LOCAL RULES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE

These Rules are current as of June 1, 2004

Table of Contents

I. CIVIL RULES

1. General 1

3. Commencement of Action 2

5. Service and Filing of Pleadings and Other Papers 4

6. Time 5

7. Motions and Memoranda of Law 6

9. Pleading Special Matters 8

10. Form of Pleadings, Motions and Other Papers 9

16.1. Case Management Tracks 10

16.2. Scheduling Order 12

16.3. Management Track Procedures 14

16.4. Final Pretrial Conference and Order 19

22. Interpleader 22

24. Notice of Constitutional Question 23

26. Discovery 24

30. Depositions 26

32. Use of Depositions in Court Proceedings 27

33. Interrogatories 28

38. Demand for Jury Trial 29

39. Courtroom Practice 30

41.1. Compromised Actions 32

41.2. Court Approval of Settlements on Behalf of Minors 33

44. Proof of Official or Certified Records 34

47. Selection of Jurors 35

54.1. Security for Costs 36

54.2. Claim for Attorneys' Fees 37

54.3. Bill of Costs 38

56. Motions for Summary Judgment 39

64. Attachment and Trustee Process 41

65.1. Bonds and Security 42

67. Deposit of Funds in Interest Bearing Accounts 43

72. Duties of United States Magistrate Judges 44

72.1 Objections to Pretrial Orders 45

73. Consent to Order of Reference 46

77. Orders by the Clerk of Court 47

79. Custody of Papers and Records 48

81. Jury Demand in Removed Actions 49

83.1. Attorneys - Admission 50

83.2. Attorneys - Appearances and Withdrawals 52

83.3. Attorneys - Rules of Disciplinary Enforcement 53

83.4. Legal Assistance by Certified Law Students 62

83.5. Assignment of Remanded Cases 65

83.6. Bankruptcy 66

83.7. Corporate Disclosure Statement 67

83.8. Security 68

83.9. Complaints of Judicial Misconduct or Disability.....70

83.10 Certificate of Appealability.....71

83.11 Alternative Dispute Resolution ("ADR").....72

83.12 Procedures Governing Cases Referred to or from New Hampshire 74

83.13 Restrictions Upon Law Practice After Termination of a Clerkship....75

Appendix 76

II. CRIMINAL RULES

110 Trial Date.....78

111. Time Limits on Plea Agreements 79

117. Final Pretrial Conference.....80

123. Courtroom Practice 81

124.1. Proposed Questions for Jury Voir Dire.....83

124.2. Trial Jury.....84

130. Requests for Jury Instructions 86

132. Guideline Sentencing 87

147. Motions and Memoranda of Law 89

157.1. Duties of United States Magistrate Judges 90

157.2. Trial Briefs 91

157.3. Special Orders for the Protection of the Accused in Widely Publicized and Sensational Criminal Cases 92

157.4. Release of Information by Attorneys and Courthouse Personnel in Criminal Cases 93

157.5 Attorneys - Appearances and Withdrawal 96

Table of Contents

RULE 1

GENERAL

(a) Relaxation

The Court may relax these rules in exceptional circumstances when justice so requires.

(b) Effective Date: Repealer

These rules shall be effective February 1, 1997 and shall govern all proceedings in cases then pending, or thereafter brought. All prior rules of this Court are repealed, and all standing orders inconsistent with these rules are vacated, as of that date.

(c) Definition

The term "party's attorney" or similar term whenever used in these rules shall include a party appearing without counsel.

(d) Numbering

The numbering of the local rules tracks the numbers of the Federal Rules of Civil Procedure. Rules concerning criminal practice have been assigned to the 100 series and thereafter correspond to the Federal Rules of Criminal Procedure.

Table of Contents

RULE 3

(As Amended December 1, 2001)

COMMENCEMENT OF ACTION

(a) Commencement of Civil Action

The filing fee shall be paid to the Clerk upon filing the complaint. A party who desires to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 shall file with the complaint a motion for leave to proceed in forma pauperis together with an affidavit showing in detail the party's inability to pay fees and costs and that the party is entitled to redress. All complaints shall be accompanied by a properly completed Civil Cover Sheet (Form JS-44) which is available from the Clerk.

(b) Assignment

Maine constitutes one judicial district. Court shall be held at Bangor and Portland. Cases arising in the counties of Aroostook, Franklin, Hancock, Kennebec, Penobscot, Piscataquis, Somerset, Waldo and Washington shall be filed and ordinarily tried at Bangor. Cases arising in the counties of Androscoggin, Cumberland, Knox, Lincoln, Oxford, Sagadahoc and York shall be filed and ordinarily tried at Portland. However, the Clerk shall assign those cases arising out of Kennebec County in which the State of Maine is either a plaintiff or a defendant to the judges of the court by lot, in such manner that each judge shall be assigned an equal number of said cases. Those Knox County cases brought by inmates at the Maine State Prison in Thomaston and Warren which would ordinarily be filed in Portland, are to be filed in Bangor.

New Hampshire cases referred to this court due to the recusal of the judges in the District of New Hampshire and appeals from decisions of the U. S. Bankruptcy Court to the district judges of this court shall be assigned by lot so that each judge is assigned an equal number of each category of cases.

(c) Form of Complaint in Social Security Cases

Complaints filed in civil cases, pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), for benefits under Titles II, XVI and XVIII of the Social Security Act shall use the form provided in Appendix I.

Table of Contents

RULE 5

(As Amended October 1, 2003)

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) Place of Filing

Unless otherwise ordered by the Court, papers shall be filed with the Court at Bangor in cases filed and pending at Bangor, and at Portland in cases filed and pending at Portland.

(b) Filing of Discovery

Unless otherwise ordered by the Court, depositions upon oral examination and interrogatories, requests for documents, requests for admissions, and answers and responses thereto and disclosures made under Fed. R. Civ. P. 26(a)(1)-(3) and pursuant to scheduling orders issued by the Court, shall be served upon other parties but shall not be filed with the Court. The party that has served notice of a deposition or has served discovery papers shall be responsible for preserving and for insuring the integrity of original transcripts and discovery papers for use by the Court.

(c) Filing and Service by Electronic Means

Unless exempt or otherwise ordered by the Court, papers shall be filed and served electronically as required by the Court's Administrative Procedures Governing the Filing and Service by Electronic Means, the provisions of which shall be applied and enforced as part of these Local Rules. No papers shall be submitted to the Court by means of a facsimile machine without prior leave of Court.

Table of Contents

RULE 6

(As amended March 1, 2001)

TIME

Rule 6 is abrogated in its entirety, effective March 1, 2001.

Table of Contents

RULE 7

(As amended March 1, 2001)

MOTIONS AND MEMORANDA OF LAW

(a) Submissions of Motions and Supporting Memoranda

Every motion shall incorporate a memorandum of law, including citations and supporting authorities. Affidavits and other documents setting forth or evidencing facts on which the motion is based shall be filed with the motion. No written discovery motions shall be filed without the prior approval of a judicial officer. See Rule 26(a).

(b) Objections to Motions

Unless within twenty-one (21) days after the filing of a motion the opposing party files written objection thereto, incorporating a memorandum of law, the opposing party shall be deemed to have waived objection.

Any objections shall include citations and supporting authorities and affidavits and other documents setting forth or evidencing facts on which the objection is based. The deemed waiver imposed herein shall not apply to motions filed during trial.

(c) Reply Memorandum

Within eleven (11) days of the filing of any objection to a motion, the moving party may file a reply memorandum, which shall not exceed 7 pages in length and which shall be strictly confined to replying to new matter raised in the objection or opposing memorandum.

(d) Calculation of Time for Response

The time periods for objection to motions and for filing reply memoranda shall be computed from the filing date of the motion or objection. F.R.Civ.P. 6(e) shall not apply and therefore no additional days will be added for the possibility that service may have been accomplished by mail.

(e) Form and Length

All memoranda shall be typed, double-spaced on 8-1/2 x 11 inch paper or printed. All pages shall be numbered at the bottom. Except by prior leave of Court, no memorandum of law in support of or in opposition to a nondispositive motion shall exceed 10 pages. Except by prior leave of Court, no memorandum of law in support of or in opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, a motion for injunctive relief, or an appeal from the recommended decision of a magistrate judge shall exceed 20 pages. No reply memorandum shall exceed 7 pages.

(f) Written Submissions and Oral Argument

All motions shall be decided by the Court without oral argument unless otherwise ordered by the Court on its own motion or, in its discretion, upon request of counsel.

Table of Contents

RULE 9

PLEADING SPECIAL MATTERS

(a) Request for Three-Judge District Court

To enable the Court to comply with the provisions of 28 U.S.C. § 2284, in any action or proceeding which a party believes is required to be heard by a three-judge district court, the words "THREE-JUDGE DISTRICT COURT REQUESTED" or the equivalent shall be included directly beneath the designation of the pleadings.

In such an action or proceeding, all pleadings, motions and other papers, except exhibits, shall be filed or otherwise submitted in three copies.

(b) Request for Injunctive Relief

If a pleading or motion seeks injunctive relief, in addition to the prayer for such relief, the words "INJUNCTIVE RELIEF SOUGHT" or the equivalent shall be included on the first page.

Table of Contents

RULE 10

FORM OF PLEADINGS, MOTIONS AND OTHER PAPERS

All pleadings, motions and other papers filed with the Clerk or otherwise submitted to the Court, except exhibits, shall bear the proper case number and shall contain on the first page a caption as described by Fed. R. Civ. P. 10(a) and immediately thereunder a designation of what the document is and the name of the party in whose behalf it is submitted. All such documents shall be typed double-spaced or printed on 8-1/2 x 11 inch paper. All pages shall be numbered at the bottom. Ancillary papers shall be attached at the end of the document to which they relate.

Table of Contents

RULE 16.1

(As amended June 1, 2004)

CASE MANAGEMENT TRACKS

(a) Civil Case Tracks

Each civil case shall be assigned to one of the following tracks:

1. Administrative
2. Standard
3. Complex
4. Toxic Tort
5. Prisoner Civil Rights
6. State of Maine/Pine Tree Legal Protocol

(b) Definitions

(1) Administrative Track. Contains those cases in which discovery is prohibited entirely unless specific approval is obtained from a judicial officer. Cases on this track include cases filed under 28 U.S.C. §§ 2254, 2255 (habeas corpus cases); social security disability cases; government collections of student loans and VA benefits; government foreclosures; special education appeals; and bankruptcy appeals. Administrative track cases shall ordinarily be resolved within six (6) months after filing.

