

UNITED STATES DISTRICT COURT

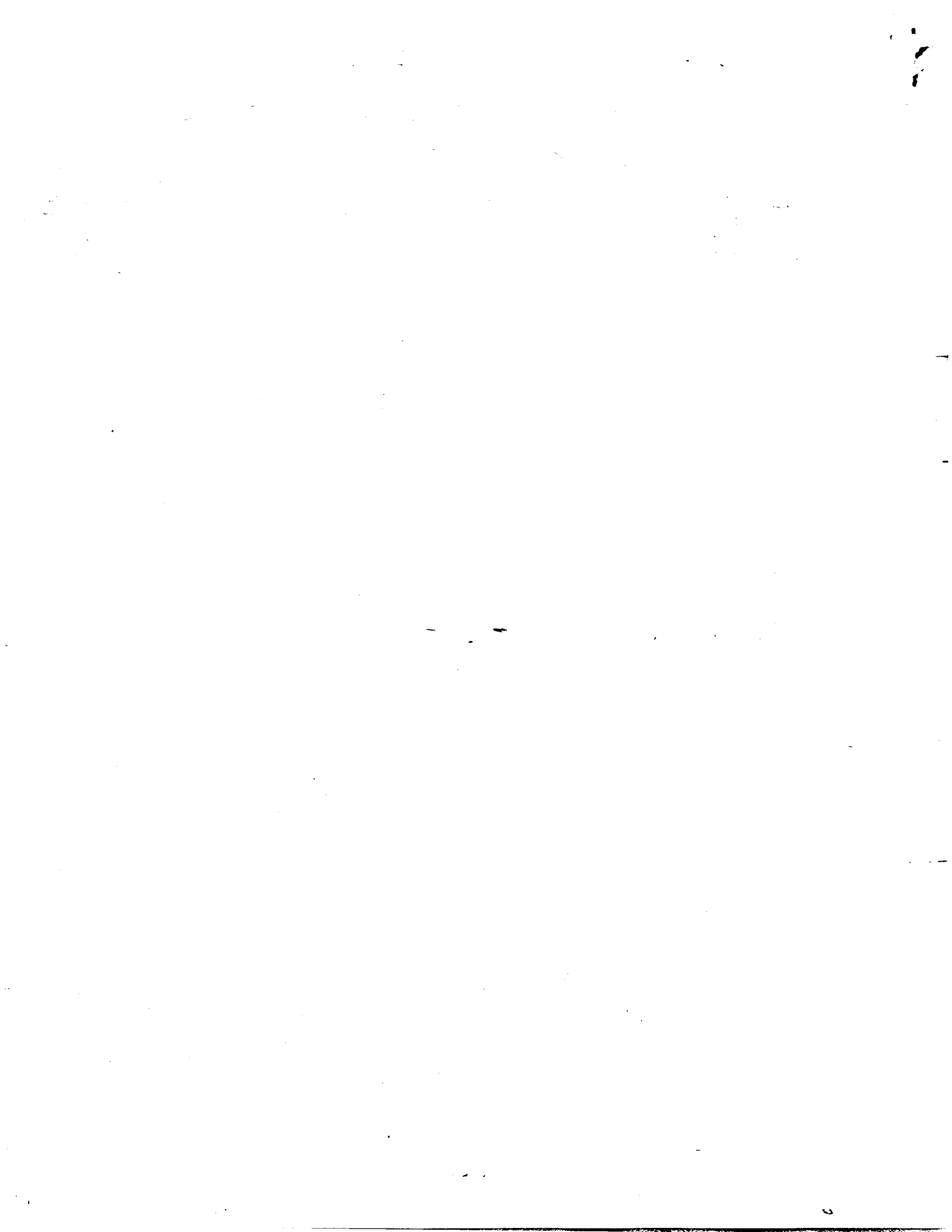
FOR THE

DISTRICT OF COLORADO

LOCAL RULES OF PRACTICE

ADOPTED NOVEMBER 2, 1976

Updated with Amendments April 5, 1982



<u>RULE</u>		<u>PAGE</u>
1	Attorneys	1
2	Removal of Cases	2
3	Filing of Papers -- Withdrawal of Exhibits	2
4	Motions in Civil Cases	3
5	Discovery	4
6	Assignment of Court Business	5
7	Jury Trials	8
8	Instructions	8
9	Costs and Judgments	8
10	Bonds	9
11	Jury Cost Assessment	9
12	Brief On An Amicus Curiae	9
13	Notification of Claim of Unconstitutionality	9
14	Deposits in the Registry	10
15	Official Reporter	10
16	Use of Cameras and Recording Devices	10
17	United States Magistrates	11
18	Forfeiture of Collateral in Lieu of Appearance	15
19	Dismissal for Lack of Prosecution	16
20	(Reserved for Future Amendments)	16
21	(Reserved for Future Amendments)	16
22	Modification of Rules	16
	General Order in Criminal Cases	16
23	Proceedings for the Disbarment or Discipline of Attorneys	17
24	Discipline of Attorneys Convicted of a Felony	20

TABLE OF CONTENTS

<u>RULE</u>		<u>PAGE</u>
25	Attorneys Disciplined by Other Courts	20
26	Attorneys Who Resign from the Bar of Another Court During an Investigation of Misconduct	21
27	Duty of Attorneys to Notify the Court of Convictions or Discipline by Other Courts	21
28	Preclusion of Visiting Attorneys from Practice in this Court	21
29	Proceedings Where an Attorney is Declared to be Mentally Incompetent or is Alleged to be Incapacitated	21

(Revision Effective April 5, 1982)

FOR THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

It is ordered that the following Local Rules of Practice for the United States District Court for the District of Colorado are hereby adopted in accordance with the provisions of Rule 83 of the Federal Rules of Civil Procedure, Rule 57 of the Federal Rules of Criminal Procedure, and Rule 11 of the Rules of Procedure for the trial of minor offenses before the United States Magistrates. Copies of these rules shall be filed with the Clerk of this Court and copies shall be furnished to the Supreme Court of the United States and to the Administrative Office of the United States Courts. The effective date of these rules shall be November 2, 1976.

