CIVIL RULES

INTRODUCTION TO THE CIVIL RULES

These are the Local Rules of practice for civil proceedings before the United States District Court for the Western District of Washington. These rules, promulgated under 28 U.S.C. § 2071 and Fed. R. Civ. P. 83, have been adopted by the judges of the district and apply to all civil proceedings before this court unless otherwise ordered in a specific case.

The judges of this district are committed to assisting the bar and litigants to reduce costs in civil cases. It is the obligation of all counsel, as officers of the court, to work toward the prompt completion of each case and to minimize the costs of discovery. The local rules provide the judges and attorneys with basic tools for the management of civil cases, including discovery. Attorneys and litigants are urged to use these tools creatively and cooperatively to manage civil cases on a cost-effective basis and to develop a cost-effective case management plan in each case.

While no list is exhaustive, attorneys and litigants should consider the following means for reducing costs: (a) limiting discovery and phasing discovery and motions to bring on for early resolution potentially dispositive issues; (b) the availability of judges to resolve discovery disputes by telephone or informal conference; (c) scheduling discovery or case management conferences with the judge assigned to the case as necessary; (d) early referral to mediation through Local Rule 39.1 or other alternative dispute resolution mechanism; (e) the use of an abbreviated pretrial order; and (f) consenting to the assignment of the case to a United States magistrate judge for the conduct of all proceedings pursuant to 28 U.S.C. § 636(c). The judges will support the use of these tools and, if necessary, impose them, when appropriate and helpful to reduce costs or more effectively manage and resolve civil cases.

Along with the cost of civil litigation, the judges of this district are very concerned about professionalism among attorneys, especially in the conduct of discovery. The judges of this district expect a high degree of professionalism from the lawyers practicing before them. The orders issued by judges of this district at the outset of a case to govern conduct and scheduling of written discovery and depositions express those expectations. There should be no difference between the professional conduct of counsel when appearing before the court and when engaged outside it whether in discovery or any other phase of a case.

All counsel and unrepresented parties are encouraged to review their assigned judge's web page for procedural information specifically applicable to each judge. The Local Rules, Electronic Filing Procedures for Civil and Criminal Cases, court forms, instruction sheets, General Orders, and judges' web pages can be found on the court's website at www.wawd.uscourts.gov.

LCR 1

SCOPE AND PURPOSE; DEFINITIONS; PROHIBITION OF BIAS

(a) Purpose

These rules should be interpreted so as to be consistent with the Federal Rules and to promote the just, efficient, speedy, and economical determination of every action and proceeding.

(b) Other Local Rules

In addition to these rules, this district has promulgated local rules in the following subject areas: admiralty and maritime, bankruptcy, criminal proceedings, proceedings before magistrate judges, and patent, all of which can be found on the court's website.

(c) Definitions

(1) "Chief Judge" of this district is the judge who has attained that position pursuant to 28 U.S.C. § 136. The Chief Judge shall have precedence and preside at any session that he or she attends. The current Chief Judge of this district is identified on the court's website.

(2) "Clerk" or "Clerk of Court" refers to the District Court Executive/Clerk of Court or a deputy Clerk of Court.

(3) "Court" refers to the United States District Court for the Western District of Washington and to a Judge, Clerk, or deputy clerk acting on behalf of the Court.

(4) "General Orders" are made by the Chief Judge or by the court relating to court administration and are available on the court's website.

(5) "Judge" refers to a United States District Judge, a United States Bankruptcy Judge, or United States Magistrate Judge.

(6) "Meet and Confer" means a good faith conference in person or by telephone to attempt to resolve the matter in dispute without the court's involvement. The court expects a high degree of professionalism and collegiality among counsel during any meet and confer conference.

(7) "Stipulated Motion" is a stipulation (agreement) between or among the parties presented to the court with a proposed order.

(d) Prohibition of Bias

Litigation, inside and outside the courtroom in the United States District Court for the Western District of Washington, must be free from prejudice and bias in any form. Fair and equal

treatment must be accorded all courtroom participants, whether judges, attorneys, witnesses, litigants, jurors, or court personnel. The duty to be respectful of others includes the responsibility to avoid comment or behavior that can reasonably be interpreted as manifesting prejudice or bias toward another on the basis of categories such as gender, race, ethnicity, religion, disability, age, or sexual orientation.

LCR 2

RESERVED

LCR 3

COMMENCEMENT AND ASSIGNMENT OF ACTIONS

(a) Civil Cover Sheet Required

Every complaint shall be accompanied by a Civil Cover Sheet, Form JS-44 revised. All civil actions in which jurisdiction is invoked in whole or in part under 28 U.S.C. § 1338 (regarding patents, copyrights and trademarks) shall be accompanied by the required notice to the Patent and Trademark Office, Form AO 120, in patent and trademark matters, and by the required notice, Form AO 121, in copyright matters. These forms are available on the court's website and on the U.S. Courts website at www.uscourts.gov.

(b) Proceedings In Forma Pauperis (Without Payment of Court Fees)

At the time application is made under 28 U.S.C. § 1915 or other applicable acts of Congress for leave to commence any civil action or to file any petition or motion without being required to prepay fees and costs or give security for them, each petitioner, movant or plaintiff shall:

(1) Complete the in forma pauperis application approved for use in this district for the specific type of case; and

(2) File a written consent that the recovery, if any, in the action, to such amount as the court may direct, shall be paid to the clerk who may pay therefrom all unpaid fees and costs taxed against the plaintiff, and to his attorney the amount which the court allows or approves as compensation for the attorney's services.

(3) In all proceedings in forma pauperis, for a writ of habeas corpus, or under 28 U.S.C. § 2255, the marshal shall pay all fees of witnesses for the party authorized to proceed in forma pauperis, upon the certificate of the judge.

(c) Initial Case Assignment

Unless otherwise provided in these Rules or the General Orders of the Court, all actions, causes and proceedings shall be assigned by the clerk to judges by random selection.

(d) Intradistrict Assignment and Reassignment

(1) In all civil cases in which all defendants reside, or in which all defendants have their principal places of business, or in which the claim arose in the counties of Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Kitsap, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum, the case will usually be assigned to a judge in Tacoma. In cases where all defendants have their principal places of business, or in which the claim arose in the counties of Island, King, San Juan, Skagit, Snohomish, or Whatcom, the case will be assigned to a judge in Seattle. A civil action arises where a substantial part of the events or omissions that give rise to the claim occurred or where a substantial part of the property that is the subject of the action is situated. Cases removed from state court will

be initially assigned to the Seattle Division or Tacoma Division according to the county where the action is pending.

(2) In some circumstances, a judge will order that a case that would otherwise be considered a Tacoma case be assigned to a Seattle judge, and vice versa.

(3) See LCR 42 for additional information regarding the intradistrict transfer of cases to facilitate consolidation.

(e) Motions to Recuse

Whenever a motion to recuse directed at a judge of this court is filed pursuant to 28 U.S.C. § 144 or 28 U.S.C. § 455, the challenged judge will review the motion papers and decide whether to recuse voluntarily. If the challenged judge decides not to voluntarily recuse, he or she will direct the clerk to refer the motion to the chief judge, or the chief judge's designee. If the motion is directed at the chief judge, or if the chief judge or the chief judge's designee is unavailable, the clerk shall refer it to the active judge with the highest seniority.

(f) Notice of Related Cases

A plaintiff must list all related cases in the Civil Cover Sheet.

(1) Unless an action is listed as related in the Civil Cover Sheet, a party must file a Notice of Related Case alerting the court as soon as it knows or learns that another action that was or is pending in this district may be related to the party's case. The notice should include the case number, presiding judge, and parties involved in the related case, and an explanation of the relationship between or among the cases.

(2) An action is related to another when the actions:

(A) concern substantially the same parties, property, transaction, or event; and

(B) it appears likely that there will be an unduly burdensome duplication of labor and expense or the potential for conflicting results if the cases are conducted before different judges.

(g) Notice of Pendency of Other Action in Another Jurisdiction or Forum

Whenever a party knows or learns that its pending case involves all or a material part of the same subject matter and all or substantially the same parties as another action that is pending in any other federal or state court, before an administrative body, or before an arbitrator, the party must file a Notice of Pendency of Other Action within five days of learning of the other action. The Notice must contain the title and case number of the other action, a brief description of the other action, the title and location of the court or other forum in which the other action is pending, a statement of any relationship between the two actions, a statement regarding whether transfer

should be effected pursuant to 28 U.S.C. § 1407 (Multi District Litigation Procedures) if the action is pending in another U.S. District Court, and a statement regarding whether coordination between the actions might avoid conflicts, conserve resources and promote an efficient determination of the action.

(h) Transfer or Remand of Actions; Effective Date

Unless otherwise ordered by the court, an order transferring a case to another district or remanding a case shall become effective 14 days after the date the order is filed.

LCR 4

SUMMONS

(a) Form of Summons

It is the obligation of a party seeking the issuance of a summons by the clerk to present the summons to the clerk in the proper form, prepared for issuance, with sufficient copies for service. Forms of summons may be obtained from the clerk.

(b) Reserved

(c) Service with Complaint; by Whom Made

Except as provided for herein, the United States Marshals Service is relieved from any and all civil process serving responsibilities within this district on behalf of private litigants. The private litigant or attorney of record for the private litigant shall make appropriate arrangements with a person authorized to serve process. Upon order of this court or pursuant to an express statutory provision, however, the United States Marshals Service shall make service of civil process on behalf of a private litigant or his attorney of record.

LCR 4.1

SERVING OTHER PROCESS

(a) Service of Other Process by United States Marshals Service

As set forth in LCR 4, the United States Marshals Service is relieved from any and all civil process serving responsibilities within this district on behalf of private litigants but may make service under the circumstances set forth in the rule. The United States Marshals Service shall, however, serve warrants and other process as prescribed in the Supplemental Admiralty Rules.

LCR 5

SERVING AND FILING PLEADINGS AND OTHER PAPERS

(a) Reserved

(b) The Court Authorizes Service Under Fed. R. Civ. P. 5(b) by Electronic Means

The court authorizes parties to use the court's Electronic Case Filing System (ECF) to effect service of documents under Fed. R. Civ. P. 5(b). This provision does not alter Fed. R. Civ. P. 5(d); Rule 26 initial disclosures and discovery requests and responses must not be filed until they are used in the proceedings or the court orders filing. If the recipient is a registered participant in the ECF system, service is complete when the document is electronically filed or uploaded to the docket. If the recipient is not a registered participant in the ECF system, the filer must effect service in paper form according to the Federal Rules of Civil Procedure.

(c) Reserved

(d) Electronic Filing and Signing

The court allows papers to be filed and signed by electronic means. Unless otherwise specifically ordered by the court or directed by the clerk, all counsel are required to electronically file documents through the court's electronic filing system and to comply with the electronic filing procedures for the district. Unrepresented parties may, but are not required to, electronically file documents. The court's Electronic Filing Procedures for Civil and Criminal Cases can be found on the court's website at www.wawd.uscourts.gov

(e) Reserved

(f) Proof of Service

Proof of service of all filings required or permitted to be served, other than those for which a method of proof is prescribed in the Federal Rules of Civil Procedure, shall be made by a certificate or acknowledgment of service on the document itself. Parties should not file a separate proof of service document unless it is necessary. Failure to make the proof of service required by this subdivision does not affect the validity of the service, and the court may at any time allow the proof of service to be amended or supplied unless it clearly appears that to do so would result in material prejudice to any party.

(g) Sealing and Redacting of Court Records

There is a strong presumption of public access to the court's files. This rule applies in all instances where a party seeks to overcome the policy and the presumption by filing a document under seal.

(1) A party must explore all alternatives to filing a document under seal.

(A) If the party seeks to file the document under seal because another party has designated it as confidential during discovery, the filing party and the designating party must meet and confer to determine whether the designating party will withdraw the confidential designation or will agree to redact the document so that sealing is unnecessary.