(2) Standard Track. Contains those cases in which discovery is limited to not more than 30 interrogatories per opposing side (subparts not permitted); 30 requests for admission per opposing side; 2 sets of requests for production per opposing side; and 5 depositions per opposing side. Discovery in standard track cases shall ordinarily be completed within 4 months and trial within 6 months after issue is joined. Cases on this track shall include cases such as vehicle collision cases involving only negligence claims; slip and fall cases; foreclosure actions other than Government foreclosures; statutory forfeiture cases; simple contract cases; declaratory judgments regarding insurance coverage; FELA cases; Jones Act cases; foreclosure of first preferred ship mortgages; and complaints for copyright violations for unauthorized musical performances.

(3) Complex Track. Contains those cases that require special attention because of the number of parties, complexity of the issues, scope of discovery,

and/or other comparable factors. Cases that are transferred or returned to Maine by the Multi-District Litigation Panel shall be placed on the complex track. The scope of discovery, motion practice, ADR and other matters will be discussed with the parties or their lawyers.

(4) Toxic Tort Track. Contains all the asbestos-related tort actions and any others that the court decides present similar problems.

(5) Prisoner Civil Rights Track. Contains civil rights cases filed by prisoners pursuant to Title 42 U.S.C. § 1983. Discovery and motion practice in prisoner track cases shall ordinarily be completed within 4 months of the issuance of the scheduling order.

(6) State of Maine/Pine Tree Legal Protocol Track. Contains those cases in which the plaintiffs are represented by Pine Tree Legal Assistance, Inc. and the defendant is the Maine Department of Human Services represented by the Maine Attorney General's Office.

(c) Assignment

Each case shall be assigned to a track by the Clerk based on the initial pleading. The Court may on its own initiative, or upon good cause shown by a party, change the track assignment of any case.

Table of Contents

RULE 16.2

(As amended December 5, 2000)

SCHEDULING ORDER

(a) Applicable Cases

A proposed scheduling order shall issue in all cases except social security disability cases, habeas corpus petitions, bankruptcy appeals, cases on the asbestos track, and any other case or category of cases as a judicial officer may order.

(b) Track Designation

The proposed scheduling order shall identify the case management track to which the case is assigned.

(c) Contents of Scheduling Order

(1) The proposed scheduling order in administrative track cases shall establish the deadline (1) to join other parties and to amend the pleadings; and (2) to file and hear motions. The order shall also direct the parties to exchange written settlement papers by dates certain and it shall identify the month in which the case shall be ready for trial.

(2) The proposed scheduling order in standard track cases shall establish the deadline (1) for initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1); (2) to join other parties and to amend the pleadings; (3) to file and hear motions; (4) to disclose experts and complete discovery; and (5) to complete other pretrial preparation. The order shall also direct the parties to exchange written settlement papers by dates certain and it shall identify the month in which the case shall be ready for trial.

(3) The proposed scheduling order in prisoner civil rights track cases shall establish the deadline (1) to join other parties and to amend the pleadings; (2) to file and hear motions; (3) to complete discovery; and (4) to complete other pretrial preparation. This order shall also direct the parties to exchange written settlement papers by dates certain and it shall identify the month in which the case shall be ready for trial.

(4) The scheduling order in State of Maine/Pine Tree Legal Protocol track cases shall contain the items stated in the Protocol.

(d) Issuance

The proposed scheduling order in administrative and standard track cases shall issue immediately upon the appearance of defendant(s) but in no event more than 120 days after the filing of the complaint. The scheduling order in complex cases shall issue after an initial conference with counsel at which discovery, motion practice, ADR and other matters will be discussed. The scheduling order in prisoner civil rights track cases shall issue immediately following the preliminary conference/hearing with the magistrate judge at the prison or within 120 days after the filing of the complaint, whichever is earliest. The scheduling order in State of Maine/Pine Tree Legal Protocol track cases shall issue promptly upon the filing of the joint proposed scheduling order that is to be submitted by the parties within 10 days of service of the complaint.

(e) Objections

Unless a party files an objection to the proposed scheduling order within twenty-one (21) days of its filing, the proposed order shall thereupon become the Scheduling Order of the Court as required by Fed. R. Civ. P. 16(b). A party wishing to alter any deadline or any discovery limitation of a scheduling order must file a proposed discovery plan with the objection and also request a conference with a judicial officer. In requesting a scheduling conference, a lawyer professionally represents to the Court that he or she has used his or her best efforts to reduce cost and delay and has advised the client accordingly. A conference, if deemed necessary by the Court, will be scheduled promptly.

Table of Contents

RULE 16.3

(As amended July 9, 2003)

MANAGEMENT TRACK PROCEDURES

(a) Administrative Track

(1) Habeas Corpus Petitions. Proceedings on applications for habeas corpus under 28 U.S.C. § 2254 and proceedings on motions to vacate sentence under 28 U.S.C. § 2255 shall be referred to a magistrate judge in accordance with 28 U.S.C. § 636(b)(1)(B) and processed in accordance with the Rules Governing Section 2254 Cases, 28 U.S.C. §2254, and the Rules Governing Section 2255 Proceedings, 28 U.S.C. § 2255 respectively.

(2) Social Security Disability Cases. These matters are referred upon filing to a magistrate judge for further proceedings as follows:

(A) Within 60 days of the filing of the transcript and answer, counsel for the plaintiff shall file with the Court an itemized statement of the specific errors upon which the plaintiff seeks reversal of the Commissioner's decision, and complete and file a Fact Sheet available in the Clerk's Office.

(B) The case, then being ready for the entry of judgment upon the pleadings and transcript of the record, will be scheduled for oral argument.

(C) At oral argument, each party will be given 15 minutes to present its position to the Court. Counsel for the plaintiff shall set forth the specific errors about which the plaintiff complains. Counsel for the Commissioner shall then set forth reasons why the Commissioner's decision should be affirmed. Counsel are required to cite statute, regulation, and case authority to support their respective positions. Any factual assertions must be supported by transcript references. Additional time for oral argument or the presentation of briefs following argument will be permitted only for good cause shown and on such terms as the Court may direct.

(D) If the oral argument is conducted before a magistrate judge and the parties have not consented to the magistrate judge's jurisdiction pursuant to 28 U.S.C. 636(c), the magistrate judge will issue a recommended decision. Any party desiring to object to the recommended decision shall do so in accordance with Fed. R. Civ. P. 72(b) and must provide a transcript of the oral argument.

(3) Bankruptcy Appeals. Upon the filing of a bankruptcy appeal the Clerk shall issue a notice setting forth the briefing schedule as required by Bankruptcy Rule 8009 and the appeal shall be processed as follows:

(A) An appeal from a final judgment, order or decree of the bankruptcy court shall be assigned for hearing as soon after briefs have been filed as the Court's calendar permits. The provisions of Bankruptcy Rule 8012 shall govern whether an appeal is decided on the written submissions or following oral argument. Any party requesting oral argument shall file with its brief a separate statement setting forth the reason why oral argument should be allowed.

(B) Local Rule 7 shall govern any motion practice arising from the filing of a bankruptcy appeal.

(C) All briefs shall be filed in accordance with Bankruptcy Rules 8009(a), 8010(a) and 8010(b). Except by leave of Court, principal briefs shall not exceed 30 pages, and reply briefs shall not exceed 10 pages, exclusive of pages containing the table of contents, table of citations and any addendum containing photocopies of any statutes, rules or regulations.

(4) Other Cases. The case management of all other cases on the administrative track shall be governed by the scheduling order.

(b) Standard Track

(1) The case management of all cases on the standard track shall be governed by the scheduling order.

(2) When a scheduling conference is requested, at the discretion of the judicial officer it may be conducted by telephone. In those instances, the Clerk will inform the lawyers or unrepresented parties of the date and time of the conference. It shall be the responsibility of the party who requested the conference to initiate the telephone conference call to chambers.

(3) Prior to the requested scheduling conference, the lawyers must confer and discuss the following topics: voluntary exchange of information and discovery; a discovery plan; the various alternative dispute resolution options; consenting to trial before the magistrate judge; the legal issues in the case; a plan for raising and disposing of serious and legitimate dispositive motions; settlement; and stipulations.

(4) The Court may require counsel to file a joint proposed discovery and motion plan prior to the scheduling conference.

(5) The agenda for the scheduling conference shall include the following topics: narrowing the case to its essential issues; sequencing and limiting discovery and motion practice; settlement; ADR options; and consent to trial before a magistrate judge.

(6) During the conference the judicial officer shall be aggressive in exploring the advisability and utility of ADR, ascertaining actual discovery needs and costs and imposing discovery limits and deadlines.

(c) Complex Track

(1) Promptly after issue is joined an initial scheduling conference will be held before a judicial officer. If the conference is to be conducted by telephone, the Clerk will inform the lawyers or unrepresented parties of the time and date of the conference and it shall be the responsibility of the plaintiff to initiate the telephone conference call to chambers.

(2) Prior to the conference the lawyers must meet face-to-face unless they are more than 30 miles apart and in that event by telephone and discuss the following issues: voluntary exchange of information and discovery; a discovery plan; the various kinds of alternative dispute resolution; consenting to trial by the magistrate judge; the legal issues in the case; a plan for raising and disposing of serious and legitimate dispositive motions; settlement; and stipulations.

(3) Not less than two (2) business days before the conference the lawyers shall file a joint proposed discovery and motion plan and any proposal for ADR.

(4) The agenda for the initial conference shall include the following topics: narrowing the case to its essential issues; sequencing and limiting discovery and motion practice; a trial date; all legal issues; settlement; ADR options; consenting to trial before a magistrate judge; and the date of the next conference.

(5) During the conference the judicial officer shall be aggressive in exploring the advisability and utility of ADR, ascertaining the actual discovery needs and costs and imposing discovery limits and deadlines.

(6) During the initial conference the judicial officer will ordinarily schedule further settlement discussions as part of the next conference and will determine whether

clients or client representatives should be required to attend the next conference. The attendance of the clients (in person or by being available by telephone) will usually be required.

(7) Unless the parties otherwise agree, the settlement conference in a nonjury case will be conducted by a judicial officer other than the one who will preside at trial.

(8) Additional case management and settlement conferences will be scheduled at the discretion of the judicial officer. The judicial officer will regularly hold case management conferences (either in person or by telephone) in those cases in which there is substantial discovery. At each such conference, the lawyers shall be prepared to discuss in a detailed manner the settlement status of the case, ongoing and projected litigation costs, ADR options, and avoidance of unnecessary motion practice.

(d) Toxic Tort Track

(1) Asbestos. (Not in effect so long as cases are transferred to another district by the MDP.)