RULE 1
ATTORNEYS

(a) The bar of this Court shall consist of those persons admitted to practice before it. Persons admitted to practice in the courts of the State of Colorado and residing or maintaining an office in Colorado, may be admitted to the bar of this Court upon motion of a member of the bar of the Court representing that the applicant is of good moral character. Each person admitted to the bar of this Court must take the prescribed oath, must sign the roll of attorneys, and must pay the prescribed fee.

(b) Subject to the provision of 28 U.S.C. §515, (and subject to the provisions of any other federal statute authorizing the appearance of government counsel) persons residing in a state other than Colorado, who are members in good standing of the bar of another state or of the bar of another federal court may, upon oral motion made by a member of the bar of this Court, be admitted pro hac vice. Unless otherwise ordered by a Judge of this Court, such motion shall be granted only if the applicant associates with him an active member of the bar of this Court who shall meaningfully and substantially participate in the preparation and trial of the case. A member of the bar of this Court shall sign the first pleading filed. Any notice, pleading or other paper must be served on all counsel of record. By his application, an attorney who applies for admission pro hac vice consents to the exercise of disciplinary jurisdiction by this Court over any alleged misconduct which occurs during the progress of the case in which the attorney so admitted participates.

(c) Attorneys who have appeared in a case may withdraw for good cause shown, but withdrawal shall be effective only on order of court entered after service of notice of withdrawal on all counsel of record and on the attorney's client.

(d) Attorneys appearing for defendants in criminal cases shall promptly file a written entry of appearance, a copy of which shall be served on the United States Attorney.

(e) For good cause shown, and after notice and an opportunity to be heard, any member of the bar of this Court may be disbarred, suspended from practice for a definite time, reprimanded or otherwise disciplined as the circumstances may warrant.

(f) Except as is otherwise expressly provided herein, the Code of Professional Responsibility adopted by the Supreme Court of Colorado (as amended) applies to all attorneys appearing in this court. For purposes of interpreting DR 7-107 of that Code of Professional Responsibility, all officers and employees of the United States Government are agents of government counsel; DR 7-107 (D) is expanded to include a period of thirty days prior to the scheduled trial date; DR 7-108 (B)(1) is amended to read, "Without prior permission of the judge to whom a case is assigned, during and after the trial of a case a lawyer connected therewith shall not communicate with or cause another to communicate with any member of the jury", and DR 7-108 (D) is deleted.

RULE 2

REMOVAL OF CASES

The bond required by 28 U.S.C. §1446 shall be in the amount of \$1,000.00. The party effecting removal shall (1) promptly serve copies of the removal petition on all other parties, and (2) forthwith file with the Clerk of the Court from which the case is removed a copy of the removal petition. Proof of each shall be filed promptly with the Clerk of this Court. If a hearing in the state court has been set when the case is removed, counsel effecting the removal shall immediately notify the state judge of the removal and shall likewise notify the federal judge to whom the case is assigned of the time and place of the state court setting.

RULE 3

FILING OF PAPERS — WITHDRAWAL OF EXHIBITS

(a) A properly completed Form JS-44(c) shall be given to the Clerk at the commencement of each civil action.

(b) All papers after the complaint required to be served upon a party shall be filed in duplicate with the court either before service or within a reasonable time thereafter; provided, however, that depositions, interrogatories, requests for documents, requests for admissions, and answers and responses thereto shall not be filed unless on special order of the court or unless they are needed for use in a trial or hearing.

The originals of all stenographically reported depositions shall be delivered to the party taking the deposition,

(1) Upon signature by the deponent, or

(2) Upon completion if signature is waived on the record by the deponent and all interested parties, or,

(3) Upon certification by the shorthand reporter that following reasonable notice to the deponent and deponent's attorney (if any) of the availability of the transcript for signature the deponent has failed or refused to sign it.

The original of a deposition shall be retained by the party to whom it is delivered to be available for appropriate use by any party in a hearing or trial of the case.

This rule supersedes all local rules inconsistent herewith, including local rule 5(g).

(c) All pleadings shall be legible and shall be without erasures or interlineations materially defacing them. Exhibits attached to pleadings shall conform to this rule.

(d) The name and current address and telephone number of all attorneys and pro se litigants shall be typed or printed on all pleadings. The address of a party shall appear on the first pleading filed by an attorney on behalf of that party.

(e) All pleadings filed after the commencement of a case shall bear the proper case number. The caption thereof shall properly show their nature and on whose behalf the pleading is filed.

(f) No pleading or exhibit belonging in the files of the Court shall be taken from the office or custody of the Court except on Court order.

(g) Exhibits marked, offered or received in evidence in a case may be withdrawn before final judgment only upon Court order. After final judgment, an exhibit may be withdrawn by the party offering it without Court order. If not withdrawn within thirty (30) days after final judgment, exhibits may be destroyed or otherwise disposed of as the Clerk may determine. As used in this rule, "final judgment" means a judgment not subject to further appellate review.

RULE 4

MOTIONS IN CIVIL CASES

(a) Motions for the appointment of a special process server, filed in compliance with Rule 4(c) Fed.R.Civ.P., will be granted routinely by minute order entered by the Clerk.

(b) Motions for extensions of time of not more than twenty (20) days within which to:

- (1) Answer or move to the complaint,
- (2) Answer or object to interrogatories under Rule 31, Fed.R.Civ.P. or Rule 33, Fed.R.Civ.P.,
- (3) Respond to requests for production or for inspection under Rule 34, Fed.R.Civ.P.,
- (4) Respond to requests for admissions under Rule 36, Fed.R.Civ.P.,

will be granted ex parte and routinely by minute order entered by the Clerk, subject to the right of the opposing party to move to set aside the order so extending time. Motions for further extensions of time theretofore granted by the Clerk and motions for extensions of time to file any brief shall be presented to the Court.

(c) Briefs supporting or opposing motions under Rule 12 or Rule 37, Fed.R.Civ.P. may be filed only with permission of the judge to whom the case has been assigned, but case authority may be cited in a motion.