(B) Parties must protect sensitive information by redacting sensitive information (including, but not limited to, the mandatory redactions of LCR 5.2) that the court does not need to consider. A party who cannot avoid filing a document under seal must comply with the remainder of this rule.

(2) A party may file a document under seal in only two circumstances:

(A) if a statute, rule, or prior court order expressly authorizes the party to file the document under seal; or

(B) if the party files a motion or stipulated motion to seal the document before or at the same time the party files the sealed document. Filing a motion or stipulated motion to seal permits the party to file the document under seal without prior court approval pending the court's ruling on the motion to seal. The document will be kept under seal until the court determines whether it should remain sealed.

A party filing a document under seal shall prominently mark its first page with the phrase "FILED UNDER SEAL."

(3) A motion to seal a document, even if it is a stipulated motion, must include the following:

(A) a certification that the party has met and conferred with all other parties in an attempt to reach agreement on the need to file the document under seal, to minimize the amount of material filed under seal, and to explore redaction and other alternatives to filing under seal; this certification must list the date, manner, and participants of the conference;

(B) a specific statement of the applicable legal standard and the reasons for keeping a document under seal, with evidentiary support from declarations where necessary.

Where parties have entered a litigation agreement or stipulated protective order (*see* LCR 26(c)(2)) governing the exchange in discovery of documents that a party deems confidential, a party wishing to file a confidential document it obtained from another party in discovery may file a motion to seal but need not satisfy subpart (3)(B) above. Instead, the party who designated the document confidential must satisfy subpart (3)(B) in its response to the motion to seal or in a stipulated motion.

(4) A party must minimize the number of documents it files under seal and the length of each document it files under seal. Where the document to be sealed is an exhibit to a document filed electronically, an otherwise blank page reading "EXHIBIT __ FILED UNDER SEAL" shall replace the exhibit in the document filed without sealing, and the exhibit to be filed under seal shall be filed as a separate sealed docket entry. Where the document to be sealed is a declaration, the declaration shall be filed as a separate sealed docket entry.

(5) Only in rare circumstances should a party file a motion, opposition, or reply under seal. A party who cannot avoid including confidential information in a motion, opposition, or reply must follow this procedure:

(A) the party shall redact the confidential information from the motion, opposition, or reply and publicly file the redacted motion, opposition, or reply; and

(B) the party shall file the unredacted motion, opposition, or reply under seal, accompanied by a motion or stipulated motion to seal the unredacted motion, opposition, or reply in compliance with part (3) above.

(6) When the court denies a motion to seal, the clerk will unseal the document unless (1) the court orders otherwise, or (2) the party who is relying on the sealed document requests in the motion to seal or response that, if the motion to seal is denied, the court withdraw the document from the record rather than unseal it. If a document is withdrawn on this basis, the parties shall not refer to it in any pleadings, motions or other filings, and the court will not consider it. For this reason, parties are encouraged to seek a ruling on motions to seal well in advance of filing underlying motions relying on those documents.

(7) When a court grants a motion to seal or otherwise permits a document to remain under seal, the document will remain under seal until further order of the court.

(8) Parties may file a motion or stipulated motion requesting that the court unseal a document. A non-party seeking access to a sealed document may intervene in a case for the purpose of filing a motion to unseal the document.

(9) When a party files a paper copy of a sealed document, the party shall seal the document in an envelope marked with the case caption and the phrase "FILED UNDER SEAL." This requirement applies to pro se parties and others who are exempt from mandatory electronic filing and to parties submitting courtesy copies to comply with LCR 10(e)(9).

LCR 5.1

RESERVED

LCR 5.2

REDACTION OF FILINGS

(a) Redacted Filings

Parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all documents filed with the court or used as exhibits in any hearing or at trial, unless otherwise ordered by the court:

(1) Dates of Birth - redact to the year of birth
(2) Names of Minor Children - redact to the initials
(3) Social Security Numbers and Taxpayer-Identification Numbers- redact in their entirety
(4) Financial Accounting Information - redact to the last four digits
(5) Passport Numbers and Driver License Numbers - redact in their entirety

(b) Reserved

(c) Social Security Appeals and Immigration Cases

Unless the court orders otherwise, in an action for benefits under the Social Security Act and in an immigration action or proceeding relating to an order of removal, to relief from removal, or to immigration benefits or detention, the administrative record must be filed under seal, and the court will maintain it under seal. These actions are entitled to special treatment due to the prevalence of sensitive information and the volume of filings. A party filing any excerpt of the record separately must redact all personal information in accordance with LCR 5.2(a) or move to file the document under seal in accordance with LCR 5(g).

LCR 6

COMPUTING AND EXTENDING TIME

(a) Computing Time

When the Local Rules or a court order permits a party to act within a period of time stated in days or a longer unit of time and the last day of the period is a Saturday, Sunday, or legal holiday, the time period continues to run until the following day that is not a Saturday, Sunday, or legal holiday. If an order of the court sets a specific calendar date by which a party must act, the date is not extended even if it falls on a Saturday, Sunday, or legal holiday unless otherwise ordered by the court. If the courthouse is closed for inclement weather or other unanticipated reasons, deadlines are extended to the next day the courthouse is open. If the closure results in a party having additional time to file a response to a motion, then the deadline for the party filing a reply shall be extended by the same number of days.

(b) Motions to shorten time have been abolished.

LCR 7

FORM AND SCHEDULING OF MOTIONS

(a) Reserved

(b) Motions and Other Papers

(1) *Obligations of Movant*. The moving party shall serve the motion and a proposed order on each party that has appeared in the action, and shall file the motion and proposed order with the clerk. The argument in support of the motion shall not be made in a separate document but shall be submitted as part of the motion itself. If the motion requires consideration of facts not appearing of record, the movant shall also serve and file copies of all affidavits, declarations, photographic or other evidence presented in support of the motion.

All motions shall include in the caption (immediately below the title of the motion) the date the motion is to be noted for consideration upon the court's motion calendar. See LCR 7(d) for scheduling motions and briefing deadlines. The noting date is the date by which all briefing is complete and the matter is ready for the court's consideration, although the court may not issue a ruling on that day. The form for this notation shall be as follows:

NOTE ON MOTION CALENDAR: [insert date noted for consideration]

(2) *Obligation of Opponent*. Each party opposing the motion shall, within the time prescribed in LCR 7(d), file with the clerk, and serve on each party that has appeared in the action, a brief in opposition to the motion, together with any supporting material of the type described in subsection (1). Except for motions for summary judgment, if a party fails to file papers in opposition to a motion, such failure may be considered by the court as an admission that the motion has merit.

(3) *Reply Brief*. The moving party may, within the time prescribed in LCR 7(d), file with the clerk, and serve on each party that has appeared in the action, a reply brief in support of the motion, together with any supporting material of the type described in subsection (1).

(4) *Oral Argument*. Unless otherwise ordered by the court, all motions will be decided by the court without oral argument. Counsel shall not appear on the date the motion is noted unless directed by the court. A party desiring oral argument shall so indicate by including the words "ORAL ARGUMENT REQUESTED" in the caption of its motion or responsive memorandum. If a request for oral argument is granted, the clerk will notify the parties of the date and time for argument.

(5) *Decisions on Motions*. All motions will be decided as soon as practicable, and normally within thirty days following the noting date. The court encourages counsel to call the assigned judge's courtroom deputy clerk to verify that a motion is scheduled for

determination if a decision on the motion has not been received within forty-five days of the noting date.

(c) Reserved

(d) Noting Dates for Motions and Briefing Schedules

Unless otherwise provided by rule or court order, motions shall be noted for consideration as follows:

(1) *Same Day Motions.* Stipulated motions (see LCR 10(g)), motions to file over-length motions or briefs (see LCR 7(f)), motions for reconsideration (see LCR 7(h)), joint submissions pursuant to the optional procedure established in LCR 37(a)(2), motions to appoint a mediator (LCR 39.1(c)(3)), motions for default (see LCR 55(a)), requests for the clerk to enter default judgment (see LCR 55(b)(1)), ex parte motions, motions for the court to enter default judgment where the opposing party has not appeared (see LCR 55(b)(2)), and motions for a temporary restraining order ("TRO") (see LCR 65) shall be noted for consideration for the day they are filed.

(2) *Second Friday Motions.* Except for same day motions, all other motions shall be noted for consideration on a Friday. Pursuant to a General Order of this court, the following motions may be noted for consideration no earlier than the second Friday after filing and service of the motion:

(A) motions for relief from a deadline;

(B) motions for protective orders;

(C) motions to seal (see LCR 5(g)).

For any motion brought pursuant to this subsection, the moving party shall ensure that the motion papers are received by the opposing party on or before the filing date. Unless otherwise provided by court rule, any papers opposing motions of the type described in this subsection shall be filed and received by the moving party no later than the Wednesday before the noting date. Any reply papers shall be filed, and shall be received by the opposing party, no later than the noting date.

(3) *Third and Fourth Friday Motions.* Motions to dismiss, motions for summary judgment, motions seeking a preliminary injunction, motions for class certification, and motions directed toward changing the forum (through remand, transfer, or to compel arbitration) shall be noted for consideration on a date no earlier than the fourth Friday after filing and service of the motion. With the exception of the motions specifically listed in LCR 7(d)(1), 7(d)(2), and 7(d)(3), all other motions shall be noted for consideration on a date no earlier than the third Friday after filing and service of the motion.

Any opposition papers shall be filed and served not later than the Monday before the noting date. If service is by mail, the opposition papers shall be mailed not later than the

Friday preceding the noting date. Any reply papers shall be filed and served no later than the noting date.

(4) *Motions in Limine.* Except upon a showing of good cause, any motions in limine shall be filed as one motion and shall be noted for consideration no earlier than the third Friday after filing and service of the motion but no later than the Friday before any scheduled pretrial conference. Any opposition papers shall be filed and served no later than the Monday before the noting date. No reply papers shall be filed.

Any motion in limine must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve which matters really are in dispute. A good faith effort to confer requires a face-to-face meeting or a telephone conference. If the court finds that counsel for any party, or a party proceeding pro se, willfully refuses to confer, fails to confer in good faith, or fails to respond on a timely basis to a request to confer, the court may take action as stated in LCR 11 of these rules.

(5) If the deadline for a party's response or reply to a motion falls on a date that is a legal holiday as defined by Fed. R. Civ. P. 6, the party's response or reply is due on the following day that is not a Saturday, Sunday, or legal holiday.

(6) When a motion is filed on a Friday, that day is excluded from the time period under Fed. R. Civ. P. 6(a), so the following Friday is the first Friday after filing. When calculating time periods, parties should refer to LCR 6 and Fed. R. Civ. P. 6.

(7) *Cases Involving Prisoners and Detainees.* All motions filed in a case in which a party is under civil or criminal confinement shall be subject to the briefing schedule under Rule 7(d)(1) or 7(d)(3), not 7(d)(2).

(e) Length of Motions and Briefs

Except as otherwise provided by court order or rule, the length of motions and briefs shall be as follows:

(1) Motions noted under LCR 7(d)(1), except motions for temporary restraining orders, shall not exceed six pages.

(2) Motions noted under LCR 7(d)(2) and briefs in opposition shall not exceed twelve pages. Reply briefs shall not exceed six pages.

(3) Motions for summary judgment, motions to dismiss, motions for class certification, motions for a temporary restraining order, motions for preliminary injunction, and motions aimed at changing the forum (*e.g.,* motions to remand, transfer, or compel arbitration) and briefs in opposition shall not exceed twenty-four pages. Reply briefs shall not exceed twelve pages.

Absent leave of the court, parties must not file contemporaneous dispositive motions, each one directed toward a discrete issue or claim.

(4) All other motions noted under LCR 7(d)(3) and briefs in opposition shall not exceed twelve pages. Reply briefs shall not exceed six pages.

(5) Any motion in limine noted under LCR 7(d)(4) and any brief in opposition shall not exceed eighteen pages.

(6) The court may refuse to consider any text, including footnotes, which is not included within the page limits. Captions, tables of contents, tables of authorities, signature blocks, and certificates of service need not be included within the page limit.