(A) A plaintiff who has only minimal symptoms of an asbestos-related disease may elect to have the case placed on the suspense docket. Those cases will remain inactive and are administratively closed by the Clerk. A case may be placed on the suspense docket at the time of filing and up until 3 weeks before trial. Any case removed from the suspense docket shall be placed at the end of any trial list and not in any event proceed to trial earlier than 9 months from the date the plaintiff elected the suspense docket.

(B) All remaining asbestos cases shall be set for trial in groups of as many as 15 to 25. In each group, consecutive and separate damages trials for each plaintiff are conducted before a single jury. Thereafter, the same jury will determine the issue of liability in a consolidated trial of all the cases remaining in the group.

(C) Discovery and pretrial preparation are to be completed in accordance with the standing discovery order governing asbestos cases.

(2) Other. Similar procedures may be devised for other toxic torts or mass

torts if circumstances suggest the need for them.

(e) Prisoner Civil Rights Track

(1) All prisoner civil rights cases are referred upon filing to a magistrate judge. The case management of the cases shall be governed by a scheduling order entered by the magistrate judge.

(2) In pro se prisoner cases arising out of the Maine State Prison, the magistrate judge shall, after issue is joined, visit the prison for a conference/hearing on the record with the prisoner plaintiff and the attorney(s) for the defendant(s).

Table of Contents

RULE 16.4

(As amended March 1, 2001)

FINAL PRETRIAL CONFERENCE AND ORDER

(a) Final Pretrial Conference

A final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The Clerk shall notify counsel of the time and place by mailing to them a written notice or a "Final Pretrial List."

A final pretrial conference may be conducted by the trial judge or any other judicial officer.

(b) Preparation for Final Pretrial Conference

Not later than 5 business days prior to the final pretrial conference, each party shall file with the Court and serve on every other party a pretrial memorandum, which normally need not exceed 5 pages in length, containing the following information: (1) a brief factual statement of the party's claim or defense, as the case may be, including an itemized statement of any damages claimed; (2) a brief statement of the party's contentions with respect to any controverted points of law, including evidentiary questions, together with supporting authority; (3) proposed stipulations concerning matters which are not in substantial dispute and to facts and documents which will avoid unnecessary proof; (4) the names and addresses of all witnesses the party intends to call at trial, other than those to be used for impeachment and rebuttal, but in the absence of stipulation, the disclosure of a witness shall not constitute a representation that the witness will be produced or called at trial; and (5) a list of the documents and things the party intends to offer as exhibits at trial.

Each party shall be prepared at the pretrial conference to discuss the issues set forth in items (1) through (5) above, to exchange or to agree to exchange medical reports, hospital records, and other documents, to make a representation concerning settlement as set forth in this rule and to discuss fully all aspects of the case.

(c) Conduct of Final Pretrial Conference

The Court will consider at the final pretrial conference the pleadings and

papers then on file; all motions and other proceedings then pending; and any other matters referred to in this rule or in Fed. R. Civ. P. 16 which may be applicable.

Unless excused for good cause, each party shall be represented at the final pretrial conference by counsel who is to conduct the trial on behalf of such party, who shall be thoroughly familiar with this rule and with the case. Counsel shall be required to make a representation to the Court at the final pretrial conference that counsel has made a recommendation to the client in respect to settlement and that the client has acted on such recommendation. Counsel's inability to make such representations shall be grounds for imposition of sanctions.

(d) Final Pretrial Order

Either at or following the final pretrial conference, the Court shall make a final pretrial order, which shall recite the action taken at the conference, and such order shall control the subsequent course of the action, unless modified by the Court to prevent manifest injustice. Unless otherwise ordered, any objections to the final pretrial order must be made within fourteen (14) days after receipt by counsel of a copy thereof. Any discussion at the conference relating to settlement shall not be a part of the final pretrial order. The final pretrial order deadlines shall be such that they do not come into play until after the last settlement conference has been held and it appears that trial is unavoidable. In any case where there is a pending dispositive motion, one item on the final pretrial conference agenda shall be whether the provisions and deadlines of the final pretrial order should be stayed until the motion is resolved. The judicial officer presiding at the final pretrial conference shall tailor the order to the individual case and consider whether certain provisions of the final pretrial order should be waived. (For example, in a simple automobile negligence personal injury case it may not be necessary to list exhibits or summaries of witness testimony. In such cases trial briefs and draft jury instructions may also be unnecessary.) The number of copies of documents to be filed shall be limited. In a jury case, the original set of exhibits is ordinarily sufficient and should not be filed with the Clerk before trial.

In a nonjury case, one extra set for the judge to review in advance of the trial should be adequate. Trial briefs, voir dire, jury instructions, etc. should be simply the original and one copy.

(e) Sanctions

If a party fails to comply with the requirements of Fed. R. Civ. P. 16 or this rule, the Court may impose such penalties and sanctions as are just, including those set forth in Fed. R. Civ. P. 16(f).

(f) Special Circumstances

The Court may provide for a special pretrial procedure in any case when special circumstances warrant.

(g) Settlement

The parties, through their lawyers, shall be prepared to fully engage in meaningful settlement discussions at the conference. If the case will be tried by the judge without a jury, a different judicial officer will conduct the settlement discussions.

A judicial officer may direct that a separate settlement conference be held with party representatives present in person.

Table of Contents

RULE 22

INTERPLEADER

See Local Rule 67.

Table of Contents

RULE 24

NOTICE OF CONSTITUTIONAL QUESTION

To enable the Court to comply with the provisions of 28 U.S.C. § 2403 and Fed. R. Civ. P. 24(c), in any action, suit or proceeding to which the United States or any agency, officer or employee thereof is not a party, any party who shall draw in question the constitutionality of any Act of Congress affecting the public interest shall forthwith so notify the Clerk in writing, stating the title of the action, its docket number if any, and the Act of Congress in question.

To enable the Court to comply with the provisions of 28 U.S.C. § 2403, in any action, suit or proceeding to which a State or any agency, officer or employee thereof is not a party, any party who shall draw in question the constitutionality of any statute of that State affecting the public interest shall forthwith so notify the Clerk in writing, stating the title of the action, its docket number if any, and the statute of the State in question.

Table of Contents

RULE 26

(As amended December 5, 2000)

DISCOVERY

(a) Filing of Discovery

Unless otherwise ordered by the Court, depositions upon oral examination and interrogatories, requests for documents, requests for admissions, and answers and responses thereto and disclosures made under Fed. R. Civ. P. 26(a)(1)-(3) and pursuant to scheduling orders issued by the Court, shall be served upon other parties but shall not be filed with the Court, except as required by subsection (c) of this Rule. The party that has served notice of a deposition or has served discovery papers shall be responsible for preserving and for insuring the integrity of original transcripts and discovery papers for use by the Court.

(b) Discovery Disputes

No written discovery motions shall be filed without the prior approval of a judicial officer. A party with a discovery dispute must first confer with the opposing party in a good faith effort to resolve by agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party shall then seek a prompt hearing with a judicial officer by telephone or in person. If the hearing is to be conducted by telephone, the Clerk will inform counsel of the time and date of the hearing and it shall be the responsibility of the moving party to initiate the telephone conference call to chambers. The recording of telephone hearings or conferences with the Court is prohibited, except with prior permission of the Court. The request for a hearing with a judicial officer carries with it a professional representation by the lawyer that a conference has taken place and that he or she has made a good faith effort to resolve the dispute.

The lawyers or unrepresented parties shall supply the judicial officer with the particular discovery materials (such as objectionable answers to interrogatories) that are needed to understand the dispute.

If the judicial officer decides that motion papers and supporting memoranda are needed to satisfactorily resolve the discovery dispute, such papers shall be filed in conformity with Rule 7. Such motions shall (1) quote in full each interrogatory, question at deposition, request for admission or request for production to which the motion is addressed, or otherwise identify specifically and

succinctly the discovery to which objection is taken or from which a protective order is sought; and (2) the response or objection and grounds therefor, if any, as stated by the opposing party.

Unless otherwise ordered by the Court, the complete transcripts or discovery papers need not be filed with the Court pursuant to subsection (c) of this rule unless the motion cannot be fairly decided without reference to the complete original.

(c) Use of Depositions and Discovery Material by the Court

If depositions, interrogatories, requests or answers or responses thereto are to be used at trial, other than for purposes of impeachment or rebuttal, the complete original of the transcript or the discovery material to be used shall be filed with the Clerk seven (7) days prior to trial. A party relying on discovery transcripts or materials in support of or in opposition to a motion shall file a copy of such transcript or materials with the memorandum required by Rule 7 as well as a list of specific citations to the parts on which the party relies. Discovery transcripts and materials thus filed with the Court shall be returned to appropriate counsel after final disposition of the case.

Table of Contents

RULE 30

DEPOSITIONS

(a) Video Depositions

In a video deposition, the camera shall focus from a single stationary position on the witness and any exhibits utilized by the witness, unless the parties otherwise agree or the Court enters an order under Local Rule 26(b).

(b) Opening Depositions; Copying Restricted

Sealed depositions received by the Clerk for use at trial or in support of or in opposition to a motion shall be opened and made part of the public record, unless otherwise ordered by the Court. No deposition on file with the Clerk shall be copied by the Clerk or any other person, except by order of the Court.

Table of Contents

RULE 32

USE OF DEPOSITIONS IN COURT PROCEEDINGS

(a) Stipulations Regarding Objections

The Court will not give any effect to a stipulation attempting to preserve for trial those objections which by Fed. R. Civ. P. 32(d)(3)(A) and (B) are waived (unless reasonable objection is made at the taking of the deposition).

(b) Use of Depositions

See Local Rule 26(b).

Table of Contents

RULE 33

INTERROGATORIES

Answers and objections to interrogatories shall set forth in full, immediately preceding the answer or objection, the interrogatory to which answer or objection is being made.

Table of Contents

RULE 38

DEMAND FOR JURY TRIAL

If a demand for jury trial is endorsed upon a pleading pursuant to Fed. R. Civ. P. 38(b), in addition to said endorsement the designation of the pleading shall include the words "AND DEMAND FOR JURY TRIAL" or the equivalent on the first page.

A demand for jury trial in actions removed to this Court from the state courts shall be filed in accordance with the provisions of Fed. R. Civ. P. 81(c).

Table of Contents

RULE 39

(As amended June 23, 1998)

COURTROOM PRACTICE

(a) Opening Statements

Opening statements shall not be argumentative, and shall not exceed thirty minutes in length, except by leave of Court. Counsel for the defendant may make an opening statement immediately following the plaintiff's opening statement, or counsel may reserve the right to do so until the close of the plaintiff's evidence.

(b) Closing Arguments

The length of closing arguments shall be fixed by the Court. Only one attorney shall argue for each party, except by leave of Court. The plaintiff in a civil action and the claimant in a land condemnation action shall argue first, and may reserve for rebuttal such time as shall be fixed by the Court.