(d) A motion under Rule 56, Fed.R.Civ.P. or a motion seeking remand under 28 U.S.C. §1447 shall be supported by a brief filed with the motion. A brief opposing a motion under Rule 56, Fed.R.Civ.P. shall be filed within twenty (20) days after service of the motion or within such extended time as may be allowed by the Court. Briefs opposing a motion to remand under 28 U.S.C. §1447 may be filed only with permission of the Court. Reply briefs to a motion under either Rule 56, Fed.R.Civ.P. or 28 U.S.C. §1447 may be filed only with permission of the Court.

(e) Oral argument will be at the Court's discretion.

RULE 5

DISCOVERY

(a) Unless otherwise ordered by the Court, "reasonable notice" for the taking of depositions under Rule 30(b)(1), Fed.R.Civ.P. shall be not less than five days. Rule 6, Fed.R.Civ.P. governs the computation of time. Pending resolution of any motion under Rule 26(c) or Rule 30(d), Fed.R.Civ.P., neither the objecting party, witness, nor any attorney is required to appear at the deposition to which the motion is directed until the motion is ruled upon. The filing of a motion under either of these rules shall stay the discovery at which the motion is directed pending further order of the Court.

(b) Unless otherwise ordered by the Court, depositions which have been filed may be opened by the Clerk for counsel's examination upon application of any attorney of record in the case. Upon the conclusion of the examination, the depositions shall be re-sealed.

(c) Fees for taking depositions shall be plainly endorsed on the Notary's certificate.

(d) Motions under Rules 26(c) and 37(a), Fed.R.Civ.P. directed at interrogatories or requests under Rules 33 or 34, Fed.R.Civ.P., or at the responses thereto, shall set forth the interrogatory, request or response constituting the subject matter of the motion.

(e) Interrogatories under Rule 33, Fed.R.Civ.P., and the answers thereto, Requests for Production or Inspection under Rule 34, Fed.R.Civ.P. and Requests for Admissions under Rule 36, Fed.R.Civ.P. and the responses thereto shall be served upon other counsel or parties, but shall not be filed with the Court. If relief is sought under Rule 26(c), Fed.R. Civ.P. or Rule 37, Fed.R.Civ.P. concerning any interrogatories, requests for production or inspection, requests for admissions, answers to inter-

rogatories or responses to requests for admissions, copies of the portions of the interrogatories, requests, answers or responses in dispute shall be filed with the Court contemporaneously with any motion filed under Rule 26(c), Fed.R.Civ.P. or Rule 37, Fed.R.Civ.P. If interrogatories, requests, answers or responses are to be used at trial, the portions to be used shall be filed with the Clerk at the outset of the trial insofar as their use reasonably can be anticipated.

(f) A request for production or inspection under Rule 34, Fed.R. Civ.P. shall fix the date, time, and place therefor. The party to whom the request is made shall comply, unless such party has already responded, objected or sought relief under Rule 26(c), Fed.R.Civ.P. within the times fixed by the Federal Rules of Civil Procedure.

(g) Unless otherwise ordered, the Court will not entertain any motion under Rule 37, Fed.R.Civ.P. unless counsel for the moving party has conferred or has made reasonable effort to confer with opposing counsel concerning the matter in dispute prior to the filing of the motion. Counsel for the moving party shall file a certificate of compliance with this rule with any motion filed under Rule 37(a), Fed.R.Civ.P.

RULE 6

ASSIGNMENT OF COURT BUSINESS

It is the policy of this Court insofar as practicable and efficient to provide for the assignment of cases among the judges of this district by random selection. It is the further policy of the Court to provide for parity of work among the active judges of the district and to provide to the senior judges of this Court the opportunity to participate in the business of the Court to the fullest extent that each senior judge chooses to accept. In order to implement these policies the following procedures shall obtain:

A. The Clerk of the Court shall provide a form which shall be completed by the person filing any civil case. In addition to such other information as may be required, the person filing the form shall indicate whether the case is related to any other action pending or terminated within the previous 12 months. If no such relationship is indicated, the case shall be assigned as provided in paragraph A(1) below. If such relationship is indicated, the case shall be assigned as provided in paragraph A(2) below.

1. The Clerk shall maintain a block of assignment cards which shall begin with an equal number of the names of each active judge except that the name of the Chief Judge shall appear three-fourths the number of times as each of the other active judges. A senior judge may have his name cards placed in the block in any number he desires.

At 8:15 a.m. on each business day the Clerk, or his designated deputy, shall conduct a public drawing at which he shall pull a card from the block and assign a case to the judge named on that card. Each case shall be assigned in the sequence in which it was filed during the previous business day. If, after having received a case by assignment, a senior judge chooses, he may return the case to the Clerk for redrawing without stating any reason for such action.

In cases of an emergency nature requiring immediate attention by a judge, the Clerk shall determine the availability of a judge to act who, having acted, shall promptly return the case to the clerk for assignment at the next public drawing or advise the Clerk that he or she intends to keep the case. The Clerk shall determine availability by contacting each judge, senior or active, on a rotating basis. Any judge may notify the Clerk of his or her availability for the handling of emergency matters and the Clerk may direct the emergency matter to that judge without further or additional inquiry.

2. If it is indicated that a relationship to a pending case or one terminated within the previous 12 months exists the Clerk shall deliver the case file to the judge assigned to the earlier related case or cases and that judge shall promptly review the determination of relationship and return it to the Clerk, if such relationship does not exist, for assignment at the next public drawing. If the judge determines that such relationship does exist, the case shall be assigned to that judge and the Clerk shall remove one of that judge's cards from the next block of Assignment Cards. For purposes of this Rule, all pro se cases filed by the same person are deemed related.

B. Recusal and disqualification of a judge shall be only by formal order setting forth the reasons for that action. Upon such recusal or disqualification the Chief Judge shall order the case to be redrawn at the next regular draw. After the redrawing the Clerk shall add an additional assignment card bearing the name of the recusing judge to the next block of Assignment cards.