(f) Motions to File Over-length Motions or Briefs

Motions seeking approval to file an over-length motion or brief are disfavored but may be filed subject to the following:

(1) The motion shall be filed as soon as possible but no later than three days before the underlying motion or brief is due, and shall be noted for consideration for the day on which it is filed, pursuant to LCR 7(d)(1).

(2) The motion shall be no more than two pages in length and shall request a specific number of additional pages.

(3) No opposition to the motion shall be filed unless requested by the court.

(4) If the court grants leave to file an over-length motion, the brief in opposition will automatically be allowed an equal number of additional pages. In all cases, the reply brief shall not exceed one-half the total length of the brief filed in opposition.

(g) Requests to Strike Material Contained in Motion or Briefs; Surreply

Requests to strike material contained in or attached to submissions of opposing parties shall not be presented in a separate motion to strike, but shall instead be included in the responsive brief, and will be considered with the underlying motion. The single exception to this rule is for requests to strike material contained in or attached to a reply brief, in which case the opposing party may file a surreply requesting that the court strike the material, subject to the following:

(1) That party must file a notice of intent to file a surreply as soon after receiving the reply brief as practicable.

(2) The surreply must be filed within five days of the filing of the reply brief, and shall be strictly limited to addressing the request to strike. Extraneous argument or a surreply filed for any other reason will not be considered.

(3) The surreply shall not exceed three pages.

(4) No response shall be filed unless requested by the court.

(5) This rule does not limit a party's ability to file a motion to strike otherwise permitted by the

Federal Rules of Civil Procedure, including Fed. R. Civ. P. 12(f) motions to strike material in pleadings. The term “pleadings” is defined in Fed. R. Civ. P. 7(a).

(h) Motions for Reconsideration

(1) *Standard.* Motions for reconsideration are disfavored. The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence.

(2) *Procedure and Timing.* A motion for reconsideration shall be plainly labeled as such. The motion shall be filed within fourteen days after the order to which it relates is filed. The motion shall be noted for consideration for the day it is filed. The motion shall point out with specificity the matters which the movant believes were overlooked or misapprehended by the court, any new matters being brought to the court's attention for the first time, and the particular modifications being sought in the court's prior ruling. Failure to comply with this subsection may be grounds for denial of the motion. The pendency of a motion for reconsideration shall not stay discovery or any other procedure.

(3) *Response.* No response to a motion for reconsideration shall be filed unless requested by the court. No motion for reconsideration will be granted without such a request. The request will set a time when the response is due, and may limit briefing to particular issues or points raised by the motion, may authorize a reply, and may prescribe page limitations.

(i) Telephonic Motions

Upon the request of any party, and with the court's approval, a motion may be heard by telephone without the filing of motion papers. No request for a telephonic motion shall be considered unless all counsel participate in the call making the request, or unless it is represented by counsel making the call that reasonable efforts have been made to include all counsel in the call, and that such efforts were unavailing. Whether such telephonic motions will be considered, what procedural requirements will be imposed, and the type of relief granted are within the sole discretion of the court.

(j) Motions for Relief from a Deadline

A motion for relief from a deadline should, whenever possible, be filed sufficiently in advance of the deadline to allow the court to rule on the motion prior to the deadline. Parties should not assume that the motion will be granted and must comply with the existing deadline unless the court orders otherwise.

If a true, unforeseen emergency exists that prevents a party from meeting a deadline, and the emergency arose too late to file a motion for relief from the deadline, the party should contact the adverse party, meet and confer regarding an extension, and file a stipulation and proposed order with the court. Alternatively, the parties may use the procedure for telephonic motions in LCR 7(i). It is expected that if a true emergency exists, the parties will stipulate to an extension.

(k) Cross Motions

Parties anticipating filing cross motions are encouraged to agree on a briefing schedule and to submit it to the court for approval through a stipulation and proposed order. The court may order parties filing cross motions for summary judgment to combine their memoranda and forego reply briefs in exchange for an enlarged response brief.

A party filing a cross motion must note it in accordance with the local rules. Even if the motion and cross motion are noted for different days, the court will typically consider them together.

(l) Withdrawing and Renoting Pending Motions

A moving party may renote its own pending motion itself by promptly filing a document titled Notice of Motion Renoted and changing the noting date in CM/ECF before any opposing party files a response to the motion. Once a response has been filed, the motion may be renoted only by filing a stipulation signed by all parties or by order of the court.

The court may renote a pending motion to ensure compliance with applicable court rules or for other reasons.

A moving party may withdraw its own pending motion by filing a Notice to Withdraw Pending Motion. If the noting date for the motion has already passed, the party must also immediately telephone the assigned judge's chambers to notify his or her staff that the pending motion has been withdrawn; the failure to do so may result in the imposition of sanctions.

(m) Praecipe

Parties are expected to file accurate, complete documents, and the failure to do so may result in the court's refusal to consider later filed corrections or additions to the record. In the event that an error is discovered, a party should file, as promptly as possible, a praecipe requesting that the court consider a corrected document, which must be filed with the praecipe. The praecipe must specify by docket number the document being corrected and the corrections by page and line number. If the party seeks to add an additional document in support of a previous filing, the praecipe must set forth why the document was not included with the original filing and reference the original filing by docket number.

(n) Notice of Supplemental Authority

Before the court rules on a pending motion, a party may bring to the court's attention relevant authority issued after the date the party's last brief was filed by serving and filing a Notice of Supplemental Authority that attaches the supplemental authority without argument.

LCR 7.1

CORPORATE DISCLOSURE STATEMENT

(a) Who Must File; Copies

Any nongovernmental party, other than an individual or sole proprietorship, must file 2 copies of a statement identifying:

(1) any parent corporation and any publicly held corporation owning more than 10% of its stock, or stating that there is no such corporation;

(2) any member or owner in a joint venture or limited liability corporation (LLC);

(3) all partners in a partnership or limited liability partnership (LLP); or

(4) any corporate member, if the party is any other unincorporated association, or stating that there is no such corporate member.

LCR 8

PLEADING

(a) Contents of Complaint in Diversity Cases

If plaintiff is asserting that this court has jurisdiction based on diversity, the complaint must identify the citizenship of the parties, and, if any of the parties is a limited liability corporation (LLC), a limited liability partnership (LLP), or a partnership, identify the citizenship of the owners/partners/members of those entities to establish the court's jurisdiction.

LCR 9

PLEADING ADMIRALTY AND OTHER SPECIAL MATTERS

(a) to (g) Reserved

(h) Admiralty and Maritime Claims

The words "IN ADMIRALTY" shall be typed in capital letters above the cause number on the first page of a pleading setting forth a claim which is cognizable only in admiralty. The words "AT LAW AND IN ADMIRALTY" shall be typed in capital letters above the cause number on the first page of a pleading setting forth a claim for relief within the admiralty and maritime jurisdiction that is also within the jurisdiction of the court on some other ground.

(i) Three Judge Court

If the case is such that any party contends that it will require a hearing before a three judge court, the words "THREE JUDGE COURT" shall be typed in capital letters on the first page of the complaint, answer, or other pleading making such allegation immediately below the name of the pleading to the right of the name of the cause, and the original and three copies of the complaint or other pleadings shall be left with the clerk and all other pleadings and papers filed in the cause shall be submitted in quadruplicate, unless the court rules that the cause is not properly before a three judge court.

LCR 10

FORM OF PLEADINGS, MOTIONS AND OTHER FILINGS

(a) through (c) Reserved

(d) Size

Page size of all pleadings, motions and other filings shall be 8 ½ x 11 inch.

(e) Format

All pleadings, motions or other filings should include the following:

(1) *Margins and Fonts*. No less than three inches of space should be left at the top of the first page. All other margins must be at least one inch wide, although formatted lines and numbering, attorney information, the name of the judge(s) to whom copies should be sent, and footers may be placed in the margins. Examples of correctly formatted pages are attached as Appendix A. The text of any typed or printed brief must be 12 point or larger and must, with the exception of quotations, be double spaced. Footnotes must be 10 point or larger and may be single spaced.

(2) *Title*. Each pleading, motion or other filing shall contain the words "United States District Court, Western District of Washington" on the first page and, in the space below the docket number, a title indicating the purpose of the paper and the party presenting it.

(3) *Bottom Notation*. At the left side of the bottom of each page, an abbreviated title of the pleading, motion or other filing should be repeated, followed by the case number. The page number should be placed after the abbreviated title or in the middle of the bottom of each page. At the right side of the bottom of each page, the law firm (if any), mailing address and telephone number of the attorney or party preparing the paper should be printed or typed.

(4) *Dates and Signature Lines*. All pleadings, motions and other filings shall be dated and signed as provided by Federal Rule of Civil Procedure 11, LCR 11, and the court's Electronic Filing Procedures. The court might not consider improperly signed or unsigned documents.

(5) *Numbered Paper*. Each pleading, motion or other filing shall bear line numbers in the left margin, leaving at least one-half inch of space to the left of the numbers.

(6) *Citation to the Record*. In all cases where the court is to review the proceedings of an administrative agency, transcripts, deposition testimony, etc., the parties shall, insofar as possible, cite the page and line of any part of the transcript or record to which their pleadings, motions or other filings refer. Citations to documents already in the record, including declarations, exhibits, and any documents previously filed, must include a citation to the docket number and the page number (*e.g.*, Dkt. # __ at p. __) and citations to legal authority must include page numbers.

(7) *Proposed Orders.* Any document requiring the signature of the court shall bear the signature of the attorney(s) presenting it preceded by the words "Presented by" on the left-hand side of the last page and shall provide as follows:

"Dated this ___ day of (Insert Month), (Insert Year).

"_____

"UNITED STATES DISTRICT JUDGE [or UNITED STATES MAGISTRATE JUDGE]"

(8) *Electronic Filing of Documents*. All documents filed with the court shall be in accordance with the Electronic Filing Procedures for Civil and Criminal Cases adopted by General Order of the court. The Electronic Filing Procedures are available on the court's web site at www.wawd.uscourts.gov and from the Clerk's Office.

(9) *Courtesy Copies*. When documents that exceed 50 pages in length are filed electronically, a paper copy of the document shall be delivered to the Clerk's Office for chambers. The judge's copy shall not be delivered directly to chambers unless the judge has so instructed. The copy for chambers shall be clearly marked with the words "Courtesy Copy of Electronic Filing for Chambers."

The copies of all papers must indicate in the upper right-hand corner of the first page the name of the district judge or magistrate judge to whom the copies are to be delivered. Courtesy copies must be delivered to the court no later than 12:00 p.m. on the business day after filing, except that courtesy copies of motions for temporary restraining orders and oppositions must be delivered the same day. Unless the court otherwise directs, the parties shall not provide duplicate copies of state court records in prisoner cases or of an administrative record filed pursuant to LCR 79(h).

In those circumstances where a judge's courtesy copy of a document is to be delivered to the court, it shall contain no items other than 8 ½ x 11 inch paper, unless larger original documents are being filed as exhibits. Copies may be filed in binders, and the use of tabs as dividers and exhibit markers is not only permitted, but encouraged.

The courtesy copy must be identical to the filed copy. For electronic filers, the courtesy copy must be printed from PACER so that the CM/ECF header, which contains the cause number and docket number, appears at the top of each page. Parties should consult their assigned judge's web page at www.wawd.uscourts.gov for additional guidance regarding courtesy copies.

(10) *Marking Exhibits*. All exhibits submitted in support of or opposition to a motion must be clearly marked with divider pages. References in the parties' filings to such exhibits should be as specific as possible (i.e., the reference should cite specific page numbers, paragraphs, line numbers, etc.). All exhibits must be marked to designate testimony or evidence referred to in the parties' filings. Acceptable forms of markings include highlighting, bracketing, underlining or similar methods of designations but must be clear and maintain the legibility of the text.

(11) *Format of Originals*. Originals of documents filed with the court shall not contain double-sided pages or items other than 8 ½ x 11 inch paper, unless double-sided or larger original documents are being filed as exhibits.