(c) Examination of Witnesses

(1) The examination of a particular witness, and objections relating to that examination, shall be made by one attorney for each party, except by leave of Court.

(2) Upon oral motion of a party or on its own motion, the Court may order on such terms as it may prescribe, that a witness under examination in court shall not discuss the witness′s testimony, including during any recess taken during the examination or before the witness is finally excused.

(d) Attorneys as Witnesses

No attorney shall without leave of Court conduct the trial of a jury action in which the attorney is a witness for the party represented at trial.

(e) Trial Day

(1) The presiding judge shall establish the limits of the trial day.

(2) In a civil case, the presiding judge may, after consulting with the trial lawyers, establish the amount of time that each side will have for its case,

including its cross-examination of witnesses. Such limits may be exceeded only for good cause shown, taking into account, among other things, the lawyers' efficient use of the time already allotted. The courtroom deputy clerk will maintain a continuing record of time used by a party in such a case.

(f) Exhibits

(1) Custody and Marking. All exhibits shall be marked for identification prior to trial in accordance with the final pretrial order. Unless otherwise ordered by the Court, all exhibits offered in evidence, whether admitted or excluded, shall be held in the custody of the Clerk during the pendency of the proceedings, except that exhibits which because of their size or nature require special handling shall remain in the possession of the party introducing them. Exhibits retained by counsel shall be preserved in the form in which they were offered until the proceeding is finally concluded.

(2) Return. Unless otherwise ordered by the Court, at the conclusion of the proceeding, all nondocumentary exhibits shall be returned to the submitting parties who shall keep them in the form in which they had been offered and who shall make them available for the use of other parties, the Court, or an appellate court until the expiration of any appeal. Any documentary exhibits shall be withdrawn by counsel who offered them within 30 days after the final determination of the action by this or any appellate court. Upon counsel's failure to timely remove any exhibits, the Clerk may, after due notice to counsel, dispose of them as necessary.

(3) Valuable or Bulky Exhibits. A party who offers valuable exhibits shall be responsible for their insurance and protection.

(4) Photographs of Chalks. Counsel may photograph or otherwise copy any chalk in order to make a record of it.

(g) Official Record

The only official record of any court proceeding shall be a record prepared by an authorized court reporter or an electronic sound recording made by court personnel or a transcript prepared therefrom by professional transcription services, when properly certified in each case.

(h) Cellular Phones

All cellular phones, pagers and recording devices shall be turned off at all times while in any courtroom.

Table of Contents

RULE 41.1

COMPROMISED ACTIONS

(a) Compromised Actions

Within 30 days after counsel notify the Clerk that an action has been settled, counsel shall execute and file the papers necessary to terminate the action as of record. Upon failure of counsel to do so, unless otherwise ordered by the Court, the Clerk shall enter an order as of course dismissing the action with prejudice but without costs, subject to the right of any party to move to reinstate the action within one year after the entry of the order if the settlement is not consummated.

(b) Dismissal for Lack of Prosecution

The Court may at any time issue an order to show cause why a case should not be dismissed for lack of prosecution. If good cause is not shown within the time prescribed by the show cause order, the Court may enter a judgment of dismissal with or without prejudice.

(c) Class Actions, etc.

In actions to which Fed. R. Civ. P. 23(e), 23.1, 23.2 or 66 apply, or in which any other rule or any statute of the United States so requires, dismissal under this rule will be made by Court order.

Table of Contents

RULE 41.2

COURT APPROVAL OF SETTLEMENTS ON BEHALF OF MINORS

No approval of settlement of personal injury actions on behalf of minors will be given unless a motion is filed signed by the next friend or guardian containing the following information where applicable:

(1) A brief description of the accident and of all injuries sustained;

(2) An itemized statement of all medical expenses;

(3) The total amount of the settlement and whether the bills are to be paid out of the total settlement or are being paid in addition as part of the parent's claim. If the parent is being paid anything directly, the motion shall contain a statement of the total amount being paid the parent and a specification of the items covered;

(4) Whether the settlement was negotiated by counsel actually representing the minor and, if so, the amount claimed as attorney's fees; and

(5) The amount to be deposited on behalf of the minor and the name of the savings institution preferred by the next friend or guardian.

Table of Contents

RULE 44

(As adopted January 25, 2002)

PROOF OF OFFICIAL OR CERTIFIED RECORDS

A party offering into evidence official records under F.R.Civ.P. 44, public documents under F.R.E. 902 (1) – (3), or certified records under F.R.E. 902 (4) or (11) – (12) shall identify and produce such records as required by the scheduling order or other order of the Court. Objection to the authenticity of such records shall be filed with the court within 10 days of identification. All other objections shall be made as provided in the pretrial order. If the discovery period has passed, the Court may on motion permit additional discovery, limited to the issue of the authenticity of records to which objection has been taken.

Table of Contents

RULE 47

SELECTION OF JURORS

(a) Number of Jurors

In all civil jury cases the jury shall consist of no fewer than six (6) members unless the parties otherwise consent.

(b) Examination of Jurors

The Court will itself conduct the examination of prospective jurors. At the close of such examination, the Court will afford counsel an opportunity, at the bench, to request that the Court ask additional questions.

(c) Challenges for Cause

Challenges for cause of individual prospective jurors shall be made at the bench, at the conclusion of the Court's examination.

(d) Peremptory Challenges

(1) Manner of Exercise. Peremptory challenges shall be exercised by striking out the name of the juror challenged on the list of the drawn venire prepared by the Clerk. Any party may waive the exercise of any peremptory challenge without thereby relinquishing the right to exercise any remaining peremptory challenge or challenges to which the party is entitled. If all peremptory challenges are not exercised, the Court will strike from the bottom of the list sufficient names to reduce the number of jurors remaining to the number of jurors decided by the Court to sit on the case.

(2) Order of Exercise. In any action in which both sides are entitled to an equal number of peremptory challenges, they shall be exercised one by one, alternately, the plaintiff in a civil action and the claimant in a land condemnation action, exercising the first challenge. In any action in which the Court allows several plaintiffs or several defendants additional peremptory challenges, the order of challenges shall be determined by the Court.

Table of Contents

RULE 54.1

SECURITY FOR COSTS

Except where 28 U.S.C. §§1915, 1916 or any other statute of the United States otherwise provides, the Clerk shall, upon written application by a defendant at any time after the commencement of any civil action, enter an order as of course directing a non-resident plaintiff to furnish, within 20 days after service of said order, security in the amount of Five Hundred Dollars ($500) for the payment of all taxable costs of the action. Upon motion and for good cause shown, the Court may at any time modify or rescind such an order, or direct that additional or other security be furnished.

Table of Contents

RULE 54.2

(As Amended November 13, 2003)

CLAIM FOR ATTORNEYS' FEES

An application for attorneys' fees in those cases in which fees have been contracted for or in any case in which no notice of appeal to the Court of Appeals has been filed shall be filed within 30 days of the expiration of the time for filing a timely appeal.

An application for fees in all other cases shall be filed within 30 days of the filing of the appellate mandate providing for the final disposition of any appeal to the Court of Appeals. A claim for fees filed before the final disposition of any appeal to the Court of Appeals shall have no effect and a new application must be filed within the prescribed time as described herein.

Table of Contents

RULE 54.3

(As amended November 13, 2003)

BILL OF COSTS

Bills of costs shall be prepared on forms available from the Clerk's Office or on a filing substantially similar and shall be filed with supporting memoranda within thirty (30) days of the expiration of the time for filing a timely appeal if no notice of appeal has been filed or within 30 days of the filing of the appellate mandate providing for the final disposition of any appeal to the Court of Appeals. Unless within twenty-one (21) days after the filing of a bill of costs the opposing party files a written objection thereto, incorporating a memorandum of law, the opposing party shall be deemed to have waived objection and the Clerk shall tax the costs which appear properly claimed.

Table of Contents

RULE 56

(As amended October 1, 2003)

MOTIONS FOR SUMMARY JUDGMENT

(a) Motions for Summary Judgment

In addition to the material required to be filed by Local Rule 7, a motion for summary judgment and opposition thereto shall comply with the requirements of this rule.

(b) Supporting Statement of Material Facts

A motion for summary judgment shall be supported by a separate, short, and concise statement of material facts, each set forth in a separately numbered paragraphs, as to which the moving party contends there is no genuine issue of material fact to be tried. Each fact asserted in the statement shall be supported by a record citation as required by subsection (e) of this rule.

(c) Opposing Statement of Material Facts

A party opposing a motion for summary judgment shall submit with its opposition a separate, short, and concise statement of material facts. The opposing statement shall admit, deny or qualify the facts by reference to each numbered paragraph of the moving

party's statement of material facts and unless a fact is admitted, shall support each denial or qualification by a record citation as required by this rule. Each such statement shall begin with the designation "Admitted," "Denied," or "Qualified" and, in the case of an admission, shall end with such designation. The opposing statement may contain in a separately titled section additional facts, each set forth in a separately numbered paragraphs and supported by a record citation as required by subsection (e) of this rule.

(d) Reply Statement of Material Facts

A party replying to the opposition to a motion for summary judgment shall submit with its reply a separate, short, and concise statement of material facts which shall be limited to any additional facts submitted by the opposing party. The reply statement shall admit, deny or qualify such additional facts by reference to the numbered paragraphs of the opposing party's statement of material facts and unless a fact is admitted, shall support each denial or qualification by a record citation as required by subsection (e) of this rule. Each such reply statement shall begin with the designation "Admitted," "Denied," or "Qualified" and, in the case of an admission, shall end with such designation.

(e) Statement of Facts Deemed Admitted Unless Properly Controverted; Specific Record of Citations Required

Facts contained in a supporting or opposing statement of material facts, if supported by record citations as required by this rule, shall be deemed admitted unless properly controverted. An assertion of fact set forth in a statement of material facts shall be followed by a citation to the specific page or paragraph of identified record material supporting the assertion. The court may disregard any statement of fact not supported by a specific citation to record material properly considered on summary judgment. The court shall have no independent duty to search or consider any part of the record not specifically referenced in the parties' separate statement of facts.