C. It shall be the responsibility of the Chief Judge to review, at least annually, the pending case loads of the active judges in service and to suggest reassignment when it is determined by a majority of the active judges that there is an imbalance which is adversely affecting litigants. In considering the question of such reassignment, this Court will consider the categories of cases for which Congress has mandated priorities. All reassignments or transfers of cases from one judge to another shall be only with the approval of the Chief Judge. ✓

D. Filing and Assignment for Criminal Cases.

1. There will be a separate block of assignment cards for criminal cases. The number of cards for each judge shall be equal, except as may from time to time be determined by the Chief Judge, with the approval of the Court. A senior judge may have his name placed in any desired amount. The assignment cards shall be thoroughly mixed by the Clerk so that the sequence of the judge's names will be random and secret. The case number shall be placed on the assignment card at the time of assignment and all assignment cards shall be preserved for one year.

2. A criminal case will be publicly drawn by the Clerk and assigned to a judge at the time of defendant's arraignment. All matters thereafter occurring in the case shall be referred to the judge drawn. Reassignments shall be made in accordance with C. above.

3. If, at the time of filing, the U.S. Attorney shall advise the Clerk that the case is related to any other pending case or one terminated within the last year, the Clerk shall proceed as with related civil cases. Criminal cases are deemed related when the case file involves the same defendants or the same occurrence as another case.

4. Transfer of Jurisdiction (Probation Form 22).

The transfer of probation jurisdiction is accepted by the Chief Judge when the Probation Form 22 is signed by him. After the arrest of probationer all preliminary matters are handled by the magistrate pursuant to Rule 32.1. If it is determined that further hearing is necessary, the Clerk shall draw a judge and refer the matter to the judge drawn for further proceedings.

E. Assignment Register and Reports.

1. The Clerk of the District Court shall maintain an assignment register (in forms as approved by the Court) containing an account of all cases, civil and criminal, assigned to each of the judges of the Court or to any visiting judge and all reassignments among judges.

2. At the end of each month the Clerk will prepare a report showing the number of cases assigned to and pending before each judge and such other information as the Chief Judge may direct.

F. Naturalization Ceremonies; Contested Applications for Citizenship.

Presiding over naturalization ceremonies and hearing contested applications for citizenship shall be assigned on a rotation basis by the Chief Judge. A senior judge, at his option, may be included in such assignments.

G. General Duty Judge.

The Chief Judge shall appoint a member of the Court to serve as the general duty judge for a period of one month. Appointments shall be made on an equitable and rotating basis. Any matter brought before a judge while serving as general duty judge shall be retained by that judge until the matter is terminated.

H. Petit Jury Matters.

The Chief Judge shall appoint a member of the Court to handle matters relating to petit juries.

I. Grand Jury Matters.

When a grand jury is impanelled the Chief Judge shall assign, on a rotating basis, a judge to handle all matters relating to that grand jury during its entire term including the question of whether sealed indictments shall be kept sealed. No indictment shall be sealed without the written order of the judge assigned pursuant to this rule.

J. Calendars.

Each judge shall maintain an individual civil calendar. Effort will be made to avoid conflicts of counsel with all earlier firm trial Court settings made known to the judge. In the absence of compelling, extraordinary circumstances, trailing calendars or uncertain settings in this Court will not be permitted to interfere with the firm settings in other courts. Firm trial dates in this Court will not be vacated to defer to trailing calendars or uncertain settings in other trial courts.

JURY TRIALS

(a) Subject to the provisions of Rule 47, Fed.R.Civ.P. and Rule 24, Fed.R.Crim.P., examination of prospective jurors shall be by the Court. Insofar as counsel reasonably can anticipate a need for specific questions, such questions shall be submitted in writing before the selection of the jury commences.

(b) The Court may be recessed during jury deliberations, and, if the jury reaches a verdict during such recess, it may seal the verdict and deliver it to the bailiff. In such event, the jury will return to Court at a predetermined time for the opening and reading of the verdict.

(c) Except as is otherwise expressly provided by law, in all civil cases the jury shall consist of six members unless the parties stipulate to a lesser number.

RULE 8

INSTRUCTIONS

At the commencement of all jury trials, each party shall file with the Court, in duplicate, all instructions (other than stock instructions) which reasonably can be anticipated in advance of trial, and copies thereof shall be served on all other parties. In civil cases, the plaintiff shall, and the defendant may, submit a "statement of the case" instruction. When Colorado jury instructions or instructions published in Devitt and Blackmar are submitted, appropriate references to those publications shall be noted on the tendered instructions.

RULE 9

COSTS AND JUDGMENTS

(a) Motions to tax costs must be made within ten (10) days after entry of judgment.

(b) The Clerk shall enter a satisfaction of a final judgment in whole or in part, upon the filing with the Clerk of any of the following:

- (1) The return of the execution by the United States Marshal showing the amount of the judgment collected by the Marshal.
- (2) An acknowledgment of satisfaction executed by the judgment creditor and acknowledged by him as in the case of a conveyance of real property under the statutes of the State of Colorado, or, if filed within one year after judgment, executed by his attorney of record, unless a revocation of the attorney's authority has been filed with the Clerk.
- (3) Upon payment into the Registry of the Court of the amount of the judgment plus interest and costs. Payments may be tendered to the Clerk only upon a signed order of the Court.

(c) The Clerk shall enter such satisfaction on the docket of the case.

BONDS

(a) An attorney or a party in a case, or the spouse of either a party or of an attorney in a case, shall not be accepted as a personal surety on any bond filed in that case.

(b) Where the surety on a bond is an approved surety company, a power of attorney showing the authority of the agent signing the bond shall be on file with the Clerk.

RULE 11

JURY COST ASSESSMENT

Whenever any civil action scheduled for jury trial is settled or otherwise disposed of in advance of the actual trial, then except for good cause shown, jury costs, including Marshal's fees, mileage, and per diem, shall be assessed equally against the parties and their counsel, or otherwise assessed as directed by the Court unless the Clerk is notified before twelve noon of the last business day preceding the time when the action is scheduled for trial, in time to advise the jurors that it will not be necessary for them to attend. Likewise, when any civil action, proceeding as a jury trial, is settled at trial in advance of the verdict, then, except for good cause shown, jury costs, including Marshal's fees, mileage, and per diem, shall be assessed equally against the parties and their counsel, or otherwise assessed as directed by the Court.

(Effective June 1, 1979)

RULE 12

BRIEF ON AN AMICUS CURIAE

A brief of an amicus curiae may be filed only by leave of Court. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable.