(f) Name and Address of Parties and Attorneys

Any attorney representing any party or any party not represented by an attorney must file a notice with the court of any change in address, telephone number or e-mail address. Such notice must be received by the Clerk's Office within ten days of the change. All subsequent pleadings, motions or other filings shall reflect the new address and telephone number. The address and telephone number of the party or its attorney, noted on the first pleadings, motions or other filings or as changed by individual notice, shall be conclusively taken as the last known address and telephone number of said party or attorney.

(g) Stipulated Motions

If the parties seek a court order related to their stipulation, they should file a stipulated motion pursuant to LCR 7(d)(1). If a stipulated motion would alter dates or schedules previously set by the court, the parties shall clearly state the reasons justifying the proposed change. Such stipulated motions should rarely be necessary, and are disfavored by the court. Stipulations and stipulated motions shall be binding on the court only if adopted by the court through an order. An order based upon a stipulation shall be sufficient if the words "It is so ordered," or their equivalent, are endorsed on the stipulation at the close thereof and if this endorsement is signed by the court.

LCR 11

SIGNING FILINGS; SANCTIONS

(a) Signature

A document signed electronically (by either a digital signature or by using the "s/ Name" convention) has the same force and effect as if the person had affixed a signature to a paper copy of the document. Electronic signatures must be in conformance with this district's Electronic Filing Procedures for Civil and Criminal Cases.

(b) Notifying the Court of Settlement

Attorneys must advise the court promptly when a case is settled or when for other reasons it will not be ready for trial at the time set. An attorney who fails to promptly notify the court may be subject to such discipline as the court deems appropriate, including the imposition of costs or of a fine.

(c) Sanctions for Non-Participation, Non-Compliance, or Multiplying or Obstructing Proceedings

Failure of an attorney for any party to appear at a pretrial conference or to complete the necessary preparations therefor, or to appear or be prepared for trial on the date assigned, may be considered an abandonment or failure to prosecute or defend diligently, and judgment may be entered against that party either with respect to a specific issue or the entire case.

An attorney or party who without just cause fails to comply with any of the Federal Rules of Civil or Criminal Procedure, these rules, or an order of the court, or who presents to the court unnecessary motions or unwarranted opposition to motions, or who fails to prepare for presentation to the court, or who otherwise so multiplies or obstructs the proceedings in a case may, in addition to or in lieu of the sanctions and penalties provided elsewhere in these rules, be required by the court to satisfy personally such excess costs and may be subject to such other sanctions as the court may deem appropriate.

LCR 12 THROUGH 14

RESERVED

LCR 15

A party who moves for leave to amend a pleading, or who seeks to amend a pleading by stipulation and order, must attach a copy of the proposed amended pleading as an exhibit to the motion or stipulation. The party must indicate on the proposed amended pleading how it differs from the pleading that it amends by bracketing or striking through the text to be deleted and underlining or highlighting the text to be added. The proposed amended pleading must not incorporate by reference any part of the preceding pleading, including exhibits. If a motion or stipulation for leave to amend is granted, the party whose pleading was amended must file and serve the amended pleading on all parties within fourteen (14) days of the filing of the order granting leave to amend, unless the court orders otherwise.

LCR 16

PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

(a) Scheduling Conference or Joint Status Report

As soon as practicable after a case is filed, the court shall convene a scheduling conference, or order the submission of a joint status report, or both.

(1) *Scheduling Conference.* Counsel with principal responsibility for a case and all pro se parties shall attend the scheduling conference. Counsel and all pro se parties shall be prepared to discuss at the scheduling conference those matters listed in Fed. R. Civ. P. 16(c)(2) and 26(f) and LCR 26(f) and to state whether there is a significant possibility that early and inexpensive resolution of the case would be fostered by any alternative dispute resolution ("ADR") procedure, as described in Rules 39.1 and 39.2 of these rules. The parties should identify any appropriate ADR procedure, and suggest at what stage of the case it should be employed.

(2) *Joint Status Report.* In their joint status report, the parties must address all of the topics set forth in Fed. R. Civ. P. 26(f)(3) and in LCR 26(f).

Parties should not include requests for relief from the court in the joint status report, and the court typically will not rule on such requests. Rather, requests for relief should be contained in a stipulated motion, where feasible, or in a motion.

(b) Scheduling Order; Exemption of Certain Types of Cases

(1) *Scheduling Order.* The court shall enter a written scheduling order, as prescribed in Rule 16(b) of the Federal Rules of Civil Procedure, as soon as practicable after the scheduling conference or receipt of the joint status report. The scheduling order shall include, among other things, deadlines for the completion of discovery and the filing of dispositive motions.

(2) *Discovery Deadline.* Interrogatories, requests for admissions or production, etc., must be served sufficiently early that all responses are due before the discovery deadline. Any motion to compel discovery shall also be filed and served on or before this deadline or as directed by court order.

(3) *Dispositive Motions.* Not later than the deadline to file dispositive motions, unless otherwise ordered by the court, parties shall file all motions to dismiss, motions for summary judgment, other dispositive motions, and other reasonably foreseeable motions, together with supporting papers.

(4) *Modifying a Schedule.* The parties are bound by the dates specified in the scheduling order. A schedule may be modified only for good cause and with the judge’s consent. Mere failure to complete discovery within the time allowed does not constitute good cause for an extension or continuance.

(5) *Exemption of Certain Types of Cases.* The court exempts certain types of cases from the requirements of this local rule and of Fed. R. Civ. P. 16(b), including: any case exempt from the initial disclosure requirements under Fed. R. Civ. P. 26, proceedings upon a defendant's default, bankruptcy proceedings before this court, condemnation cases, forfeiture actions, and cases filed as miscellaneous matters before this court.

(c) Orders for Further Conference, Reports, or ADR Procedures

At any stage of the case, the court may do one or more of the following:

(1) schedule a conference for some or all of the purposes prescribed for the initial scheduling conference;

(2) direct a written report from the parties as to the advisability of employing any ADR procedure;

(3) direct the parties to participate in an ADR procedure; provided, that the court shall order participation in an arbitration or a summary jury trial only with the agreement of all parties.

(d) Later Recommendations of Parties for ADR Proceedings

As the case proceeds, if counsel for any party concludes that an ADR procedure would have a significant possibility of fostering an early and inexpensive resolution of the case, that counsel shall so advise the court and all other counsel in writing. Whenever possible, such reports should be submitted jointly by counsel for all parties.

(e) Proposed Pretrial Order

The proposed pretrial order, bearing the signatures of counsel for each party, shall be filed 30 days prior to the scheduled trial date, unless otherwise ordered by the court.

(f) Reserved

(g) Reserved

(h) Plaintiff's Pretrial Statement

Not later than 30 days prior to the date for filing the proposed pretrial order, counsel for plaintiff(s) shall serve upon counsel for all other parties a brief statement as to:

(1) Federal jurisdiction;

(2) Which claims for relief plaintiff intends to pursue at trial, stated in summary fashion;

(3) Relevant facts about which plaintiff asserts there is no dispute and which plaintiff is prepared to admit;

(4) Issues of law;

(5) The names and addresses of all witnesses who might be called by plaintiff, and the general nature of the expected testimony of each. As to each witness, plaintiff shall indicate “will testify” or “possible witness only.” Rebuttal witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial, need not be named;

(6) A list of all exhibits which will be offered by plaintiff at the time of trial, except exhibits to be used for impeachment only, and a statement of whether the plaintiff intends to present exhibits in electronic format to jurors. The exhibits shall be numbered in the manner required by the assigned judge during a pre-trial conference, in the applicable case management order, or by other order. Further clarification may be obtained by reviewing the assigned judge’s web page at http://wawd.uscourts.gov or, in the absence of guidance in an order or on the web page, by contacting the assigned judge’s courtroom deputy.

(i) Defendant's Pretrial Statement

Not later than 20 days prior to the filing of the proposed pretrial order, each defense counsel shall serve upon counsel for all other parties a brief statement as to:

(1) Objections, additions or changes which defendant believes should be made to plaintiff's statement on federal jurisdiction and admitted facts;

(2) Which affirmative defenses and/or claims for relief defendant intends to pursue at trial, stated in summary fashion;

(3) Objections, additions or changes which defendant believes should be made to plaintiff's statement of issues of law;

(4) The names and addresses of all witnesses who might be called by defendant, and the general nature of the expected testimony of each. As to each witness, defendant shall indicate “will testify” or “possible witness only.” Rebuttal witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial, need not be named;

(5) A list of all exhibits which will be offered by defendant at the time of trial, except exhibits already listed by plaintiff and exhibits to be used for impeachment only, and a statement of whether the defendant intends to present exhibits in electronic format to jurors. All exhibits shall be numbered in the manner required by the assigned judge during a pre-trial conference, in the applicable case management order, or by other order. Further clarification may be obtained by reviewing the assigned judge’s web page at http://wawd.uscourts.gov or, in the absence of guidance in an order or on the web page, by contacting the assigned judge’s courtroom deputy.

No party is required to list any exhibit which is listed by another party.

(j) Review of Exhibits

Each exhibit listed in the pretrial statement of a party shall be promptly made available for inspection and copying upon request by counsel for any other party. Prior to the conference of

attorneys, counsel for each party shall review every exhibit to be offered by any other party, and shall provide counsel for all other parties with a list stating whether, as to each exhibit, the party will (1) stipulate to admissibility, (2) stipulate to authenticity but not admissibility, or (3) dispute authenticity and admissibility.

(k) Conference of Attorneys

Not later than ten days prior to the filing of the proposed pretrial order, there shall be a conference of attorneys for the purpose of accomplishing the requirements of this rule. It shall be the duty of counsel for the plaintiff to arrange for the conference. The attorney principally responsible for trying the case on behalf of each party shall attend the conference. Each attorney shall be completely familiar with all aspects of the case in advance of the conference, and be prepared to enter into stipulations with reference to as many facts and issues and exhibits as possible, and to discuss the possibility of settlement. At the conference, counsel shall cooperate in developing a proposed pretrial order which can be signed by counsel for all parties. Except in land condemnation cases, the order shall, insofar as possible, be in the form set forth below in LCR 16.1. The parties' witness lists may be on separate pages. Counsel shall assemble a single pretrial order, properly paginated.

(l) Final Pretrial Conference

The court may, in its discretion, schedule a final pretrial conference. Counsel who will have principal responsibility for trying the case for each party shall attend, together with any party proceeding pro se. At the final pretrial conference, the court may consider and take action with respect to:

(1) The sufficiency of the proposed pretrial order;

(2) Any matters which may be presented relative to parties, process, pleading or proof, with a view to simplifying the issues and bringing about a just, speedy and inexpensive determination of the case;

(3) In jury cases, whether the parties desire to stipulate that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury;

(4) Requirements with respect to trial briefs;

(5) Requirements with respect to requests for instruction and suggested questions to be asked by the court on voir dire in cases to be tried by jury;

(6) The number of expert witnesses to be permitted to testify on any one subject;

(7) The possibility of settlement; but nothing with respect thereto shall be incorporated in the pretrial order, and any discussion with respect to settlement shall be entirely without prejudice, and may not be referred to during the trial of the case or in any arguments or motions.

(m) Other General Provisions

(1) In order to accomplish effective pretrial procedures and to avoid wasting the time of the parties, counsel, and the court, the provisions of this rule will be strictly enforced. Sanctions and penalties for failure to comply are set forth in LCR 11 and in the Federal Rules of Civil Procedure.

(2) The court may, by order in a specific case, modify or forego any of the procedures or deadlines set forth in this rule.

(3) A party proceeding without counsel shall comply in all respects with obligations imposed upon "counsel" under this rule.

(4) The full-time magistrate judges of this court are authorized to conduct pretrial conferences, enter and modify scheduling orders, and perform all other functions performed by district judges under Fed. R. Civ. P. 16 and this rule.

LCR 16.1

FORM OF PRETRIAL ORDER

The following form of pretrial order shall be used, insofar as possible, in the trial of all cases except those involving land condemnation.