Table of Contents

RULE 64

(As amended June 1, 2001)

ATTACHMENT AND TRUSTEE PROCESS

A party to a civil action, other than an admiralty or maritime claim within the meaning of Fed. R. Civ. P. 9(h), may move for approval of attachment of property, including attachment on trustee process, or dissolution or modification of attachment approved ex parte, within the District of Maine in accordance with state law and procedure as would be applicable had the action been maintained in the courts of the State of Maine, with the exception that the time periods provided in Rule 7 of these rules shall apply to the filing of objections to motions. Upon approval of attachment or trustee process by the Court, the appropriate writ shall be prepared by the moving attorney and submitted to the Clerk for attestation. Service shall be made in accordance with the applicable law and procedure of the State of Maine

Table of Contents

RULE 65.1

BONDS AND SECURITY

(a) Approval by Clerk

The Clerk is authorized to approve the form of, and the sureties on, all bonds and undertakings required in any proceeding in this Court and approve any other security offered in lieu of sureties as provided by law; but the Clerk's action may be suspended or altered or rescinded by the Court upon cause shown.

(b) Court Officers as Sureties

No Clerk, Marshal, member of the bar, or other officer of this Court shall be approved as surety on any bond or undertaking.

(c) Supersedeas Bond

A supersedeas bond staying execution of a money judgment shall be in the amount of the judgment plus ten percent (10%) of the amount to cover interest and any award of damages for delay plus Five Hundred Dollars ($500) to cover costs, unless the Court directs otherwise.

Table of Contents

RULE 67

DEPOSIT OF FUNDS IN INTEREST BEARING ACCOUNTS

Whenever a party seeks a court order for money to be deposited by the Clerk in an interest bearing account, the party shall personally deliver the proposed order to the Clerk or financial administrator who shall review the proposed order for proper form and content prior to signature by the judge for whom the order is prepared.

Any order that directs the Clerk to invest funds in an interest bearing account shall include the following:

(1) the amount to be invested;

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

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

(4) a direction to the Clerk to deduct from the income earned on the investment a fee equal to 10 percent of the total income earned on investments of less than $100,000,000. On investments exceeding $100,000,000, the fee shall be based on a variable rate approved by the Judicial Conference dependant upon the amount and term of the deposit.

Table of Contents

RULE 72

(As amended September 21, 1999)

DUTIES OF UNITED STATES MAGISTRATE JUDGES

(a) Authority of Part-time Magistrate Judge

Any part-time United States Magistrate Judge appointed by this Court is authorized to exercise all powers and perform all duties conferred upon magistrate judges by Sections 636(a) and (b) of Title 28, United States Code.

(b) Assignment of Duties to Part-time Magistrate Judge

A part-time magistrate judge may perform any of the duties authorized by 28 U.S.C. § 636(b) upon specific designation by a judge of the court or pursuant to a general order of the court assigning duties. In performing such duties the part-time magistrate judge shall conform to the general procedural rules of this court and the instructions of the district judges.

(c) Authority of Full-time Magistrate Judge

Any full-time United States Magistrate Judge appointed by this Court is authorized to exercise all the powers and perform all the duties of part-time magistrate judges as provided in subsection (a) herein. In addition, any full-time Magistrate Judge is authorized to exercise all powers and perform all duties conferred upon magistrate judges by sections 636(b) and (c) and (g) of Title 28, United States Code, and to exercise the powers enumerated in Rules 5, 8, 9 and 10, Rules Governing Section 2254 and 2255 Proceedings in accordance with the standards and criteria established in 28 U.S.C. § 636(b)(1).

(4) Assignment of Social Security Act Cases and Prisoner Cases

All complaints filed pursuant to 42 U.S.C. Section 405(g) and 42 U.S.C. Section 1383(c)(3), for benefits under Title II, XVI and XVIII of the Social Security Act shall ordinarily be referred to the full-time magistrate judge in Portland for all further proceedings in accordance with Local Rule 16.3.

All applications for post-trial relief filed by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement shall ordinarily be referred to the full-time magistrate judge in Bangor in accordance with 28 U.S.C. Section 636(b)(1)(B).

Table of Contents

RULE 72.1

(As adopted June 1, 2004)

OBJECTIONS TO PRETRIAL ORDERS

Within ten (10) days after being served a copy of an order, report, proposed findings or a recommended decision of a United States Magistrate Judge entered under 28 U.S.C. §636(b)91), a party seeking review shall file an objection with an incorporated memorandum of law to those specific portions for which review is sought. Within ten (10) days of being served with an objection, a party opposing the objection may file a response with an incorporated memorandum of law. Neither the objection nor response shall exceed ten (10) pages in length. Except by prior order of the court, no reply memorandum shall be filed.

Table of Contents

RULE 73

(As amended May 1, 1999)

CONSENT TO ORDER OF REFERENCE

Each full time magistrate judge for the District of Maine is authorized to conduct jury trials of issues triable of right by a jury where a jury trial has been demanded.

At the time a civil action or notice of removal is filed, the Clerk shall deliver to the filing party or counsel (i) a notice of the party's right to consent to the exercise of a magistrate judge's jurisdiction to conduct any or all proceedings and order the entry of judgment, and (ii) a consent form for execution by all the parties or their counsel. The notice shall instruct the parties or their counsel that the consent form is to be returned to the Clerk only if all parties or their counsel consent to the exercise of such jurisdiction. If any party or counsel declines to consent, neither the Clerk, nor any Magistrate Judge nor any Judge of the Court shall be informed of the identity of the declining party. However, a Judge or a Magistrate Judge may again advise the parties of the availability of the magistrate judge, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequence. Upon the consent of the parties, each full-time magistrate judge may conduct any and all proceedings in a jury or non-jury civil matter, including determination of all pretrial, post-trial and dispositive motions, and order the entry of judgment in the case without further order of the court.

Table of Contents

RULE 77

(Adopted September 21, 1999)

ORDERS BY THE CLERK OF COURT

The clerk and deputy clerks of this court are authorized to issue the following orders without further direction of the Court:

(1) orders granting assented-to nondispositive motions that do not alter any previously established trial date;

(2) orders allowing substitution of counsel; and

(3) orders allowing extensions of not more than 5 pages of the page limitations established in Local Rule 7.

Table of Contents

RULE 79

CUSTODY OF PAPERS AND RECORDS

Except upon order of Court, no paper or record on file with the Clerk shall be removed from the Clerk's custody, other than by authorized court personnel or for transmission to an appellate court; but any person may inspect and copy such matter unless otherwise provided by statute, rule or order of Court.

Table of Contents

RULE 81

JURY DEMAND IN REMOVED ACTIONS

See Local Rule 38.

Table of Contents

RULE 83.1

(As amended November 13, 2003)

ATTORNEYS-ADMISSION

(a) Eligibility for Admission

Any attorney who is of good personal and professional character, who is an active member in good standing of the bar of the State of Maine and who is not then disbarred from or under a period of suspension in any court of record in the United States, is eligible for admission to the bar of this Court upon compliance with the provisions of subsection (b).

(b) Procedure for Admission

Each applicant for admission to the bar of this Court shall file with the Clerk an application, in duplicate, on a form to be furnished by the Clerk, who shall thereupon forward one copy to the United States Attorney. The application shall include a certification that the applicant has read and will comply with the Local Rules of this Court. The applicant shall provide the United States Attorney with letters from two members of the Bar of this Court attesting to the applicant's good personal and professional character. The United States Attorney shall cause to be made such investigation of the applicant's eligibility under subsection (a) as necessary.

If the United States Attorney is satisfied that the applicant is eligible under subsection (a), said United States Attorney, an Assistant United States Attorney, or a member of the bar of this Court designated by the Court, shall move the applicant's admission. If the United States Attorney is not so satisfied, any member of the bar of

this Court may move such admission, and the United States Attorney, or an Assistant United States Attorney, may appear in opposition. The Court will grant the motion if it is satisfied that the applicant is eligible under subsection (a)(1) or (2), and the applicant shall take and subscribe to the following oath, or affirmation in lieu thereof:

> "I solemnly swear that I will conduct and demean myself as an attorney and counselor of this the United States District Court for the

District of Maine uprightly and according to law; that I will support the Constitution of the United States and the Constitution of the State of Maine; that I will maintain the respect due to Courts of Justice and judicial officers; that I will never reject, for any personal considerations, the cause of the defenseless or oppressed; and that I will strive at all times to uphold the honor and maintain the dignity of the legal profession, and to serve justice,

SO HELP ME GOD."

The applicant shall sign the roll of attorneys of this Court and shall thenceforth be a member of the bar of this Court.

(c) Attorneys Who Are Not Members of the Bar of this Court

No person who is not a member in good standing of the bar of this Court shall appear or practice before this Court on behalf of another person except in accordance with the following:

(1) Visiting Lawyers. Leave of Court is granted to any attorney who is not a member of the bar of this Court to appear and practice in this Court provided that the attorney certifies that he/she is admitted to practice in any other United States federal court or the highest court of any State and is not currently under any order of disbarment, suspension or any other discipline. Any such attorney shall have at all times associated with him/her a member of the bar of this Court, upon whom all process, notices and other papers may be served and who shall sign all papers filed with the Court and whose attendance at any proceeding may be required by the Court. The Court may at any time for good cause and without hearing revoke the right of a visiting lawyer to practice.

(2) Government Attorneys. Any member in good standing of the bar of any court of the United States or of the highest court of any State, who is employed by the United States or by the State of Maine, or any department or agency thereof, and whose duties involve the representation of the United States or of the State of Maine, or any department or agency thereof, in actions in courts of the United States, is permitted to practice before this court in any such action. The Court may at any time for good cause revoke such permission without hearing.

Table of Contents

RULE 83.2

(As amended February 14, 2002)

ATTORNEYS-APPEARANCES AND WITHDRAWALS

(a) Appearances

An attorney's signature to a pleading shall constitute an appearance for the party filing the pleading. Otherwise, an attorney who wishes to participate in any manner in any action must file a formal written appearance identifying the party represented. An appearance whether by pleading or formal written appearance shall be signed by an attorney in his/her individual name and shall state his/her office address.

(b) Prohibition on Limited Appearances

No appearance shall be allowed purporting to limit the attorney's representation to less than all issues and proceedings.

In any case removed from state court where a lawyer has entered a limited appearance, the appearance shall be treated as a general appearance, but counsel shall have 10 days in which to move to withdraw altogether on the basis that his/her/its scope of representation was limited.

(c) Withdrawals

No attorney may withdraw an appearance in any action except by leave of Court.

Table of Contents

Rule 83.3

(As amended January 25, 2002)

ATTORNEYS-RULES OF DISCIPLINARY ENFORCEMENT

(a) Attorneys Convicted of Crimes

(1) Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any Court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, the Court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney as provided in subsection (i) of this rule. Upon good cause shown, the Court may set aside such order when it appears in the interest of justice to do so.

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

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

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

(5) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime", the Court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the Court; provided, however, that the Court may in its discretion make no reference with respect to convictions for minor offenses.