(Effective January 1, 1980)

RULE 13

NOTIFICATION OF CLAIM OF UNCONSTITUTIONALITY

To enable the Court to comply with 28 U.S.C. §2403, whenever in any action, suit, or proceeding to which the United States or any agency, officer, or employee thereof is not a party, the constitutionality of any Act of Congress affecting the public interest is drawn in question, the party raising such question shall give written notice to the Court, in duplicate, giving the title of the cause, a reference to the questioned statute sufficient for its identification, and the respects in which it is claimed to be unconstitutional.

DEPOSITS IN THE REGISTRY

No funds may be deposited in or withdrawn from the Registry of the Court without a written Court order. Such an order shall specify in detail the amounts deposited by or to be paid to any party, and shall state the names and addresses of any person or company to whom funds are to be paid.

RULE 15

OFFICIAL REPORTER

(a) An official reporter shall attend each session of the Court and record verbatim: (1) all proceedings in criminal cases had in open Court; (2) all proceedings in all other cases had in open Court, unless the parties, with the approval of the Judge, shall specifically agree to the contrary; and (3) such other proceedings as any Judge of the Court may request or direct. The reporter will attach his official certificate to the record so taken and promptly file it with the Clerk of the Court who will preserve it in the public records of the Court for not less than ten years. Upon the request of any party to the proceedings who has agreed to pay the prescribed fee therefor, the reporter will promptly transcribe such original record and attach thereto his official certificate. The reporter shall also, without additional charge, file with the Clerk's office a certified copy of any transcription made in the case.

(b) Rates to be charged by court reporters of this Court shall be as established by the Judicial Conference of the United States and adopted by the Court. When a reporter is requested to provide services for which rates have not been so established and adopted, the rates shall be negotiated with the reporter by the party requesting the service.

(c) The reporter shall not be required to undertake the making of a typed transcript without the deposit of an adequate indemnity, nor to furnish such transcript prior to the payment therefor, unless otherwise ordered by the Court.

RULE 16

USE OF CAMERAS AND RECORDING DEVICES

Subject to the rules and order of the United States Court of Appeals for the Tenth Circuit relating to those portions of the United States Courthouse in Denver which are now or may be under the control of that Court, the use or operation of any camera, recording device, or other

mechanical means for the visual reproduction of the likeness of an individual or object, or for the auditory reproduction of a voice or sound, is prohibited in the United States Courthouse, Denver, Colorado.

This rule is not applicable to employees of the Court acting pursuant to their official duties.

RULE 17

UNITED STATES MAGISTRATES

(a) Commissioner Duties.

Each United States magistrate serving in this district shall have within the territorial jurisdiction prescribed by his appointment:

- (1) all powers and duties conferred upon or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts;
- (2) the power to administer oaths and affirmations, impose conditions of release under 18 U.S.C. §3146, take acknowledgments, affidavits, depositions; and
- (3) the power to conduct non-jury trials under 18 U.S.C. §3401, in conformity with and subject to the limitations of that section and under the Rules of Procedure for Trial of Minor Offenses before United States magistrates.

(b) Criminal Cases.

Each magistrate shall also have the following additional duties in criminal cases:

- (1) accepting complaints, finding probable cause, and issuing proper arrest warrants or summonses for the named defendants.
- (2) issue search warrants upon a determination of the existence of probable cause.
- (3) conduct initial appearance proceedings for defendants, informing them of their rights, admitting them to bail and imposing conditions of release.
- (4) appoint attorneys for indigent defendants, assist in the administration of the court's Criminal Justice Act Plan, maintain a register of eligible attorneys, and approve attorneys' expense vouchers in appropriate cases.

- (5) conduct full preliminary examinations.
- (6) conduct the preliminary proceedings and hold such hearings as may be required under Rule 40 of the Federal Rules of Criminal Procedure.
- (7) set bail for material witnesses.
- (8) full-time magistrates may conduct extradition proceedings under 18 U.S.C. §3184.
- (9) schedule and conduct all arraignments on indictments and informations by taking and entering of pleas of not guilty.
- (10) schedule the filing of pre-trial motions at the time of arraignment or at the time of any proceedings preliminary to arraignment.
- (11) conduct discovery conferences.
- (12) issue subpoenas, writs of habeas corpus ad testificandum or ad prosequendum, or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings.

(c) Civil Cases - Non-dispositive Pretrial Matters.

- (1) Pursuant to 28 U.S.C. §636(b)(1)(A), a district judge may designate a magistrate to hear and determine any pretrial matter in any pending civil action, except for the following:
 - A. a motion for injunctive relief,
 - B. a motion for judgment on the pleadings,
 - C. a motion for summary judgment,
 - D. a motion to dismiss for failure to state a claim upon which relief can be granted, and
 - E. a motion to dismiss involuntarily an action for failure to comply with an order of the court.
- (2) Such a designation shall be made by a written order with copies served upon the attorneys of record or pro se litigants. Unless otherwise provided in the order of designation, the decision of the magistrate shall be final, subject only to reconsideration by the district judge on a showing

that a magistrate's order is clearly erroneous or contrary to law; provided, however, that the designating district judge has the inherent power to rehear or reconsider any matter sua sponte and all such preliminary rulings during the pretrial stage of a case are subject to review and change by the district judge at a later stage if conditions warrant.

- (3) Any party requesting reconsideration of a magistrate's order as a result of a designation made pursuant to 28 U.S.C. §636(b)(1)(A) must file a motion for reconsideration with the Clerk of the District Court within 15 days from the date of the order, or such additional time as the magistrate may allow, which motion shall set forth the ruling or order for which reconsideration is sought, and a concise statement of the basis upon which it is claimed that such ruling or order is clearly erroneous or contrary to law. The failure to file such a motion is a waiver of the party's right to seek reconsideration by the district judge. The procedure to be followed after the timely filing of a motion for reconsideration shall be as directed by the district judge to whom the case is assigned, except that no de novo hearing shall be provided as a matter of right.

(d) Civil Cases - Dispositive Matters.