Hon. [name of judge]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT _____

_____	)	
	)	
Plaintiff,	)	Case No. _____
	)	
vs.	)	PRETRIAL ORDER
	)	
_____	)	
	)	
Defendant.	)	
	)	

JURISDICTION

Jurisdiction is vested in this court by virtue of: (State the facts and cite the statutes whereby jurisdiction of the case is vested in this court).

CLAIMS AND DEFENSES

The plaintiff will pursue at trial the following claims: (e.g., breach of contract, violation of 28 U.S.C. § 1983). The defendant will pursue the following affirmative defenses and/or claims: (e.g., accord and satisfaction, estoppel, waiver).

ADMITTED FACTS

The following facts are admitted by the parties: (Enumerate every agreed fact, irrespective of admissibility, but with notation of objections as to admissibility. List 1, 2, 3, etc.)

ISSUES OF LAW

The following are the issues of law to be determined by the court: (List 1, 2, 3, etc., and state each issue of law involved. A simple statement of the ultimate issue to be decided by the court, such as "Is the plaintiff entitled to recover?" will not be accepted.) If the parties cannot agree on the issues of law, separate statements may be given in the pretrial order.

EXPERT WITNESSES

(a) Each party shall be limited to _____ expert witness(es) on the issues of _____.

(b) The name(s) and addresses of the expert witness(es) to be used by each party at the trial and the issue upon which each will testify is:

(1) On behalf of plaintiff;

(2) On behalf of defendant.

OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

(a) On behalf of plaintiff: (E.g., Jane Doe, 10 Elm Street, Seattle, WA; will testify concerning formation of the parties' contract, performance, breach and damage to plaintiff.)

(b) On behalf of defendant: (follow same format).

(As to each witness, expert or others, indicate "will testify," or "possible witness only." Also indicate which witnesses, if any, will testify by deposition. Rebuttal witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial, need not be named.)

EXHIBITS

Identify each exhibit with a number, which becomes the number for the exhibit at the trial and appears on the exhibit tag.

(a) Admissibility stipulated:

Plaintiff's Exhibits

#__Photo of port side of ship. (Examples)

#__Photo of crane motor.

#__Photo of crane.

Defendant's Exhibits

#__Weather report. (Examples)

#__Log book.

#__X-ray of plaintiff's foot.

#__X-ray of wrist.

(b) Authenticity stipulated, admissibility disputed:

Plaintiff's Exhibits

#__Inventory Report. (Examples)

Defendant's Exhibits

#__Photograph. (Examples)

(c) Authenticity and admissibility disputed:

Plaintiff's Exhibits

#__Accountant's report. (Examples)

Defendant's Exhibits

#__Ship's log. (Examples)

(No party is required to list any exhibit which is listed by another party, or any exhibit to be used for impeachment only. See LCR 16 for further explanation of numbering of exhibits).

ACTION BY THE COURT

(a) This case is scheduled for trial (before a jury) (without a jury) on _____, 20___, at _____.

(b) Trial briefs shall be submitted to the court on or before _____.

(c) (Omit this subparagraph in non-jury case). Jury instructions requested by either party shall be submitted to the court on or before _____. Suggested questions of either party to be asked of the jury by the court on voir dire shall be submitted to the court on or before _____.

(d) (Insert any other ruling made by the court at or before pretrial conference.)

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this ____ day of [insert month], 20[insert year].

_____

United States District Judge/ Magistrate Judge

FORM APPROVED

_____
Attorney for Plaintiff

_____

Attorney for Defendant

LCR 17

PLAINTIFF AND DEFENDANT; CAPACITY; PUBLIC OFFICERS

(a) and (b) Reserved

(c) Minors or Incompetent Persons

In every case where the court is requested to approve a settlement involving the claim of a minor or incompetent, an independent guardian ad litem, who shall be an attorney-at-law, must be appointed by the court, and said guardian ad litem shall investigate the adequacy of the offered settlement and report thereon; provided, however, that the court may dispense with the appointment of the guardian ad litem if a general guardian has been previously appointed for such minor or incompetent, or if the court affirmatively finds that the minor or incompetent is represented by independent counsel.

LCR 18 THROUGH 22

RESERVED

LCR 23

CLASS ACTIONS

(a) through (h) Reserved

(i) Format and Time Limits

In any case sought to be maintained as a class action:

(1) The complaint shall bear next to its caption the legend, “Complaint—Class Action.”

(2) The complaint shall contain under a separate heading, styled “Class Action Allegations":

(a) A reference to the portion or portions of Fed. R. Civ. P. 23 under which it is claimed that the suit is properly maintainable as a class action.

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

1. The size (or approximate size) and definition of the alleged class,

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

(i) to be an adequate representative of the class, or

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

3. The alleged questions of law and fact claimed to be common to the class, and

4. In actions claimed to be maintainable as class actions under Fed. R. Civ. P. 23(b)(3), allegations thought to support the findings required by that subdivision.

(3) Within one hundred eighty days after the filing of a complaint in a class action, unless otherwise ordered by the court or provided by statute, the plaintiff shall move for a determination under Fed. R. Civ. P. 23(c)(1), as to whether the case is to be maintained as a class action. This period may be extended on motion for good cause. The court may certify the class, may disallow and strike the class allegations, or may order postponement of the determination pending discovery or such other preliminary procedures as appear appropriate and necessary in the circumstances. Whenever possible, where the determination is postponed, a date will be fixed by the court for renewal of the motion.

(4) The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim or cross claim alleged to be brought for or against a class.

LCR 23.1

RESERVED

LCR 23.2

RESERVED

LCR 24 AND 25

RESERVED

LCR 26

DUTY TO DISCLOSE; GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Required Disclosures

(1) Reserved

(2) Reserved

(3) *Pretrial Disclosures.* Unless otherwise directed by the court, the disclosures listed in Fed. R. Civ. P. 26(a)(3) shall be made in the manner and in accordance with the schedule prescribed in LCR 16. A party shall state any objections to exhibits in the manner prescribed in that rule. Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown.

(4) Reserved

(b) Reserved

(c) Protective Orders

(1) Any motion for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. If the movant fails to include such a certification, the court may deny the motion without addressing the merits of the dispute. A good faith effort to confer requires a face-to-face meeting or a telephone conference. If the court finds that counsel for any party, or a party proceeding pro se, willfully refuses to confer, fails to confer in good faith, or fails to respond on a timely basis to a request to confer, the court may take action as stated in LCR 11 of these rules.

(2) Parties may file a proposed stipulated protective order to protect confidential, proprietary, or private information that warrants special protection. The court may enter a proposed stipulated protective order as an order of the court if it adequately and specifically describes the justification for such an order, it is consistent with court rules, it does not purport to confer blanket protection on all disclosures or responses to discovery, its protection from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle the parties to file confidential information under seal. Parties are encouraged to use this district's model protective order, available on the court's website. Parties that wish to depart from the model order must provide the court with a redlined version identifying departures from the model.

(d) Reserved

(e) Reserved

(f) Conference of the Parties; Planning for Discovery

The rule is intended to promote the just, efficient, speedy, and economical determination of every action and proceeding and to promote, wherever possible, the prompt resolution of discovery disputes without court intervention. Counsel are expected to cooperate with each other to reasonably limit discovery requests, to facilitate the exchange of discoverable information, and to reduce the costs of discovery.

The proportionality standard set forth in Fed. R. Civ. P. 26(b)(2)(C) must be applied in every case when parties formulate a discovery plan and promulgate discovery requests. To further the application of the proportionality standard in discovery, discovery requests and related responses should be reasonably targeted, clear, and as specific as possible.

(1) Prior to the initial status conference with the court, if any, or prior to submitting their joint status report, counsel and any pro se parties shall meet and discuss, and address in their joint status report if the court orders one, the topics set forth in Fed. R. Civ. P. 26(f) and the following issues:

(A) possibilities for promptly settling or otherwise resolving the case;

(B) whether the parties plan to engage in some form of alternative dispute resolution ("ADR"), such as mediation or the individualized trial program set forth in LCR 39.2, when they plan to engage in ADR, or why the parties do not plan to engage in ADR;

(C) the existence of any related cases pending before this court or in another jurisdiction as set forth in LCR 3(g) and (h) and a proposal for how to handle the related cases;

(D) a statement of how discovery will be managed to promote the expeditious and inexpensive resolution of the case, including but not limited to:

(i) forgoing or limiting depositions or exchanging documents informally;

(ii) agreeing to share discovery from third parties and the cost of obtaining that discovery;

(iii) scheduling discovery or case management conferences with the judge assigned to the case as necessary;

(iv) requesting the assistance of a magistrate judge for settlement conferences;

(v) requesting to use an abbreviated pretrial order; and

(vi) requesting other orders the court should enter under LCR 16(b) and (c).

(E) the targeted discovery that each side anticipates seeking;

(F) phasing motions to facilitate early resolution of potentially dispositive issues;

(G) any preliminary issues relating to the preservation of discoverable information and the scope of the preservation obligation;

(H) procedures for handling inadvertent production of privileged information and other privilege waiver issues pursuant to Rule 502(d) or (e) of the Federal Rules of Evidence;

(I) whether the case will involve the preservation and production of Electronically Stored Information ("ESI") and, if so:

(i) the nature, location, and scope of discoverable ESI; and

(ii) whether the parties agree to adopt the Model Agreement Regarding Discovery of Electronically Stored Information in Civil Litigation (the "Model ESI Agreement," which can be found under "Forms" on the court's website) or a modified version thereof;

(J) if one or more of the parties intend to engage in the discovery of ESI and are unable to agree to the Model ESI Agreement or a modified version thereof, whether they are able to reach agreement regarding the following topics and the substance of their agreement:

(i) the nature, location, and scope of ESI to be preserved by the parties;

(ii) the formats for production of ESI (whether TIFF with a companion text file, native, or some other reasonably usable format);

(iii) methodologies for identifying relevant and discoverable ESI for production, including:

(a) methods for identifying an initial subset of sources of ESI that are most likely to contain the relevant and discoverable information as well as methodologies for culling the relevant and discoverable ESI from that initial subset;

(b) identifying the custodians and non-custodial data sources, including all third party data sources, most likely to have discoverable information;

(c) any plans to filter data based on file type, date ranges, sender, receiver, custodian, search terms, or other similar parameters; and

(d) the use of any computer- or technology-assisted review, including any plans to use keyword searching, mathematical or thesaurus based topic or concept clustering, or other advanced culling technologies.

iv) whether ESI stored in a database or a database management system can be identified and produced by querying the database for discoverable information, resulting in a report or a reasonably usable and exportable electronic file for review by the requesting counsel or party.

(2) The attorneys for each party shall review and understand how their client's data and ESI are stored and retrieved before the Rule 26(f) conference and before any meet and confer discussions related to the production of ESI in order to determine what issues must be addressed during those discussions. To satisfy this requirement, the attorney may choose to include in the Rule 26(f) conference and/or meet and confer discussion a paralegal, information technology specialist, or other person with knowledge about how the client's data and ESI are stored and retrieved.

(3) Any motion for a protective order or motion to compel related to the production of ESI must include the certification set forth in LCR 26(c) or 37(a)(1), state that the parties agreed to an ESI Agreement and attach that ESI Agreement, or state that the parties met and conferred regarding the topics set forth in LCR 26(f)(1)(I) to the extent they are applicable.

(4) In the scheduling order or by separate order, the court may require the parties to adhere to an agreement for the discovery and disclosure of electronically stored information.

(5) If the court determines that any counsel or party in a case has failed to cooperate and participate in good faith in the discovery planning process, the court may require additional discussions prior to the commencement of discovery, and may impose sanctions, if appropriate.

(6) Generally, the costs of discovery shall be borne by each party. However, on motion or on its own, the court may apportion the costs of discovery related to ESI upon a determination of good cause, considering the factors in Fed. R. Civ. P. 26(b)(2)(C) and

the parties' failure to agree to the Model ESI Agreement, a modified version or other similar agreement.