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

(b) Action Taken by Other Courts or Tribunals

(1) Any attorney admitted to practice before this Court shall, upon being subjected to discipline or upon being found incapacitated from continuing practice by reason of mental infirmity or addiction to drugs or intoxicants by any other Court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, or by any other duly authorized tribunal, promptly inform the Clerk of this Court of such action.

(2) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that any attorney admitted to practice before this court has been disciplined or found incapacitated by another court, or by any other duly authorized tribunal, this Court shall forthwith issue a notice directed to the attorney containing:

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

(B) an order to show cause directing that the attorney inform this Court within 10 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in Paragraph 4 hereof that the imposition of the identical discipline or finding of incapacity by the Court would be unwarranted and the reasons therefor.

(3) In the event the action imposed in the other jurisdiction has been stayed

there, any reciprocal action taken by this Court shall be deferred until such stay expires.

(4) Upon the expiration of 10 days from service of the notice issued pursuant to the provisions of Paragraph 2 above, this Court shall impose the identical discipline or make the identical finding of incapacity unless the respondent-attorney demonstrates, or this Court finds, that the record in the other jurisdiction clearly shows:

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

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

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

(D) that the conduct at issue is deemed by this Court to warrant substantially different action.

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

(5) In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct or found incapacitated shall establish conclusively the misconduct or incapacity for purposes of any proceeding under this Rule in this Court.

(6) This Court may at any stage appoint counsel to prosecute proceedings undertaken under this Rule.

(c) Disbarment on Consent or Resignation in Other Courts

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

disbarment on consent or resignation, cease to be permitted to practice before this Court and be stricken from the roll of attorneys admitted to practice before this Court.

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

(d) Standards for Professional Conduct

This Court adopts as its standard for professional conduct the Code of Professional Responsibility adopted by the Supreme Judicial Court of Maine, as amended from time to time by that Court.

(e) Disciplinary and Other Proceedings

(1) When misconduct or allegations of misconduct or incapacity which, if substantiated, would warrant discipline or other corrective action against an attorney admitted to practice before this Court shall come to the attention of a Judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the Judge shall refer the matter to counsel for investigation and the prosecution of a formal proceeding or the formulation of such other recommendation as may be appropriate, including proceedings before the Grievance Commission under Maine Bar Rule 7.1, or proceedings before the Maine Supreme Judicial Court under Maine Bar Rule 7.2, or proceedings under Maine Bar Rule 7.3(e).

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

(3) To initiate formal proceedings, counsel shall upon a showing of probable cause obtain leave of this Court to file a complaint against the respondent-attorney. If leave of the Court is obtained, the complaint and

summons shall be promptly served as provided in subsection (i) of this rule.

(4) The respondent-attorney shall file an answer to the complaint within 20 days of service. If any issue of fact is raised in the answer or if the respondent-attorney wishes to be heard in mitigation, this Court shall set the matter for prompt hearing before one or more Judges of this Court, provided however, that if the proceeding is predicated upon the complaint of a Judge of this Court, the hearing shall be conducted before another Judge of this Court, or, if there is no Judge of this Court eligible to serve, before a District Judge of this Circuit appointed by the Chief Judge of the Court of Appeals.

(f) Disbarment on Consent While Under Investigation of Allegations of Misconduct or Incapacity

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

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

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

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

(D) the attorney so consents because the attorney knows that if formal proceedings were held the attorney could not successfully contest the allegations.

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

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

(g) Reinstatement

(1) After Disbarment or Suspension. An attorney suspended for three months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the Court of an affidavit of compliance with the provisions of the order of suspension and after retaking the attorney's oath. An attorney suspended for more than three months or disbarred may not resume practice until reinstated by order of this Court, which shall require the retaking of the attorney's oath.

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

(3) Hearing on Application. Petitions for reinstatement by an attorney suspended for more than three months or disbarred shall be filed with the Chief Judge of the Court. Upon receipt of the petition, the Chief Judge shall refer the petition to counsel and assign the matter for hearing before one or more Judges of this Court, provided however, that if the disciplinary or other proceeding that led to the suspension or disbarment was predicated upon the complaint of a Judge of this Court the hearing shall be conducted before one or more other Judges of this Court, or, if there are not Judges of this Court eligible to serve, before a District Judge of this Circuit appointed by the Chief Judge of the Court of Appeals. Within 30 days after referral, the Judge or Judges assigned to the matter shall schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that petitioner no longer has any incapacity and possesses the moral qualifications, competency and learning in the law required for admission to practice law before this Court and that petitioner's resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

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

(5) Deposit for Costs of Proceeding. Petitions for reinstatement under this Rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the Court to cover anticipated costs of the reinstatement proceeding.

(6) Conditions of Reinstatement. If the petitioner is found unfit to resume

the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, a judgment of reinstatement shall enter, provided that the judgment may include such conditions as the Court deems necessary to protect the public interest as well as making reinstatement conditional upon the payment of all or part of the costs of the proceedings and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment.

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

(h) Attorneys Specially Admitted

Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (pro hac vice), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

(i) Service of Complaint, Papers and Other Notices

Upon the filing of a complaint instituting a disciplinary proceeding, the Clerk shall forthwith issue a summons and deliver the summons and a copy of the complaint to the U. S. Marshal for service in the manner provided in Fed. R. Civ. P. 4(d)(1) or, if such service cannot be made, by registered or certified mail addressed to the respondent-attorney at the attorney's last-known address. The summons shall direct the respondent-attorney to serve an answer within twenty (20) days after service. An order of suspension shall be served in the same manner as a summons and complaint instituting a disciplinary proceeding. Service of any other papers or notices required by these Rules shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at the attorney's last known address; or to counsel or the respondent's attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding.

(j) Appointment of Counsel

Whenever counsel is to be appointed pursuant to these Rules, this Court shall appoint as counsel Bar Counsel to the Board of Overseers of the Bar of the State of Maine. If Bar Counsel declines appointment, or such appointment is clearly inappropriate, this Court shall appoint as counsel one or more members of

the Bar of this Court, provided, however, that for good cause the respondent-attorney may move to disqualify an attorney so appointed. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

(k) Duties of the Clerk

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

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

(3) Whenever any person who is a member of the bar of any other court is convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court, the Clerk of this Court shall transmit to the other court, a certificate of the conviction or a certified exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.

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

(l) Jurisdiction

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

Table of Contents

RULE 83.4

LEGAL ASSISTANCE BY CERTIFIED LAW STUDENTS

(a) In General

A law student certified pursuant to subsection (b) may with the permission of the Court and subject to the requirements of subsection (c), engage in the activities specified in subsections (d), (e) and (f).

(b) Certification

The Dean of the University of Maine School of Law may certify a law student who meets the following requirements:

(1) Has completed legal studies amounting to at least 4 semesters;

(2) Is of good character and competent legal ability and is adequately trained to perform as a legal intern;

(3) Promises to neither ask for nor receive any compensation or remuneration of any kind for his/her services from the person on whose behalf service is rendered, but this shall not prevent a legal aid bureau, law school, or Government from paying compensation to the eligible law student, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require; and

(4) Certifies in writing that the law student has read and is familiar with the Maine Code of Professional Responsibility (Maine Bar Rule 3), the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence and the Rules of this Court.

The certification:

(1) Shall be filed with the Clerk of this Court;

(2) May be withdrawn by the Dean at any time by mailing notice to that effect to the Clerk of Court. It is not necessary that the notice state the cause for withdrawal; and

(3) May be terminated by the Court without notice or hearing and without

any showing of cause. Notice of such termination shall be filed with the Clerk of Court.

(c) Supervision

A member of the Bar of this Court shall appear in court with any certified law student who appears in court pursuant to subsections (d) or (e) of this Rule. The member of the Bar shall file in the record of the case a written approval of the certified law student's appearance.

A member of the Bar of this Court shall supervise a certified law student in connection with any activities permitted by this Rule and shall:

(1) Assume personal professional responsibility for the student's guidance in any work undertaken and shall supervise the quality of the student's work; and

(2) Assist the student in preparation to the extent necessary.

(d) Court Appearance on Behalf of Indigent Person

A certified law student may appear in court in any civil or criminal proceeding on behalf of an indigent person receiving legal assistance from a law school clinical practice program, if the person on whose behalf the student is appearing consents in writing to that appearance. The written consent shall be filed in the record of the case.

(e) Court Appearance on Behalf of Government

A certified law student may appear in court in any criminal or civil proceeding on behalf of the Government with the written approval of the United States Attorney. The written approval shall be filed in the record of the case.

(f) Other Activities

A certified law student may prepare pleadings, briefs, and other documents to be filed in the court in any matter in which the student is eligible to appear pursuant to subsections (d) or (e). The document must be signed by the supervising lawyer.

Each pleading, brief, or other document must contain the name of the certified law student who participated in drafting it. If the student has participated in drafting only a portion of it, that fact may be mentioned.

(g) Limitation

Nothing contained in this rule shall affect the right of any person who is not admitted to practice law to do anything that might otherwise lawfully be done.

Table of Contents

RULE 83.5

ASSIGNMENT OF REMANDED CASES

A case remanded from the First Circuit Court of Appeals for further proceedings shall be assigned as follows, unless the judge originally assigned finds that the interests of justice or the appearance of justice warrant assignment of the case to another judge, after giving due consideration to the rights and convenience of the parties, the conservation of litigant and judicial resources, and the fair and expeditious administration of justice:

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

(2) Nonjury Trial. Unless the parties otherwise agree, a case remanded for a new nonjury trial shall be assigned to a judge other than the judge who conducted the earlier nonjury trial unless remand was predicated solely on errors of law.

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

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

Table of Contents

RULE 83.6

(As amended September 21, 1999)

BANKRUPTCY

(a) Reference to Bankruptcy Court

All cases under Title 11 and all civil proceedings arising under Title 11 or arising in or related to cases under Title 11 are referred to the bankruptcy judges of this district pursuant to 28 U.S.C. Section 157(a).

(b) Jury Trial

Each bankruptcy judge for the District of Maine is specially designated to conduct jury trials pursuant to 28 U.S.C. Section 157(e).

(c) Bankruptcy Appellate Panel

The Bankruptcy Appellate Panel for the First Circuit is hereby authorized to hear and determine the bankruptcy appeals originating in the District of Maine pursuant to 28 U.S.C. Section 158(b)(6).

Table of Contents

RULE 83.7

(As amended December 19, 2002)

CORPORATE DISCLOSURE STATEMENT

Inasmuch as Fed.R.Civ.P. 7.1, governing the filing of corporate disclosure statements, took effect on December 1, 2002, Local Rule 83.7 is hereby abrogated effective December 19, 2002.