Pursuant to 28 U.S.C. §636(b)(1)(B) a district judge may designate a magistrate to conduct hearings, including evidentiary hearings, and to submit proposed findings of fact and recommendations for the disposition of any of the motions excepted from Rule 17(c), and the magistrate shall file his proposed findings and recommendations with the court, mailing copies thereof to all parties who shall have ten days after service thereof to serve and file written, specific objections thereto. If no such objections are timely filed, the magistrate's proposed findings and recommendations may be accepted by the district judge and appropriate orders entered without further notice.

(e) Service as Special Master.

Pursuant to 28 U.S.C. §636(b)(2), a district judge may designate a magistrate to serve as a special master in any civil case; upon consent of the parties. The magistrate shall then proceed according to Rule 53 of the Federal Rules of Civil Procedure. In the absence of consent of the parties, the appointment of a magistrate as special master may be made only upon a showing of the exceptional conditions required by Rule 53(b).

(f) Prisoner Petitions.

- (1) Subject to the provisions of the United States Supreme Court Rules governing §2254 and §2255 cases, the uniform rules of ancillary forms for use in district courts within the Tenth Circuit have been adopted. These rules apply to pro se petitions for writs of habeas corpus pursuant to 28 U.S.C §2241 and §2254 and motions under Rule 35, Federal Rules of Criminal Procedure, and to civil rights complaints under 42 U.S.C. §1983. Copies of the uniform rules and ancillary forms shall be made available upon request made to the Clerk.
- (2) When presented for filing, pro se petitions under 28 U.S.C. §2241, §2254, and pro se complaints under 42 U.S.C. §1983 shall be delivered to a magistrate who shall review the motion and affidavit to proceed in forma pauperis and rule thereon in accordance with 28 U.S.C. §1915. If the motion is granted, the magistrate shall promptly review the file and if there is any basis for jurisdiction and possible merit, the magistrate shall direct the clerk to make service of process.
- (3) If the magistrate determines that the case may be dismissed pursuant to 28 U.S.C. §1915(d) or F.R.C.P. 12, the magistrate shall prepare a recommendation and appropriate order for consideration by a district judge, who shall at that time be selected by lot.
- (4) These cases shall be assigned to a district judge by lot and to a designated magistrate. The assigned magistrate shall review promptly all further pleadings and may:
 - A. issue such orders as may be needed to obtain a complete record,
 - B. conduct such evidentiary hearings as may be necessary, including the conduct of on-site depositions and investigations,
 - C. prepare appropriate findings and recommendations for consideration by the district judge, copies of which shall be mailed to the parties who shall have ten days after service thereof to serve and file specific written objections thereto. If no such objections are timely filed, the magistrate's proposed findings and recommendations may be accepted by the district judge and appropriate orders entered without further notice,

- D. obtain the expected release date of inmates filing complaints under 42 U.S.C. §1983 to determine when the plaintiff may be available for trial.

(Revision Effective August 24, 1981)

RULE 18

FORFEITURE OF COLLATERAL IN LIEU OF APPEARANCE

For certain scheduled offenses committed within the territorial and subject matter jurisdiction of the United States Magistrate for the District of Colorado, collateral may be posted in the scheduled amount in lieu of an accused's appearance before the magistrate.

If the accused fails to appear before the magistrate after posting collateral in the scheduled amount, the collateral shall be forfeited to the United States and such forfeiture shall be accepted in lieu of appearance and as authorizing the termination of the proceedings.

No forfeiture of collateral will be permitted for the following:

1. An offense resulting in an accident causing personal injury or causing property damage in excess of \$300.00.
2. Operation of a motor vehicle while under the influence of intoxicating liquor or of a narcotic or habit-forming drug.
3. Permitting the operation of a vehicle under the custody and control of the accused by another person under the influence of intoxicating liquor or of a narcotic or habit-forming drug.
4. Leaving the scene of an accident.
5. Driving during the period of suspension or revocation of the driver's license.
6. Exceeding the speed limit by more than 19 miles per hours.

Copies of current schedules of offenses for which collateral may be posted in lieu of appearance, and of the amounts of required collateral shall be available for public inspection at the office of each magistrate and at the office of the Clerk of this Court.

RULE 19

DISMISSAL FOR LACK OF PROSECUTION

Any judge may at any time issue an order to show cause why a case assigned to him 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 an order of dismissal with or without prejudice.

RULE 20

[Reserved for future amendments]

RULE 21

[Reserved for future amendments]

RULE 22

MODIFICATION OF RULES

Any of the foregoing rules shall be subject to such modification by any judge of this Court as may be necessary to meet emergencies or to avoid injustice and great hardship.

GENERAL ORDER IN CRIMINAL CASES

(1) Unless otherwise ordered by the Court, all information available to a defendant under Rule 16(a), Fed.R.Crim.P. shall be supplied routinely by the government at a discovery hearing before the United States Magistrate who presided at the arraignment. The defendant has the right to be present personally at that hearing. The time of the hearing will be set at the time of the arraignment. Upon acceptance of the discovery information, the defendant shall make disclosure of evidence in accordance with Rule 16(b), Fed.R.Crim.P. Thereafter, Rule 16(c) shall apply to the parties and the duty to disclose additional evidence or material continues. Motions under Rule 12 and 14, Fed.R.Crim.P. shall be filed within ten (10) days after conclusion of the discovery hearing unless otherwise ordered by the Court.

(Effective May 1, 1979)

(2) No plea agreements involving dismissal of charges will be accepted by this Court unless written notification of the agreement is received by the Court no later than 10 days prior to the Monday of the week of trial.

(Effective August 1, 1980)

(3) All pleas of guilty or nolo contendere shall be made before the judge initially assigned to the case.

(Effective August 1, 1980)

(a) DISCIPLINARY PANEL.

The Chief Judge shall appoint a panel of three judges of the Court to be known as the Disciplinary Panel. The Disciplinary Panel shall have jurisdiction over all judicial proceedings involving the disbarment, suspension, censure or discipline of members of the bar of this Court. The Chief Judge may, from time to time, designate additional judges to serve as alternates on the Disiplinary Panel.

(b) COMMITTEE ON CONDUCT.