(g) Reserved

LCR 27

DEPOSITIONS BEFORE ACTION OR PENDING APPEAL

RESERVED

LCR 28

PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

RESERVED

LCR 29

STIPULATIONS REGARDING DISCOVERY PROCEDURE

RESERVED

LCR 30

DEPOSITIONS BY ORAL EXAMINATION

(a) When Depositions May Be Taken; When Leave Required

(1) Reserved

(2) If a party wishes to take the deposition of a person in custody, the party shall attempt to reach agreement with officials of the institution as to date, time, place, and maximum duration of the deposition. If agreement is reached, the party taking the deposition shall give notice as provided in Fed. R. Civ. P. 30(b), and no further order of the court is required. If agreement is not reached, the party noting the deposition shall serve a notice, at least 14 days before the proposed deposition, on the deponent, all other parties, the superintendent of the institution, and the attorney for the institution (e.g., the Washington Attorney General for a state prisoner, or the United States Attorney for a federal prisoner). Not later than seven days before the proposed deposition, the attorney for the institution may file, serve and note a motion objecting to the proposed deposition. In that event, the deposition shall not proceed until the court has ruled on the motion. In the absence of a timely motion, the deposition may proceed as noted without further order of the court.

LCR 31

DEPOSITIONS BY WRITTEN QUESTIONS

RESERVED

LCR 32

USING DEPOSITIONS IN COURT PROCEEDINGS

(a) Reserved

(b) Reserved

(c) Reserved

(d) Reserved

(e) Offering Portions of Depositions

If a party intends to offer a deposition instead of live testimony at trial, the party shall provide to all other parties a transcript of the deposition with the relevant portions highlighted. Other parties may offer other portions of the deposition by highlighting them. The parties shall submit to the court, along with the proposed pretrial order, a single copy of the deposition transcript, setting forth all designated testimony, and indicating any objections and responses to objections in the margin. A failure to designate an objection in this manner shall constitute a waiver, even if the objection was previously stated at the deposition. A party shall enter all highlighting of testimony, all objections, and all responses to objections in a single color, used only by that party. After the court has ruled on the objection, the deposition will be filed as part of the record.

If a party intends to offer a video deposition instead of live testimony, the party must, in addition to complying with the provisions above, submit a copy of the video deposition to the court and to all other parties no later than the deadline for filing the pretrial order. The party offering the video is responsible for being familiar with the courtroom technology necessary to play it and for ensuring that the video is edited appropriately.

LCR 33

INTERROGATORIES TO PARTIES

RESERVED

LCR 34

PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

RESERVED

LCR 35

PHYSICAL AND MENTAL EXAMINATION OF PERSONS

RESERVED

LCR 36

REQUESTS FOR ADMISSION

RESERVED

LCR 37

FAILURE TO MAKE DISCLOSURE OR COOPERATE IN DISCOVERY; SANCTIONS

(a) Motion for Order Compelling Disclosure or Discovery

(1) *Meet and Confer Requirement.* Any motion for an order compelling disclosure or discovery must include a certification, in the motion or in a declaration or affidavit, that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. If the movant fails to include such a certification, the court may deny the motion without addressing the merits of the dispute. A good faith effort to confer with a party or person not making a disclosure or discovery requires a face-to-face meeting or a telephone conference. If the court finds that counsel for any party, or a party proceeding pro se, willfully refused to confer, failed to confer in good faith, or failed to respond on a timely basis to a request to confer, the court may take action as stated in CR 11 of these rules.

(2) *Expedited Joint Motion Procedure.* A motion for an order compelling disclosure or discovery may be filed and noted in the manner prescribed in LCR 7(d)(3). Alternatively, the parties may, by agreement, utilize the expedited procedure set forth in this subsection. If the parties utilize this procedure, the motion may be noted for consideration for the day the motion is filed. After the parties have conferred, a party may submit any unresolved discovery dispute to the court through the following procedure:

(A) The moving party shall be responsible for preparing and filing a joint LCR 37 submission to the court. An example of an LCR 37 submission is attached as Appendix B.

(B) The moving party may draft an introductory statement, setting forth the context in which the dispute arose and the relief requested. Each disputed discovery request and the opposing party's objection/response thereto shall be set forth in the submission. Immediately below that, the moving party shall describe its position and the legal authority which supports the requested relief.

The moving party shall provide the opposing party with a draft of the LCR 37 submission and shall also make the submission available in computer-readable format.

(C) Within seven days of receipt of the LCR 37 submission from the moving party, the opposing party shall serve a rebuttal to the moving party's position for each of the disputed discovery requests identified in the motion. The opposing party may also include its own introductory statement. The opposing party's rebuttal for each disputed discovery request shall be made in the same document and immediately following the moving party's statement in support of the relief requested. If the opposing party no longer objects to the relief requested, it shall so state and respond as requested within seven days from the date the party

received the draft LCR 37 submission. If the opposing party fails to respond, the moving party may file the LCR 37 submission with the court and state that no response was received.

(D) The moving party's reply, if any, in support of a disputed discovery request shall follow the opposing party's rebuttal for such request in the joint submission and shall not exceed one half page for each reply.

(E) The total text that each side may contribute to a joint LCR 37 submission shall not exceed twelve pages. This limit shall include all introductory or position statements, and statements in support of, or in opposition to, a particular request, but shall not include the discovery request itself.

(F) Each party may submit declarations for the purpose of attaching documents to be considered in connection with the submission and to provide sufficient information to permit the court to assess expenses and sanctions, if appropriate. If a party fails to include information sufficient to justify an award of fees, it shall be presumed that any request for fees has been waived. A declaration shall not contain any argument.

(G) The moving party shall prepare a proposed order that identifies each of the discovery requests at issue, with space following each of the requests for the court's decision. This proposed order shall be attached as a Word or Word Perfect compatible file to an e-mail sent to the e-mail orders address of the assigned judge pursuant to the court's Electronic Filing Procedures.

(H) The moving party shall be responsible for filing the motion containing both parties' positions on the discovery disputes, any declarations submitted by the parties, and the proposed form of order. The moving party shall certify in the motion that it has complied with these requirements. The submission shall be noted for consideration on the date of filing and shall be described as a "LCR 37 Joint Submission."

(I) If all parties agree to do so, they may use the expedited joint motion procedure for other types of motions, including but not limited to motions to seal, motions for relief from a deadline, and motions in limine. The timing and procedure shall be the same as set forth above except that (1) instead of setting forth the disputed discovery request and the opposing party's objection/response thereto, the moving party should set forth the relief requested and the legal authority that supports the requested relief, and (2) the moving party must submit a proposed order that sets forth the relief requested.

LCR 38

RIGHT TO A JURY TRIAL; DEMAND

(a) Reserved

(b) Demand

Where jury trial is demanded in or by endorsement upon a pleading as permitted by Rule 38 of the Federal Rules of Civil Procedure, the words "JURY DEMAND" shall be typed in capital letters on the first page immediately below the name of the pleading to the right of the name of the cause.

LCR 39

TRIAL BY JURY OR BY THE COURT

(a) through (c) Reserved

(d) Unnecessary Jury Panels

Where cases set for trial by jury are settled or agreed to be tried without a jury, notice of such agreement shall be filed in the Clerk's Office as soon as possible but no later than five (5) days before the day on which the case is set; otherwise jury expenses incurred by the government, if any, shall be paid to the clerk by the parties agreeing to such settlement or waiver. And where a continuance of such a case shall be applied for by one side, and resisted by the other, and granted by the court, the payment of jury expenses incurred by the government, if any, by the party applying for the continuance shall in all cases be one of the conditions of the continuance unless such continuance be granted as a matter of right and was not due to any fault of the moving party.

LCR 39.1

ALTERNATIVE DISPUTE RESOLUTION

(a) Alternative Dispute Resolution Program

(1) *Objective*. The court strives to assist parties involved in civil litigation in resolving their disputes in a just, timely and cost-effective manner. To that end, the court has created an alternative dispute resolution ("ADR") program pursuant to the Alternative Dispute Resolution Act of 1998, 28 U.S.C. § 651 et seq. That statute and this rule encourage and promote the early and inexpensive resolution of disputes through one or more alternative dispute resolution procedures, as defined below. The court finds that the use of alternative dispute resolution procedures promotes timely and affordable justice while reducing calendar congestion.

(2) *Rule Administration*. The alternative dispute resolution program shall be administered by the Clerk of Court with the cooperation and assistance of the Alternative Dispute Resolution Committee of the Federal Bar Association of the Western District of Washington (the "Alternative Dispute Resolution Committee"). The clerk and the Alternative Dispute Resolution Committee shall compile and revise materials describing various ADR procedures available hereunder. The clerk shall make such materials available to the parties in civil cases as directed by the court.

(3) *Definition*. For purposes of this rule, an ADR procedure includes any process or procedure, other than an adjudication by a presiding judge, in which one or more neutral third parties participate to assist in the resolution of issues in controversy. Such procedures include the procedures available under sections (c)--(e) of this rule, as well as such other alternative dispute resolution procedures as the court may approve under section (f) of this rule.

(4) *Participation in ADR Is Voluntary*. Participation in ADR is voluntary unless the court orders the parties to participate. As set forth in LCR 26(f), parties are expected to advise the court in their joint status report regarding whether they plan to engage in ADR and if so, when and what type.

(5) *Consideration of Alternative Dispute Resolution*. Litigants in all civil cases subject to this rule shall consider the use of ADR procedures at all appropriate stages in the litigation, including the early stages of the litigation.

(6) *Confidentiality*. Except as otherwise required by law or agreed by the litigants, or otherwise provided by this rule, all ADR proceedings under this rule, including communications, statements, disclosures and representations made by any party, attorney or other participant in the course of such proceeding, shall, in all respects, be confidential, and shall not be reported, recorded, placed in evidence, disclosed to anyone not a party to the litigation, made known to the trial court or jury, or construed for any purpose as an admission or declaration against interest. No party shall be bound by anything done or said during such proceedings unless a settlement or other agreement is reached.

(7) *Immunities and Protections*. All persons serving as neutrals under this rule shall be accorded the immunities and protections that the law provides to persons serving in a quasi-judicial capacity.

(b) Attorney Neutrals

(1) *Register of Attorney Neutrals.* The Clerk of Court, with the cooperation and assistance of the Alternative Dispute Resolution Committee, shall establish and maintain a register of qualified attorneys who have agreed to serve as neutrals under this rule. The attorneys so registered shall be approved by the court from lists of qualified attorneys at law, who are members of the bar of this court, have a physical office within the geographic boundaries of the Western District of Washington, and who are recommended by the Alternative Dispute Resolution Committee. The Alternative Dispute Resolution Committee shall request the county bar associations within the geographical boundaries of the district to cooperate with the Committee in obtaining well-qualified attorneys for the register.

(2) *Eligibility.* To qualify for inclusion and continued maintenance on the register of neutrals under this rule, an attorney shall certify that he or she:

(A) has been a member of the bar of a federal district court for at least seven years or has had at least seven years of judicial experience;

(B) is a member of the bar of the United States District Court for the Western District of Washington and has a physical office within the geographic boundaries of the Western District of Washington;

(C) has devoted a substantial portion of his or her practice to litigation;

(D) has met such training requirement as the court may direct by general order;

(E) agrees to accept appointment to serve as a neutral on a pro bono basis when appropriate. Refusal to accept at least one pro bono appointment per year, if requested to do so, may result in the removal of the attorney from the register of neutrals; and (F) recertifies every three years that he or she continues to meet the eligibility requirements of this rule and has served as a pro bono mediator at least once during each calendar year or that he or she was not asked to do so.

(3) *Alternative Dispute Resolution Committee.* The Alternative Dispute Resolution Committee shall assist the court in determining that the register of qualified attorneys is duly maintained, that such attorneys have certified that they have necessary training and/or experience as required by the rule, and that such attorneys are in compliance with LCR 39.1(b)(2).