Table of Contents

RULE 83.8

(As amended November 13, 2003)

SECURITY

(a) Courthouse Security

(1) Screening and Search. All persons entering federal courthouse facilities in this district and all items carried by them are subject to appropriate screening and search by a deputy U.S. Marshal, or any other designated law enforcement officer. Persons may be requested to provide identification and to state the nature of their business in the courthouse. Anyone refusing to cooperate with these security measures may be denied entrance to the courthouse.

(2) Deposit Firearms. All persons, including all law enforcement personnel not employed by the United States Marshals Service, shall deposit any firearm or other weapon with a deputy U. S. Marshal or any other law enforcement officer designated by the U. S. Marshal, directly upon entering federal courthouse facilities, unless otherwise specifically authorized by the United States Marshal.

(3) Photographs and Broadcasting Equipment. The taking of photographs, the recording of court proceedings and conferences, and the use of radio, television or other broadcasting equipment anywhere in the Edward T. Gignoux U. S. Courthouse at Portland, including the courtyard, or in those portions of the second and third floors of the Margaret Chase Smith Federal Building at Bangor, or in any leased space occupied by the district court, the bankruptcy court, the probation office or the United States Marshal, are prohibited, except with permission of the Court. The recording of telephone hearings or conferences with the Court is prohibited, except with permission of the Court.

(4) Cellular Phones, Laptop Computers and Recording Devices. Members of the Bar of this Court shall be permitted to use and possess cellular phones, laptop computers and other recording devices in the court facilities. A member of the Bar may authorize a person providing services to counsel in connection with a case to use a laptop computer or other recording device in the court facilities upon Counsel's certification that he/she will be responsible for that person's compliance with the Rules of this Court. However, all cellular phones, pagers and recording devices shall be turned off at all times while in any courtroom. Without prior leave of the Court, no proceeding, conference or telephone conference with any judicial officer or employee of the Court may be recorded.

(b) Courtroom Security

(1) Weapons Prohibited. No weapons are permitted in any courtroom, except in the following circumstances:

(A) when carried by U. S. Marshals Service personnel;

(B) when used as exhibits. Upon entering the courthouse, the custodian of the weapon must submit it to the United States Marshal's office for a determination that the weapon is inoperative to the Marshal's satisfaction.

(c) Grand Jury Security

In order to maintain the secrecy of the Grand Jury proceedings and to assure that those witnesses who come before the Grand Jury have a right to have their appearances before the Grand Jury kept secret and that they be protected from any unwanted interference with regard to their coming and going to the Grand Jury, the only persons permitted on the second floor of the U. S. Courthouse in Bangor and on the third floor of the U. S. Courthouse in Portland while the Grand Jury is in session are law enforcement officers, attorneys for the government, witnesses called by the Grand Jury, attorneys for witnesses, employees and invitees of government agencies located on the premises, and other persons with business with those government agencies.

(d) Other Security Measures

This rule sets out established security procedures. It does not preclude either the Court or a security officer from imposing additional security restrictions in particular cases.

Table of Contents

RULE 83.9

COMPLAINTS OF JUDICIAL MISCONDUCT OR DISABILITY

Complaints alleging judicial misconduct or disability are governed by the Judicial Conduct and Disability Act, 28 U.S.C. Section 372 and by the Rules of the Judicial Council of the First Circuit Governing Complaints of Judicial Misconduct or Disability. Any such complaint shall be filed with the Clerk of the First Circuit Court of Appeals.

Table of Contents

RULE 83.10

CERTIFICATE OF APPEALABILITY

A petitioner wishing to appeal from the denial of a §2254 or §2255 petition must file a timely notice of appeal and should promptly apply to the district judge for a certificate of appealability. The application will be directed in the first instance to the district court judge who refused the writ.

Table of Contents

RULE 83.11

(Adopted April 4, 2000)

ALTERNATIVE DISPUTE RESOLUTION (AADR@)

(a) In General

Litigants are authorized and encouraged to employ, at their own expense, any available ADR process on which they can agree, including early neutral evaluation, settlement conferences, mediation, non-binding summary jury trial, corporate mini-trial, and arbitration proceedings.

(b) Consideration of ADR

Litigants in civil cases shall consider the use of ADR as follows:

(1) **Standard Track Cases.** In accordance with the requirements of the scheduling order issued in all standard track cases, counsel shall consult with each other and their clients concerning all available ADR processes and shall consider all ADR options.

(2) **Complex Track Cases.** In accordance with the provisions of Local Rule 16.3(c), prior to the initial scheduling conference in all complex track cases, counsel shall consult with each other and with their clients concerning all available ADR processes and shall be prepared to fully discuss all such options with the presiding judicial officer at the initial scheduling conference.

(3) **Exempted Actions.** Exempted from the requirement are actions assigned, in accordance with Local Rule 16.1, to the Administrative Track, Toxic Tort Track, Prisoner Civil Rights Tract, and the State of Maine/Pine Tree Legal Protocol Track.

(c) Court-Annexed ADR

To implement section 652(a) of the Alternative Dispute Resolution Act of 1998, 28 U.S.C. §651 *et seq.*, the Court provides the following forms of ADR: the district and magistrate judges of the Court shall be available throughout the pretrial phase of all civil litigation to conduct early neutral evaluation and settlement

conferences with counsel and the parties. To the extent their dockets permit, bankruptcy judges shall also be available. This court-annexed ADR is voluntary and nonbinding, unless the parties agree otherwise. The neutrals recognized under this rule for court-annexed ADR are the judicial officers of the Court. They are subject to disqualification in accordance with federal statutes such as 28 U.S.C. § 455 and the Canons of Judicial Ethics.

(d) Confidentiality

All ADR processes are confidential. Thus, no disclosure shall be made to anyone, including any judicial officer not serving as a neutral in the matter, of any confidential dispute resolution communication that in any respect reveals the dispute resolution positions of the parties or advice or opinions of neutrals, and no such communication shall be admissible in any subsequent proceeding, including trial of the matter, except as the Federal Rules of Evidence may permit otherwise.

Table of Contents

RULE 83.12

(Adopted December 1, 2001)

PROCEDURES GOVERNING CASES REFERRED TO OR FROM NEW HAMPSHIRE

When, due to recusal of the judges of this district, a case is referred to a judge in the District of New Hampshire, or when a judge of this district is assigned to preside over a case filed in the Distirct of New Hampshire due to the recusal of the judges of that district, the following procedures shall apply:

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

(b) Conferences and hearings may be held in either district. Jury trials will be held in the distict of the originating court.

(c) Parties must make original filings with the clerk's office in the originating court. Parties must also file copies of all filings with the clerk's office in the district court where the assigned judge sits. The caption of all filings must reflect both case numbers.

Table of Contents

RULE 83.13

(Adopted April 11, 2002)

RESTRICTIONS UPON LAW PRACTICE AFTER TERMINATION OF A CLERKSHIP

No one serving as a law clerk to a member of this court shall engage in the practice of law while continuing in such position. Nor, for a period of six months after separating from that position, shall a former law clerk appear as counsel before the judicial officer for whom the attorney previously clerked. A former law clerk shall not practice as an attorney in connection with any case the judicial officer acted on during the law clerk's tenure, even if the clerk did not actually have any involvement with the case.

Table of Contents

Appendix I

MODEL COMPLAINT IN SOCIAL SECURITY APPEAL

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

_____	)	
Plaintiff	)	
v.	)	Complaint
_____	)	Civil Action No. _____
Commissioner of Social	)	
Security	)	
Defendant	)	

The above-named plaintiff makes the following representations to this Court for the purpose of obtaining judicial review of a decision of the defendant adverse to the plaintiff:

1. The plaintiff is a resident of __(City)__, __(State)__.

2. The plaintiff complains of a decision which adversely affects the plaintiff in whole or in part. The decision has become the final decision of the Commissioner for purposes of judicial review and bears the following caption:

In the Case of	Claim for
__(Claimant)____	_____
__(Wage Earner)	

3. The plaintiff has exhausted administrative remedies in this matter and this Court has jurisdiction for judicial review pursuant to 42 U.S.C. § 405(g).

WHEREFORE plaintiff seeks judicial review by this Court and the entry of a judgment for such relief as may be proper, including costs.

(Date)_____ (Attorney for Plaintiff)

(Address)

(Telephone)

So ORDERED.

Table of Contents

RULE 110

TRIAL DATE

A trial date shall ordinarily be set at the arraignment.

Table of Contents

RULE 111

TIME LIMITS ON PLEA AGREEMENTS

Counsel shall notify the Court of the existence of a plea agreement not later than 25 days from the date of arraignment. If notification is untimely, the Court may choose not to entertain the plea agreement unless good cause is shown pursuant to Fed. R. Crim. P. 11(e)(5). Counsel shall provide the Court with a copy of any plea agreement at least 2 days prior to a scheduled change of plea.

Table of Contents

RULE 117

FINAL PRETRIAL CONFERENCE

At the discretion of the Court a pretrial conference may be held pursuant to Fed. R. Crim. P. 17.1.

Table of Contents

RULE 123

(As amended June 23, 1998)

COURTROOM PRACTICE

(a) Opening Statements

Opening statements shall not be argumentative, and shall not exceed thirty minutes in length, except by leave of Court.

(b) Closing Arguments

The length of closing arguments shall be fixed by the Court. Only one attorney shall argue for each party, except by leave of Court. The Government shall argue first and may reserve for rebuttal such time as shall be fixed by the Court.

(c) Examination of Witnesses

(1) The examination of a particular witness, and objections relating to that examination, shall be made by one attorney for each party, except by leave of Court.

(2) Upon oral motion of a party or on its own motion, the Court may order on such terms as it may prescribe, that a witness under examination in court shall not discuss the witness's testimony, including during any recess taken during the examination or before the witness is finally excused.

(d) Attorneys as Witnesses

No attorney shall without leave of Court conduct the trial of a jury action in which the attorney is a witness for the party represented at trial.

(e) Trial Day

The presiding judge shall establish the limits of the trial day.

(f) Exhibits

(1) Custody and Marking. All exhibits shall be marked for identification prior to trial in accordance with the final pretrial order. Unless otherwise ordered by the

Court, all exhibits offered in evidence, whether admitted or excluded, shall be held in the custody of the Clerk during the pendency of the proceedings, except that exhibits which because of their size or nature require special handling shall remain in the possession of the party introducing them. Exhibits retained by counsel shall be preserved in the form in which they were offered until the proceeding is finally concluded.