There shall be established a standing committee appointed by the Court to be known as the Committee on Conduct consisting of nine members of the bar of this Court, of whom one-third of those first appointed shall serve for the term of one year, one-third for two years, with the remainder and all thereafter appointed by the Court for the term of three years and until their successors have been appointed. In case of any vacancy caused by death, resignation, or otherwise, any successor appointed shall serve the unexpired term of the predecessor. Where a member shall hold over after the expiration of the term for which the appointment was made, the time of such additional service shall be deemed part of a new term.

The court shall designate a Chairperson and a Vice-Chairperson of the Committee on Conduct who shall act in the absence or disability of the Chairperson. Members of the Committee on Conduct shall serve without compensation except that, insofar as possible, their necessary expenses shall be paid by the Clerk from the fund in which the admission fees paid by applicants for admission to the bar of this Court are deposited. No member of the Committee on Conduct shall serve more than two consecutive terms.

(c) DUTIES OF THE COMMITTEE.

The Committee on Conduct shall be charged with receiving, investigating, considering and acting upon complaints against members of the bar of this Court relating to disbarment, suspension, censure or other disciplinary action concerning attorneys. In such matters the Committee on Conduct shall be guided by, but not limited to, the American Bar Association Code of Professional Responsibility and Canons of Professional Ethics. The Chairperson of the Committee on Conduct shall appoint one or more members thereof to present and prosecute the charges and prepare and present all orders and judgments as directed by the Disciplinary Panel.

(d) COMPLAINTS GENERALLY.

Any person seeking to complain against a member of the bar of this Court for any cause or conduct which may justify disbarment, suspension, censure or other disciplinary action shall do so in writing, subscribed and under oath. The complaint shall be filed with or referred to the Committee on Conduct. The Committee also shall have power, without any formal complaint, to inquire into all cases of misconduct of members of the bar of this Court.

(e) COMPLAINTS BY A COOKI OR A JUDGE.

Any judge or judicial officer of this Court may refer to the Committee on Conduct the name of any member of the bar of this Court on a complaint that such member has conducted himself in an unprofessional, unethical, or improper manner, whereupon the Committee shall investigate the complaint in such manner as it deems appropriate. Should the matter be one which the Committee believes should be presented to the Court, it shall then proceed against the respondent as hereinafter provided.

(f) HEARING PANEL.

When a complaint is received it shall be referred by the Chairperson of the Committee on Conduct to a Hearing Panel consisting of three members of the Committee designated by the Chairperson who shall also appoint one of the three members as Chairperson of the Panel. The Chairperson or Vice-Chairperson of the Committee may be designated as a member of a Hearing Panel.

(g) SERVICE OF COMPLAINT: ANSWER.

The Hearing Panel shall investigate complaints referred to it by the Chairperson of the Committee and if in its opinion an answer should be made thereto, it shall serve by registered mail, addressed to the most current address on file with the Colorado Supreme Court, a copy of the complaint on the member of the bar of this Court concerning whom a complaint is made and, as respondent thereto, the member shall file an answer with the Hearing Panel subscribed and under oath on or before twenty days after the date of mailing.

(h) HEARINGS: SUBPOENA OF WITNESSES AND DOCUMENTS.

A Hearing Panel may sit as a Panel of Inquiry and, upon reasonable notice to the complainant and respondent, may hold hearings on the issues made. The Chairperson of the Hearing Panel conducting the inquiry is hereby designated and appointed a Master with authority to cause subpoenas to be issued commanding the production of books, papers, documents or tangible things designated therein at such hearing or such other time designated in the subpoena. The Chairperson of the Hearing Panel, as such Master, is further authorized to administer oaths to the parties and witnesses. Should any witness fail or refuse to attend or to testify under oath, the name of that witness may be certified to the Disciplinary Panel of the court whereupon the Disciplinary Panel may order contempt proceedings against such witness for so refusing and administer such punishment as may be appropriate.

(i) SUBMISSION OF CHARGES TO THE COURT.

Should the Hearing Panel, after investigation, so decide, it shall prepare charges and submit them to the Court, or, in its discretion, with or without preparing charges, refer the matter to the Grievance Committee of the Supreme Court of the State of Colorado. If charges are prepared and submitted to the Court and if thereafter the Court orders the

Summons directed to the respondent commanding him to answer. The summons and a copy of the charges shall be served by the United States Marshal except as hereinafter provided. The respondent shall answer the charges within thirty days from the date of service upon the respondent; otherwise the charges may be taken as confessed and hearing had thereon ex parte at a time fixed by the Court.

(j) SERVICE OUTSIDE THE DISTRICT OF COLORADO.

If any respondent cannot be served in the District of Colorado, service may be had by filing a copy of the summons and charges with the Clerk who shall in turn send by registered mail a copy of the summons and charges to the last office address of the respondent filed with the Clerk.

(k) HEARINGS AND ORDERS OF THE DISCIPLINARY PANEL.

When the respondent has filed an answer the case shall be set down for hearing at the time to be fixed by the Disciplinary Panel. If the charges are sustained, the Disciplinary Panel may censure, suspend, disbar or otherwise discipline the respondent. If the respondent is suspended or disbarred he shall also be enjoined and restrained from practicing law before this Court and the judgment shall so recite. Any violation of the judgment shall be deemed a contempt of court.

(m) RULE NOT TO DEPRIVE COURT OF INHERENT POWERS.

Nothing herein shall be deemed to deprive the Court of its inherent disciplinary powers.

(n) RIGHT TO COUNSEL IN DISCIPLINARY PROCEEDINGS.

The respondent shall be entitled to be represented by counsel who may appear in his behalf at any time after a complaint has been served upon him.

(o) APPLICATION FOR REINSTATEMENT.

An attorney who has been disbarred may not apply for reinstatement until the expiration of five years from the effective date of the disbarment. Motions for reinstatement of disbarred attorneys shall be heard by the Disciplinary Panel and in all proceedings upon such a motion the cross-examination of the attorney's proof and the submission of evidence if any in opposition to the motion for reinstatement shall be conducted by one or more members of the Committee on Conduct appointed for such purpose by the Chairperson thereof.