(4) *Disclosure Requirement.* Neutrals serving under this rule should disclose any interest or relationship likely to affect their impartiality or that might reasonably create an appearance that they are biased against one party or favorable to another. When parties, with knowledge of such disclosures, nevertheless desire a particular neutral to serve and

affirmatively waive such disclosures, the neutral may serve; provided, however, that nothing in this provision shall affect the obligations of any district judge or magistrate judge under 28 U.S.C. § 455.

(5) *Compensation and Mediation Without Charge.* Unless otherwise ordered by the court, neutrals serving under this rule shall be eligible to receive compensation for their services and reimbursement for expenses incurred, either as agreed upon by the parties or within limits set by the court, subject to regulations approved by the Judicial Conference of the United States and/or the Administrative Office of the United States Courts. Parties may contact any neutral from the register and request that he or she conduct the mediation without compensation. Parties may also submit a request for pro bono mediation to the Alternative Dispute Resolution Committee using the form available on the court's website.

(c) Mediation

(1) *Designation and Scheduling*. In any civil case, the court may order the parties to engage in mediation under this rule, and may schedule the required steps so as to maximize the prospects of early settlement. The parties may file a written stipulation for mediation under this rule at any time.

(2) *Settlement Conference*. In every civil action in which the court has ordered the parties to engage in mediation under this rule, the attorneys for all parties to the action, except nominal parties and stakeholders, shall meet at least once, preferably in person, and engage in a good faith attempt to negotiate a settlement of the action no later than 30 days prior to the mediation conference, unless the court sets a different date.

(3) *Selection of Mediator*. In every civil action in which the court has ordered the parties to engage in mediation under this rule, the parties shall attempt to agree upon the selection of a single mediator for settlement purposes from the register of attorney neutrals. If they are unable to agree upon a mediator from the register of qualified attorneys, they may choose a mediator who is not listed on the register. If the parties cannot agree upon the selection of a mediator, either party may apply to the court for the designation of a mediator from the register of attorney neutrals. The court shall thereupon promptly designate a mediator from the register and shall send notice of that designation to the mediator and to all attorneys of record in the action. The court may require the mediator to serve without compensation in some circumstances. Within ten days of such notice, the mediator designated by the court shall advise all attorneys of record whether he or she is willing and able to serve as mediator and shall make all disclosures required by section (b)(4).

(4) *Request for Mediation Without Charge.* A party, or the parties jointly, may request pro bono (free of charge) mediation. To do so, parties may complete and sign the Request for Mediation Without Charge form, available from the Clerk's Office and on the court's website. On the form, parties must indicate the basis for the request, which may include that one or more parties are unable, without financial hardship, to pay the anticipated fee for the services of the mediator.

(5) *Mediation Procedure*. Whether selected by the parties or designated by the court, the mediator may arrange with the parties an initial conference call. Except to the extent the mediator directs otherwise, the following procedures shall apply:

(A) Copy of Pretrial Order or Pleadings. Upon selection of a mediator the parties shall provide the mediator with a copy of the Pretrial Order, if one has been lodged in the cause. If a Pretrial Order has not been lodged, they shall provide the mediator with copies of their relevant pleadings.

(B) Notice of Time and Place. The mediator shall fix a time and place for the mediation conference, and all adjourned sessions that is reasonably convenient for the parties.

(C) Memoranda. Each party shall provide the mediator with a memorandum presenting in concise form its contentions relative to both liability and damages. This memorandum should not exceed 10 pages in length. Copies of the memorandum must be delivered to the mediator and served upon all other parties at least seven days before the mediation conference. In addition, a party may deliver to the mediator a confidential memorandum that is not served on the other parties.

(D) Attorney's Attendance and Preparation Required. The attorney who is primarily responsible for each party's case shall personally attend and participate in good faith in the mediation conference and any adjourned sessions of that conference. The attorney for each party shall come prepared to discuss the following matters in detail:

(1) all liability issues;

(2) all damage issues; and

(3) the position of his or her client relative to settlement.

(E) Parties to Attend. In addition to counsel, parties and insurers having authority to settle, and to adjust pre-existing settlement authority if necessary, must attend the mediation in person and participate in good faith. The mediator may in his or her discretion, but only in exceptional cases, excuse a party or insurer from personally attending a mediation conference. If a party or representative of an insurer is excused from personal attendance by the mediator, the party or representative shall be on call by telephone during the conference.

(F) Failure to Attend. Willful or negligent failure to attend the mediation conference, to participate in good faith, or to comply with this rule or with the directions of the mediator, shall be reported to the court by the mediator in writing and may result in the imposition of such sanctions as the court may find appropriate.

(6) *Notice to Clients of Mediator's Suggestions*. Counsel shall comply promptly with any request by the mediator that a party be advised of the mediator's suggestions as to settlement.

The mediator shall have no obligation to make any written comments or recommendations but may provide the attorneys for the parties with a written settlement recommendation. No copy of any such recommendation shall be filed with the clerk or made available in whole or in part, directly or indirectly, to the court or to the jury.

The attorneys for the parties shall forward copies of any such recommendation to their clients and shall advise them of the fact that the mediator is a qualified attorney who has agreed to act as an impartial mediator in an attempt to help the parties reach agreement and avoid the time, expense and uncertainty of trial.

(7) *Notice to Court*. The mediator shall provide written notice to the judge, the Clerk's Office, and the parties stating (1) when the mediation occurred, and (2) whether the case is resolved. If the case was not resolved, the mediator also may submit a letter to the judge and the parties, not filed with the Clerk's Office, expressing the mediator's views as to whether the appointment of a settlement judge, or the use of other alternative dispute resolution procedures, would be advisable. In no event shall the mediator disclose any communication made between the mediator and the parties or their counsel.

(d) Arbitration

(1) *Voluntary Submission to Arbitration*. Parties may, to the extent permitted by statute, stipulate to voluntarily dismiss or stay their civil case and proceed to arbitration. Alternatively, the parties may jointly request that the court refer their case to arbitration pursuant to 28 U.S.C. § 654. Court referred arbitration shall be governed by the provisions of 28 U.S.C. §§ 651-658 relating to voluntary arbitration, for so long as those sections remain in effect, and by this rule.

(2) *No Limitation on Use of Non-Court Referred Arbitration.* LCR 39.1(d) and the procedures herein apply only to court referred arbitration. Nothing herein shall limit the ability of the parties to consent to enter into arbitration agreements that are otherwise valid and enforceable under the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.,* RCW 7.04.010 *et seq.,* or other comparable authority.

(3) *Eligible Cases*. The parties may consent to court referred arbitration in any civil action in this court, including an adversary proceeding in bankruptcy, except where:

(A) the case is based on an alleged violation of a right secured by the Constitution of the United States;

(B) jurisdiction is based in whole or in part on 28 U.S.C. § 1343, or

(C) the relief sought consists of monetary damages in an amount greater than $150,000. For purposes of this subsection, the court shall presume that damages are not greater than $150,000 unless counsel certifies that damages exceed that amount.

Notwithstanding the above, the court may decline to refer to arbitration any case in which the objectives of arbitration would not be realized:

(A) because the case involves complex or novel legal issues,

(B) because legal issues predominate over factual issues, or

(C) for other good cause.

(4) *Agreement and Order for Arbitration*. The parties may agree in writing to submit all or part of their claims to court referred arbitration. Alternatively, the parties may prepare and submit their own form of agreement, and may thereby modify any of the provisions applicable to arbitration under this rule, subject to the approval of the court. Any agreement shall include a certification that the parties have been provided access to materials describing the arbitration program, and agree to arbitration freely and knowingly. If the parties agree that the arbitration is to be final and conclusive, with trial de novo waived, the agreement shall specifically so provide. A case shall be referred to arbitration only upon entry of an order to that effect by the judge to whom the case is assigned.

(5) *No Prejudice for Refusal*. A case shall be considered by a judge for reference to arbitration under this rule only if a consent form executed without limitation or qualification on behalf of every party has been received by the clerk. The plaintiff shall be responsible for securing the execution of consent forms by the parties and for filing such forms with the clerk of court. No consent will be made available, nor will its contents be made known to any judge, unless all parties have consented to the reference to arbitration. No party or attorney shall be pressured to consent to arbitration, or prejudiced in any way for refusing consent.

(6) *Scheduling in Arbitration Cases*. Prior to the arbitration hearing, the court shall:

(A) set a trial date, which shall be no later than if the case had not been submitted for arbitration;

(B) set a deadline for completion of all discovery. No discovery will be permitted during the period beginning fourteen days before the arbitration hearing and ending on the date the award is issued;

(C) set a deadline for the commencement of the arbitration hearing; and

(D) set a deadline for the filing of pre-arbitration motions.

(7) *Number of Arbitrators*. Cases shall be heard by a single arbitrator unless the court orders otherwise.

(8) *Selection of Arbitrators*. In court referred arbitration, all arbitrators shall be drawn from the register of neutrals unless the court orders otherwise in a particular case. The parties may secure a current register from the clerk. Within 14 days after the court orders arbitration, the parties may notify the clerk that they agree to nominate a specific arbitrator, and that the nominee has advised the parties that he or she is willing to serve. If the parties cannot agree upon the selection of an arbitrator, the clerk shall nominate the

arbitrator from the register of neutrals. In either event, the court shall make the final appointment, and shall notify the arbitrator and the parties. Within ten days of such notice, the arbitrator designated by the court shall advise all attorneys of record whether he or she is willing and able to serve as arbitrator and shall make all disclosures required by section (b)(4).

(9) *Oath or Affirmation and Powers of Arbitrator*. The arbitrator shall take an oath or affirmation as prescribed by 28 U.S.C. § 453. The arbitrator shall have the power to conduct arbitration hearings, to administer oaths and affirmations, to make awards, and to assess costs within the meaning of Fed. R. Civ. P. 54 and LCR 54.

(10) *Date and Place of Arbitration Hearing*. The arbitrator shall notify the parties of the date, time and place of the hearing. The hearing shall be scheduled in accordance with the deadline set by the court and for as early a date as possible, consistent with the parties' needs to complete their preparation.

(11) *Procedure at Arbitration Hearing*. The arbitrator shall provide directions to the parties as to the procedure at the hearing, including the length of time allotted to each side and whether pre-hearing memoranda are required. All testimony shall be given under oath or affirmation administered by the arbitrator. In receiving evidence, the arbitrator shall apply the Federal Rules of Evidence. Attendance of witnesses and production of documents may be compelled in accordance with Rule 45, Federal Rules of Civil Procedure. The arbitrator may make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing and prehearing proceedings. Failure, without good cause, to comply with the arbitrator's rules and orders shall be reported to the court for its imposition of sanctions as provided in Rule 37 of the Federal Rules of Civil Procedures and Local Rule CR 11 of this court.

(12) *Transcript or Recording*. A party may cause a transcript or recording to be made of the proceedings at its expense but shall, at the request of the opposing party, make a copy available to any other party upon the payment by that party of the cost of the copy.

(13) *Filing of Arbitrator's Award*. The arbitrator shall file his or her award with the clerk promptly after the hearing. The clerk shall transmit copies of the award to all parties. The award shall state clearly and concisely the name or names of the prevailing party or parties and the party or parties against which it is rendered, and the precise amount of money and other relief, if any, which is awarded. Unless otherwise required by the agreement to arbitrate, the award need not disclose the facts or reasons in support of the award. The award shall be in writing and signed by the arbitrator.

(14) *Effect of Award*. If the parties' agreement to arbitrate did not waive trial de novo the award shall be entered as the judgment of the court after the time has expired for requesting a trial de novo. The judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise. If the parties' agreement to arbitrate specified that trial de novo was waived, the filing of the award shall be treated as a motion to confirm the award under 9

U.S.C. § 9, which motion shall automatically be deemed granted unless a motion to vacate, modify or correct the award for any of the grounds specified in 9 U.S.C. §§ 10 and 11 is served and filed within the time for requesting a trial de novo.

(15) *Sealing of Award*. The contents of any arbitration award shall not be made known to any judge who might be assigned to the case:

(A) except as necessary for the court to determine whether to assess costs of attorneys fees;

(B) until the district court has entered final judgment in the action or the action has been otherwise terminated; or

(C) except for purposes of preparing required reports.

