIME LESS EXCLUSIONS PER 3161(h). REPORT SHOULD INCLUDE ONLY DEFENDANTS HAVING NON-EXCLUDABLE ("NET") DETENTION TIME. **WHEN** DEFENDANT HAS MORE THAN ONE SUCH DETENTION PERIOD, INTERSPERSED WITH RELEASE TIME OR EXCLUDABLE TIME, DO NOT AGGREGATE THE SEPARATE DETENTION PERIODS. TAKE THE DEFENDANTS LONGEST SINGLE PERIOD OF "NON EXCLUDABLE" DETENTION AS THE BASIS FOR DETERMINING WHICH ONE OF THE ABOVE COLUMNS TO PUT HIM IN.

DISTRICT

TENNESSEE, MIDDLE

REPORT PERIOD { ONE YEAR PERIOD
1 JAN 1979 THROUGH 31 DECEMBER 1979

SPEEDY TRIAL DATA ANALYSIS 3166(c)(4) & (5)

CRIMINAL DISPOSITIONS

TABLE 4

A NUMBER OF DEFENDANTS DISPOSED OF: 169

NOT CONVICTED						
	B	DISMISSED		ACQUITTED AT TRIAL		
% OF A	TOTAL NOT CONVICTED	% OF B	TOTAL NO. DISMISSED	% OF B	COURT	JURY
7.7	13	61.5	8	38.5	-	5

CONVICTED						
	C	CONVICTED by PLEA		CONVICTED at TRIAL		
% OF A	TOTAL CONVICTED	% OF C	PLEA of GUILTY or NOLO CON.	% OF C	COURT	JURY
92.3	156	89.7	140	10.3	2	14

DISTRICT

Middle District of Tennessee

REPORT COVERS PERIOD OF: 1/1/79 - 12/31/79

SPEEDY TRIAL DATA ANALYSIS – 3166(c)(2)(3) & (5)

NUMBER OF MATTERS PRESENTED TO U.S. ATTORNEY FOR PROSECUTION, AND THE NUMBER ON WHICH PROSECUTION WAS INITIATED

TABLE 5

NAME OF AGENCY PRESENTING MATTER TO U.S. ATTORNEY FOR PROSECUTION	MATTERS: ON HAND & NEW: MATTERS[1] ON HAND AT START OF PERIOD[1] (a)	MATTERS REC'D OR ORIGINATED BY U.S. ATTY DURING PERIOD (b)	DECLINED (i.e. DETERMINATIONS THAT NEW PROSECUTIONS WOULD NOT BE INITIATED IN THIS DISTRICT.): REFERRED TO OTHER FEDERAL DISTRICT (c)	REFERRED TO STATE/LOCAL AUTHORITY (d)	PRETRIAL DIVERSION (e)	ALL OTHER DECLINATIONS[2] (f)	OTHER DISPOSITIONS[3] (g)	NEW PROSECUTIONS INITIATED DURING PERIOD[4] (h)	MATTERS ON HAND AT END OF PERIOD[5] (i)
Dept. of Agriculture	12	2				7		5	2
Corps of Eng.-Army	2	19				1	18		2
Social Security-HEW	1	3				1	1	1	1
Other HEW		2							2
Fish & Wildlife		10					7	1	2
National Park Service		2					1		1
DEA	16	22				2		26	10
FBI	142	157		14	2	65	17	78	123
Other Justice Depts.		1						1	
Labor Department		3							3
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
TOTALS									

[1] "MATTER" REFERS TO DEFENDANT MATTER – I.E. IF CLAIMED OFFENSE INVOLVES 2 DEFENDANTS COUNT IT AS 2 MATTERS
[2] COL (F) INCLUDES MATTERS DECLINED FOR WANT OF PROSECUTIVE MERIT, LACK OF EVIDENCE, JURISDICTIONAL PROBLEMS, ETC.
[3] COL (G) INCLUDES MATTERS DISMISSED BY MAGISTRATE, NOT ON INITIATIVE OF U.S. ATTY., AND MATTERS RESULTING IN NO TRUE BILL BY GRAND JURY
[4] COL (H) INCLUDES INDICTMENTS AND INFORMATIONS FILED AND MATTERS ADJUDICATED BEFORE U.S. MAGISTRATE
[5] COL (I) INCLUDES REFERRED MATTERS THAT ARE STILL PENDING BEFORE GRAND JURY, AND ALL OTHER MATTERS NOT YET DECLINED – PER COLS (C) THRU (F) – NOR FALLING WITHIN SCOPE OF COL (G) OR (H)

DISTRICT

Middle District of Tennessee

REPORT COVERS PERIOD OF: 1/1/79 - 12/31/79

SPEEDY TRIAL DATA ANALYSIS – 3166(c)(2)(3) & (5)