(2) Return. Unless otherwise ordered by the Court, at the conclusion of the proceeding, all nondocumentary exhibits shall be returned to the submitting parties who shall keep them in the form in which they had been offered and who shall make them available for the use of other parties, the Court, or an appellate court until the expiration of any appeal. Any documentary exhibits shall be withdrawn by counsel who offered them within 30 days after the final determination of the action by this or any appellate court. Upon counsel's failure to timely remove any exhibits, the Clerk may, after due notice to counsel, dispose of them as necessary.

(3) Valuable or Bulky Exhibits. A party who offers valuable exhibits shall be responsible for their insurance and protection.

(4) Photographs of Chalks. Counsel may photograph or otherwise copy any chalk in order to make a record of it.

(g) Official Record

The only official record of any court proceeding shall be a record prepared by an authorized court reporter or an electronic sound recording made by court personnel or a transcript prepared therefrom by professional transcription services, when properly certified in each case.

(h) Cellular Phones

All cellular phones, pagers and recording devices shall be turned off at all times while in any courtroom.

Table of Contents

RULE 124.1

PROPOSED QUESTIONS FOR JURY VOIR DIRE

Proposed questions for jury voir dire shall be served and submitted, in duplicate, to the Court at least 3 days prior to jury impanelment.

Table of Contents

RULE 124.2

TRIAL JURY

(a) Number of Jurors

In all criminal jury trials cases the jury shall consist of twelve (12) members.

(b) Examination of Jurors

The Court will itself conduct the examination of prospective jurors. At the close of such examination, the Court will afford counsel an opportunity, at the bench,
to request that the Court ask additional questions.

(c) Challenges for Cause

Challenges for cause of individual prospective jurors shall be made at the bench, at the conclusion of the Court's examination.

(d) Peremptory Challenges

(1) Manner of Exercise. Peremptory challenges shall be exercised by striking out the name of the juror challenged on the list of the drawn venire prepared by the Clerk. Any party may waive the exercise of any of his peremptory challenges without thereby relinquishing his right to exercise any remaining peremptory challenge or challenges
to which he is entitled. If all peremptory challenges are not exercised, the Court will strike from the bottom of the list sufficient names to reduce the number of jurors remaining to twelve (12).

(2) Order of Exercise. In a criminal case in which the government is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges, they shall be exercised as follows:

Government	1	
Defendants(s)		2

Government	1	
Defendant(s)		2
Government	1	
Defendant(s)		2
Government	1	
Defendant(s)		2
Government	1	
Defendants(s)		1
Government	1	
Defendant(s)		1

In any action in which the Court allows several defendants additional peremptory challenges, the order of challenges shall be determined by the Court.

(3) Alternate Jurors in Criminal Cases. Peremptory challenges to alternate jurors in a criminal case shall be exercised one by one, alternately, the government exercising the first challenge.

Table of Contents

RULE 130

REQUESTS FOR JURY INSTRUCTIONS

Written requests for jury instructions pursuant to Fed. R. Crim. P. 30 shall be served and submitted, in duplicate, to the Court at least 3 days prior to jury impanelment, subject to the right of the parties to submit at the close of the evidence any additional requests the need for which might not reasonably have been foreseen. No requests need be submitted for usual and common instructions. Requests for instructions shall be numbered and shall include supporting citations.

Table of Contents

RULE 132

(As Amended March 12, 2003)

GUIDELINE SENTENCING

(a) Time for Filing Objections to Presentence Report

Unless otherwise ordered by the Court, the probation officer shall, not more than 42 calendar days after the verdict or finding of guilt, disclose the presentence report (PSR) to both counsel and to the defendant. Any objections either counsel or the defendant may have as to any material information, sentencing classification, sentencing guideline ranges or policy statements contained in or omitted from the report shall be made in writing to the probation officer within 14 days after receipt of the report.

(b) Submission of Revised Presentence Report

Within 14 calendar days of receiving any objections, the probation officer shall conduct any further investigation and make any revisions to the PSR that may be necessary and shall submit the PSR to the sentencing judge and to counsel for both parties and the defendant. The PSR shall include an addendum setting forth any objections counsel may have, together with the officer's comments thereon.

(c) Presentence Conference

Upon receipt of the PSR the Court may schedule a presentence conference with all counsel and the probation officer present and with the defendant if proceeding pro se. Any such conference shall be conducted upon the record but not transcribed except on specific request of counsel, for discussion of the application of the Guidelines to the case and for identification of all remaining contested issues.

(d) Disputed Issues

Except with regard to any unresolved objection made under subsection (a), the PSR may be accepted by the Court as accurate. The Court, however, for good cause shown, may allow objection to be raised at any time before the imposition of sentence.

(e) Modification of Time Limits

The times set forth in this rule may be modified by the court for good cause shown, except that the 14 day period set forth in subsection (a) may be diminished only with consent of the defendant.

(f) Disclosure

Nothing in this rule requires the disclosure of any portions of the PSR that is not disclosable under Fed. R. Crim. Proc. 32. The recommendations of the probation officer as to the sentence to be imposed shall not be disclosed without the Court′s permission.

The PSR shall be deemed to have been disclosed to counsel and the defendant (1) when a copy of the report is physically delivered, (2) one day after oral communication of the availability of the report for inspection, or (3) three days after a copy of the report or written notice of its availability is mailed, whichever is earlier.

Table of Contents

RULE 147

(As amended March 1, 2001)

MOTIONS AND MEMORANDA OF LAW

(a) Submissions of Motions and Supporting Memoranda

Every motion shall incorporate a memorandum of law, including citations and supporting authorities. Affidavits and other documents setting forth or evidencing facts on which the motion is based shall be filed with the motion.

(b) Objections to Motions

Unless within twenty-one (21) days after the filing of a motion the opposing party files written objection thereto, incorporating a memorandum of law, the opposing party shall be deemed to have waived objection.

Any objections shall be filed in duplicate and shall include citations and supporting authorities and affidavits and other documents setting forth or evidencing facts on which the objection is based. The deemed waiver imposed herein shall not apply to motions filed during trial.

(c) Calculation of Time for Response

The time periods for objection to motions and for filing reply memoranda shall be computed from the filing date of the motion or objection. F.R.Crim.P. 45(e) shall not apply and therefore no additional days will be added for the possibility that service may have been accomplished by mail.

(d) Form and Length

All memoranda shall be typed, double-spaced on 8-1/2 x 11 inch paper or printed. All pages shall be numbered at the bottom. Except by prior leave of Court, memorandum of law in support of or in opposition to a dispositive motion or a motion to suppress evidence shall not exceed 20 pages. Memoranda in support and in opposition to all other motions shall not exceed 10 pages.

Table of Contents

RULE 157.1

DUTIES OF UNITED STATES MAGISTRATE JUDGES

(a) Authority of Part-time Magistrate Judge

Any part-time United States Magistrate Judge appointed by this Court is authorized to exercise all powers and perform all duties conferred upon magistrate judges by Sections 636(a) and (b) of Title 28, United States Code.

(b) Assignment of Duties to Part-time Magistrate Judge

A part-time magistrate judge may perform any of the duties authorized by 28 U.S.C. § 636(b) upon specific designation by a judge of the court or pursuant to a general order of the court assigning duties. In performing such duties the part-time magistrate judge shall conform to the general procedural rules of this court and the instructions of the district judges.

(c) Authority of Full-time Magistrate Judge

Any full-time United States Magistrate Judge appointed by this Court is authorized to exercise all the powers and perform all the duties of part-time magistrate judges as provided in subsection (a) herein. In addition, any full-time Magistrate Judge is authorized to exercise all powers and perform all duties conferred upon magistrate judges by 28 U.S.C. §§ 636(b), (c) and (g); 18 U.S.C. § 3401(i); and to exercise the powers enumerated in Rules 5, 8, 9 and 10, Rules Governing Section 2254 and 2255 Proceedings in accordance with the standards and criteria established in 28 U.S.C. § 636(b)(1).

Table of Contents

RULE 157.2

TRIAL BRIEFS

At least 3 days prior to the date set for trial, unless otherwise ordered by the Court, each party shall serve and file a trial brief identifying, with citation to appropriate authorities, the legal basis of the claims and defenses to be asserted at trial. All pages shall be numbered at the bottom. Except by prior leave of Court, a trial brief shall not exceed 20 pages in length.

Table of Contents

RULE 157.3

SPECIAL ORDERS FOR THE PROTECTION OF THE ACCUSED IN WIDELY PUBLICIZED AND SENSATIONAL CRIMINAL CASES

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

Table of Contents

RULE 157.4

RELEASE OF INFORMATION BY ATTORNEYS AND COURTHOUSE PERSONNEL IN CRIMINAL CASES

(a) Attorneys

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

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

(3) From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extra-judicial statement, relating to that matter and concerning the areas enumerated below, which a reasonable person would expect to be disseminated by means of public communication, if there is a reasonable likelihood that such dissemination will seriously interfere with a fair trial:

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

(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 examinations 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 lawyer 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 a lesser offense; and

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

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

(4) During a jury trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extra-judicial statement or interview, relating to the trial or the parties or issues in the trial, which a reasonable person would expect to be disseminated by means of public communication, if there is a reasonable likelihood that such dissemination will seriously interfere with a fair trial, except that the lawyer or law firm may quote from or refer without comment to public records of the court in the case.

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

(b) Courthouse Personnel

All court supporting personnel, including among others, marshals, deputy marshals, court clerks, court security officers, court reporters, and employees or subcontractors retained by the court reporters, are prohibited from disclosing to any person, without authorization by the Court, information relating to a pending grand jury proceeding or criminal case that is not part of the public records of the Court. The divulgence of information concerning grand jury proceedings, in camera arguments and hearings held in chambers or otherwise outside the presence of the public is also forbidden.

Table of Contents

RULE 157.5

(As amended December 5, 2000)

ATTORNEYS-APPEARANCES AND WITHDRAWALS

(a) Appearances

An attorney's signature to a pleading shall constitute an appearance. Otherwise, an attorney who wishes to participate in any manner in any action must file a formal written appearance. An appearance whether by pleading or formal written appearance shall be signed by an attorney in his/her individual name and shall state his/her office address and telephone number.

(b) Withdrawals in General

No attorney may withdraw an appearance in any action except by leave of Court. A defense attorney in any criminal case shall continue the representation until relieved by order of this Court or the Court of Appeals. A motion to withdraw shall be accompanied by a notice of appearance of substitute counsel. In the absence of the appearance of substitute counsel, a motion to withdraw shall set forth sufficient information to enable the Court to rule. Such information may be filed under seal, submitted to the court *in camera*, and shall not be made part of the public record, except by order of the Court. After sentencing, the Court will grant leave to withdraw only upon the appearance of substitute counsel.

After a notice of appeal has been filed, a motion to withdraw must be directed to the Court of Appeals. See First Circuit Local Rules 12 an