(p) If the Hearing Panel determines that there has been misconduct which does not warrant the submission of charges to the Court, but the matter is of sufficient significance that the complaint should not be dismissed as being without merit, the Hearing Panel may issue a letter of admonition to the attorney of whom complaint was made, with a copy to the person making complaint. An attorney receiving a letter of admonition shall be advised that he or she has the right within twenty (20) days after receipt of that letter to make a written request that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the admonition is based. Upon the timely filing of such a request, the letter of admonition will be vacated and the Hearing Panel shall proceed with the formal procedures provided within this rule.

DISCIPLINE OF ATTORNEYS CONVICTED OF A FELONY

Any member of the bar of this Court who shall be convicted of a felony in this Court or in any United States Court or in a court of any State, Territory, District, Commonwealth or Possession shall be suspended from practice before this Court and upon the judgment of conviction becoming final shall cease to be member of the bar of this court.

Upon presentation to the court of a certified copy of such judgment of conviction it shall be referred to the Disciplinary Panel and the respondent shall be suspended from practicing before this Court by order of the Disciplinary Panel. Upon presentation of proof that the judgment of conviction is final, all rights of direct appeal having been exhausted, the name of the respondent so convicted shall be removed from the roll of members of the bar of this Court by order of the Disciplinary Panel.

In all proceedings hereunder the certificate of conviction shall constitute conclusive proof of the respondent's guilt of the conduct for which he was convicted.

RULE 25

ATTORNEYS DISCIPLINED BY OTHER COURTS

Any member of the bar of this Court who shall be disciplined by any United States Court or by a court in any State, Territory, District, Commonwealth or Possession shall be disciplined to the same extent by this Court unless

- (1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (2) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this court could not consistently with its duty accept as final the conclusion on that subject; or
- (3) the imposition of the same discipline by this court would result in grave injustice; or
- (4) the misconduct established has been held by this court to warrant substantially different discipline.

Upon presentation to the Court of a certified copy of the order imposing such discipline the matter shall be referred to the Disciplinary Panel for the entry of an order imposing discipline to the same extent by this court upon the respondent, provided, however, that within thirty days of the service upon the respondent of the order of this Court imposing discipline upon him the respondent may apply to the Disciplinary Panel to hold a hearing to determine whether the discipline in this Court should be modified on the basis of one or more of the ground set forth.

The Chairperson of the Committee on Conduct shall appoint one or more members of the Committee to appear at such hearing for the purpose of examining and cross-examining witnesses and offering proof pertinent to the issues.

RULE 25

ATTORNEYS WHO RESIGN FROM THE BAR OF ANOTHER COURT DURING
AN INVESTIGATION OF MISCONDUCT

Any member of the bar of this Court who shall resign from the bar of any other United States Court or the court of any State, Territory, District, Commonwealth or Possession while an investigation into allegations of misconduct of the attorney is pending shall cease to be a member of the bar of this Court.

Upon presentation to the court of a certified copy of the order accepting such resignation it shall be referred to the Disciplinary Panel and the name of the respondent so resigning shall by order of the Disciplinary Panel be removed from the roll of members of the bar of this Court.

RULE 27

DUTY OF ATTORNEYS TO NOTIFY THE COURT OF CONVICTIONS OR
DISCIPLINE BY OTHER COURTS

It shall be the duty of any member of the bar of this Court who is convicted of a felony in, or disciplined by, any court of the United States or a court of any State, Territory, District, Commonwealth or Possession to notify the Clerk in writing within ten days of the fact of conviction or discipline.

RULE 28

PRECLUSION OF VISITING ATTORNEYS FROM PRACTICE IN THIS COURT

An attorney who has been permitted to appear pro hac vice, pursuant to Rule 1(b) of these Rules, who is found guilty of misconduct by any other court, may be precluded from again appearing at the bar of this Court.

RULE 29

PROCEEDINGS WHERE AN ATTORNEY IS DECLARED TO BE MENTALLY
INCOMPETENT OR IS ALLEGED TO BE INCAPACITATED

(a) ATTORNEYS DECLARED MENTALLY INCOMPETENT.

Where an attorney who is a member of the bar of this Court has been judicially declared incompetent or involuntarily committed to a mental hospital, the Disciplinary Panel upon proper proof of the fact shall enter an order suspending such attorney from the practice of law effective immediately and for an indefinite period until further order of the Disciplinary Panel. A copy of such order shall be served upon such attorney, his guardian, and the Director of the mental hospital in such manner as the Disciplinary Panel may direct.

(b) ATTORNEYS ALLEGED TO BE INCAPACITATED.

Whenever the Committee on Conduct, through its Chairperson, shall petition the Disciplinary Panel of the Court to determine whether an attorney who is a member of the bar of this court is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of use of drugs or intoxicants, the Disciplinary Panel may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Disciplinary Panel shall designate. Failure or refusal to submit to such examination shall be prima facie evidence of incapacity. If upon due consideration of the matter, the Disciplinary Panel concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order suspending him on the ground of such disability for an indefinite period and until further order of the Disciplinary Panel.

The Disciplinary Panel may provide for such notice to the respondent attorney of proceedings in the matter as is deemed proper and advisable and may appoint an attorney to represent the respondent if he is without representation.

(c) CLAIM OF DISABILITY DURING DISCIPLINARY PROCEEDINGS.

If during the course of a disciplinary proceeding the respondent attorney contends that he is suffering from a disability by reason of mental or physical infirmity or illness or because of use of drugs or intoxicants which makes it impossible for the respondent to adequately defend himself, the Disciplinary Panel thereupon shall enter an order immediately suspending the respondent from continuing to practice law until a determination is made of the respondent's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of section (b) above.

(d) APPLICATION FOR REINSTATEMENT.

Any attorney suspended for incompetency, mental illness or because of use of drugs or intoxicants may apply to the Disciplinary Panel for reinstatement once a year, or at such shorter intervals as the Disciplinary Panel may direct in the order of suspension. The application shall be granted by the Disciplinary Panel upon a showing by clear and convincing evidence that the attorney's disability has been removed and that he is fit to resume the practice of law. The Disciplinary Panel may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been remedied including a direction for an examination of the attorney by such qualified medical experts as the Disciplinary Panel shall designate. The Disciplinary Panel may direct that the expenses of such an examination shall be paid by the attorney.