NUMBER OF MATTERS PRESENTED TO U.S. ATTORNEY FOR PROSECUTION, AND THE NUMBER ON WHICH PROSECUTION WAS INITIATED

TABLE 5

NAME OF AGENCY PRESENTING MATTER TO U.S. ATTORNEY FOR PROSECUTION	MATTERS								
	ON HAND & NEW		DECLINED (i.e. DETERMINATIONS THAT NEW PROSECUTIONS WOULD NOT BE INITIATED IN THIS DISTRICT.)				OTHER DISPOSITIONS[3]	NEW PROSECUTIONS INITIATED DURING PERIOD[4]	MATTERS ON HAND AT END OF PERIOD[5]
	MATTERS[1] ON HAND AT START OF PERIOD[1]	MATTERS REC'D OR ORIGINATED BY U.S. ATTY DURING PERIOD	REFERRED TO OTHER FEDERAL DISTRICT	REFERRED TO STATE/LOCAL AUTHORITY	PRETRIAL DIVERSION	ALL OTHER DECLINATIONS[2]			
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Post Office	30	42			5	15	7	17	28
Fed.Highway Admin.		2						1	1
Customs	1	2				1			2
Internal Revenue	5	13				5	1	11	2
Bureau of Alcohol, Tobacco and Firearms	8	23				5	1	7	18
Other Internal Revenue	1	4							5
Secret Service	43	72			7	22	4	43	39
Public Bldg. Service		2					2		
Tenn. Valley Authority		3					2	1	
Veterans Administration	1	6					6		1
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
TOTALS	262	391	-0-	14	14	124	67	192	242

[1] "MATTER" REFERS TO DEFENDANT MATTER – I.E. IF CLAIMED OFFENSE INVOLVES 2 DEFENDANTS COUNT IT AS 2 MATTERS
[2] COL (F) INCLUDES MATTERS DECLINED FOR WANT OF PROSECUTIVE MERIT, LACK OF EVIDENCE, JURISDICTIONAL PROBLEMS, ETC.
[3] COL (G) INCLUDES MATTERS DISMISSED BY MAGISTRATE, NOT ON INITIATIVE OF U.S. ATTY., AND MATTERS RESULTING IN NO TRUE BILL BY GRAND JURY
[4] COL (H) INCLUDES INDICTMENTS AND INFORMATIONS FILED AND MATTERS ADJUDICATED BEFORE U.S. MAGISTRATE
[5] COL (I) INCLUDES REFERRED MATTERS THAT ARE STILL PENDING BEFORE GRAND JURY, AND ALL OTHER MATTERS NOT YET DECLINED – PER COLS (C) THRU (F) – NOR FALLING WITHIN SCOPE OF COL (G) OR (H)

DISTRICT

TENNESSEE, MIDDLE

REPORT PERIOD { COMPARISON OF TWO CALENDAR YEARS: 1 JAN THROUGH 31 DEC 1978, AND 1 JAN THROUGH 31 DEC 1979.

SPEEDY TRIAL DATA ANALYSIS 3167(b)(6)

STATUS OF CIVIL CALENDAR

TABLE 6

	NUMBER OF CIVIL CASES			PERCENTAGE INCREASE OR DECREASE
	PENDING AT START OF REPORT PERIOD	FILED DURING REPORT PERIOD	PENDING AT END OF REPORT PERIOD	
	(1)	(2)	(3)	(4)
1978	745	740	728	-2.3
1979	728	818	751	3.2

	LENGTH OF TIME CASES IN COLUMN 3 ABOVE HAVE BEEN PENDING					
	Under 3 Mos	3 to 6 Mos	6 to 12 Mos	12 to 18 Mos	18 to 24 Mos	24 Mos & Over
1978	164	113	191	121	56	83
1979	157	143	183	103	76	89

CERTIFICATE OF APPROVAL

This is to certify that in accordance with Section 3165(c),(e)(3) of the Speedy Trial Act of 1974, Title 18 U.S.C. as amended, the foregoing Plan has been duly received and approved as complying with the law.

This 22nd day of April, 1980.

Chief Judge
United States District Court
Middle District of Tennessee

United States District Judge
Middle District of Tennessee

CERTIFICATE OF APPROVAL

This is to certify that in accordance with Section 3165(c) of the Speedy Trial Act of 1974, Title 18, U.S.C., the foregoing Final Plan for the United States District Court for the Middle District of Tennessee has been duly received and approved as complying with the law by those members of the Reviewing Panel consisting of the Judicial Council of the Sixth Circuit.

Dated this 10th day of June, 1980.

George Edwards

George Edwards, Chief Judge
United States Court of Appeals
for the Sixth Circuit

UNITED STATES DISTRICT COURT FOR THE

MIDDLE DISTRICT OF TENNESSEE

CERTIFICATE

I hereby certify that I have forwarded to the Administrative Office of the United States Courts, Washington, D. C. 20544, five copies of the Plan for Prompt Disposition of Criminal Cases, Final Plan Pursuant to Speedy Trial Act of 1974 - 18 U.S.C. § 3165(e)(3), for the United States District Court for the Middle District of Tennessee, this the 25th day of June, 1980.

CHIEF JUDGE

CERTIFICATE OF APPROVAL

This is to certify that in accordance with Section 3165(c) of the Speedy Trial Act of 1974, Title 18 U. S. C., the foregoing Final Plan has been duly received and approved as complying with the law.

This 13 day of August, 1980.

CHIEF JUDGE
United States District Court for
the Middle District of Tennessee