(16) *Trial De Novo*.

(A) Time for Demand. Unless the agreement to arbitrate waived trial de novo, any party may, within 30 days of the filing of the award, serve and file a written demand for trial de novo. The case will then be treated for all purposes as if it had not been referred to arbitration.

(B) The trial de novo shall be conducted as though no arbitration proceeding had occurred. No reference shall be made to the arbitration award in any pleading, brief, or other written or oral statement to the trial court or jury either before or during the trial, nor, in a jury trial, shall the jury be informed that there has been an arbitration proceeding.

(C) Testimony given during the arbitration proceeding is admissible in subsequent proceedings by stipulation of the parties, or to the extent allowed by the Rules of Evidence, but the testimony shall not be identified as having been given in an arbitration proceeding.

(D) Costs and Attorney's Fees. Following the trial de novo, the court may assess costs, pursuant to 28 U.S.C. § 1920, and reasonable attorney's fees against a party demanding the trial de novo if (i) that party fails to obtain a judgment more favorable to it than was the arbitration award and (ii) the court determines that the party's conduct in seeking a trial de novo was in bad faith.

(17) *Mediation under Rule 39.1(c)*. If the parties have participated in an arbitration hearing under this rule they will not be required to participate in mediation under Rule 39.1(c). They may choose to participate in such mediation, however.

(e) Judicial Settlement Conferences

In any case, the court may appoint a settlement judge who may conduct a settlement conference in such manner as that settlement judge may deem appropriate. Unless otherwise ordered by the

court, a judicial settlement conference will only be held in a case where the parties have already participated in mediation, but have been unable to reach a settlement.

(f) Other Alternative Dispute Resolution Procedures

Upon application of the parties, the court may approve for use under this rule other ADR procedures if the court concludes that such procedures appear reasonably calculated to further the objectives of this rule. Such ADR procedures include, but are not limited to, the following:

(1) *Early Neutral Evaluation*. This is an ADR procedure whereby the parties shall select a neutral from the register early in the case to provide an evaluation of the position of the parties regarding liability and damages. The early neutral evaluation shall be conducted according to procedures agreed to by the parties and determined by the neutral. The parties and their attorneys must attend such proceedings.

(2) *No Limitation on Use of ADR Alternatives*. Nothing herein is intended to prevent the parties from agreeing to use another dispute resolution alternative, subject to court approval as required by this rule.

LCR 39.2

INDIVIDUALIZED TRIAL PROGRAM

The court encourages parties to consider agreeing to an individualized trial. The Individualized Trial Program is meant to offer an abbreviated, efficient and cost-effective litigation and trial alternative. Subject to the approval of the assigned judge, the following procedures shall govern. "Individualized Trial" means a consensual, binding trial before a jury or before a judge with limited discovery and limited rights to appeal. Recognizing that individualized trial procedures are most efficient when tailored to the specific needs of a case, the parties may propose modifications to this rule, subject to the approval of the judge.

(a) Procedure to Request Individualized Trial

The parties shall file a written agreement, using the court form titled "Agreement for Individualized Trial and Request for Approval" available from the Clerk's Office and on the court's website. Neither the agreement nor its existence shall be disclosed to the jury. The time schedule for individualized procedures and trial shall begin on the date the agreement is approved by the court.

(b) Termination of Agreement

The agreement may be terminated by the court upon a showing that one or more parties have not participated in good faith with the provisions of this rule or that previously undisclosed facts have been discovered that make it inappropriate to use the individualized trial procedure.

(c) Applicable Rules

The provisions of the Individualized Trial Agreement, as approved by the court, shall supersede and govern over any inconsistencies or conflicts that arise between it and the Federal Rules of Civil Procedure or the Local Rules of this court. Otherwise, all Federal Rules of Civil Procedure, Rules of Evidence, and Local Rules of this court shall apply.

(d) Initial Disclosures

If initial disclosures have not been exchanged, or if they are not yet due, the disclosures required by Fed. R. Civ. P. 26(a)(1)(A) shall be exchanged within seven (7) days after the agreement is approved by the court.

(e) Individualized Trial Conference

Immediately upon the filing of the agreement, plaintiff shall contact the courtroom deputy for the assigned judge and request an initial individualized trial conference. The conference shall occur no later than thirty (30) days after the filing of the agreement unless otherwise ordered by the court. Upon request of any party, the court may permit counsel to appear by telephone. In

addition to or instead of the individualized trial conference, the judge may require the parties to submit a joint status report.

(f) Joint Individualized Trial Statement

The parties must file a Joint Individualized Trial Statement seven (7) days before the individualized trial conference addressing all of the following topics, unless they have already addressed these topics in their Joint Status Report or unless otherwise ordered by the court:

(1) the date the Individualized Trial Agreement was approved by the court;

(2) all prior and pending motions, their current status, and any anticipated motions;

(3) whether there has been full and timely compliance with the initial disclosure requirements of Fed. R. Civ. P. 26;

(4) discovery taken to date, if any, the scope of anticipated discovery, any proposed limitations or modifications of the discovery rules, and a proposed discovery plan pursuant to Fed. R. Civ. P. 26(f);

(5) whether the parties wish to engage in any form of ADR, and if so, what form;

(6) whether all parties will consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment.

(7) issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial (e.g., through summaries or stipulated facts), and any request to bifurcate issues, claims, or defenses.

(8) proposed dates for designation of experts, discovery cutoff, hearing of motions permitted by this rule, pretrial conference, and trial;

(9) whether the case will be tried to a jury or to the court; and

(10) any other matters as may facilitate the just, speedy and inexpensive disposition of this matter.

(g) Case Management Order

The court shall issue a case management order following the conference. Unless otherwise ordered by the court, the order shall require the parties to exchange the documents described in Fed. R. Civ. P. 26(a)(3) no later than fifteen (15) days before the pretrial conference and shall require the parties to complete all discovery no later than ninety 90 days after the individualized trial conference. The court will attempt to resolve all motions to dismiss and pleading issues at the individualized trial conference. The court may determine the extent, if any, that previous case

management orders on matters subject to the individualized rules shall supersede or be combined with any previous orders.

(h) Pretrial Conference

The pretrial conference shall be held no later than one hundred fifty (150) days after the agreement is approved by the court.

(i) Discovery

Unless otherwise ordered by the court or by agreement of the parties, discovery shall be limited to ten (10) interrogatories per party, ten (10) document requests, ten (10) requests for admission, and fifteen (15) hours of depositions, per party. The parties may agree or the court may order that the time for response to written discovery be shortened. Deposition time limits are inclusive of fact witnesses and expert witnesses.

(j) Expert Witnesses

No party shall call more than one expert witness to testify, unless permitted by the court or by agreement of the parties.

(k) Pretrial Motions

Except for dispositive motions, all pretrial motions must use the individualized procedure set forth in LCR 37.

(l) Trial Date

Unless otherwise ordered, trial shall be held no later than six months after the agreement is approved by the court.

(m) Trial

Jury trial will be before seven jurors and may proceed before a six-person jury if a juror is unable to serve through conclusion of trial and deliberations. The court shall conduct all voir dire and shall determine time limits for opening statements and closing argument. Each side shall have three hours to present evidence, not including time for opening statement and time for closing argument. In multi-party trials, plaintiffs shall divide the three hours among themselves, and defendants shall divide the three hours among themselves. If the parties cannot agree to a division of trial time, the judge shall order a division.

(n) Post-trial Motions

> (1) Post-trial motions shall be limited to determination of costs and attorney's fees, correcting a judgment for clerical error, conforming the verdict to the agreement, enforcement of judgment and motions for a new trial.

(2) Within ten (10) court days after notice of entry of a verdict, a party may file with the clerk and serve on each adverse party a notice of intention to move for a new trial on any of the grounds specified in subsection (n)(3) of this rule. The notice shall be deemed to be a motion for a new trial.

(3) Grounds for motions for a new trial shall be limited to: (1) judicial misconduct that materially affected the substantial rights of a party; (2) misconduct of the jury; or (3) corruption, fraud, or other undue means employed in the proceedings of the court or jury.

(o) Judgment

Judgment shall be entered within 30 days after a bench trial, except as ordered by the court for good cause.

(p) Appeal

Before filing an appeal, a party shall make a motion for a new trial pursuant to subsection (n) of these procedures. If the motion for a new trial is denied, the party may appeal the judgment and seek a new trial only on grounds specified in subsection (n)(3). All other grounds for appeal shall be waived and are not permitted, unless the parties agree otherwise.

LCR 40

SCHEDULING CASES FOR TRIAL

(a) Orders by Court

The court may make such orders as may facilitate the prompt, inexpensive, and just disposition of any action.

(b) Responsibility of Attorney

Responsibility for the appearance of attorneys, parties and witnesses in court in readiness for trial is on the attorneys of record and is not on the clerk. Attorneys of record shall advise the clerk, upon request, regarding their readiness for trial, probable duration of trial, and such other matters within their knowledge as may facilitate the performance of the clerk's duties and the prompt trial of causes.

LCR 41

DISMISSAL OF ACTIONS

(a) Reserved

(b) Involuntary Dismissal; Effect Thereof

(1) Any case that has been pending in this court for more than nine months without any proceeding of record having been taken may be dismissed by the court on its own motion for lack of prosecution. The plaintiff in any such action will be given an opportunity to show cause in writing, or at the court's election in open court, why the case should not be dismissed. A dismissal under this subparagraph will operate as an adjudication on the merits, as provided for in Fed. R. Civ. P. 41(b), unless the court orders otherwise.

(2) A party proceeding pro se shall keep the court and opposing parties advised as to his or her current mailing address and, if electronically filing or receiving notices electronically, his or her current email address. If mail directed to a pro se plaintiff by the clerk is returned by the Postal Service, or if email is returned by the internet service provider, and if such plaintiff fails to notify the court and opposing parties within 60 days thereafter of his or her current mailing or email address, the court may dismiss the action without prejudice for failure to prosecute.

LCR 42

CONSOLIDATION

(a) Motion to Consolidate

If a party seeks to have its case consolidated with one or more cases pending in this district, the party may file a motion to consolidate the cases. If possible, the motion to consolidate should be filed in the earliest filed case, with a notice of the motion filed in the later filed case(s). If a party is unable to file the motion to consolidate in the earliest filed case, for example because it is not a party to that case, it may file the motion in its own case. The motion will be heard by the judge to whom the earliest filed case is assigned. Unless all cases are pending before the same judge, the court will consider, as a preliminary matter, whether to transfer the cases to ensure that all related cases are pending before the same judge.

(b) Meet and Confer Requirement

Prior to filing a motion to consolidate, the parties must meet and confer and attempt to reach agreement regarding whether the cases should be consolidated and whether consolidation should extend through trial. If they agree, the parties must file a stipulation to consolidate in all of the cases to be consolidated. The stipulation should also address, to the extent possible, any scheduling issues implicated by consolidation such as which case schedule should govern in the consolidated action.

LCR 43

TAKING TESTIMONY; MARKING EXHIBITS

(a) to (f) Reserved

(g) Marking of Exhibits

Unless otherwise ordered by the court, on the morning of trial each party appearing shall present marked and tagged trial exhibits to the clerk. Exhibits shall be marked in accordance with the Pretrial Order or other order of the court. The clerk shall be provided with an original and a copy of each exhibit; provided, that leave may be sought from the court to dispense with providing copies of exhibits where bulk or other considerations would make copying, or the use of copies, impractical.

Electronic exhibits must be provided on a CD unless otherwise ordered by the court. The party offering the electronic exhibit(s) must include an index on paper with the electronic exhibits.

The assigned judge may impose additional requirements for submitting proposed exhibits during a pre-trial conference, in the applicable case management order, or by other order. Further clarification may be obtained by reviewing the assigned judge's web page at http://www.wawd.uscourts.gov and/or by contacting the assigned judge's courtroom deputy.

(h) Procedure at Trial

(1) In the trial of an action the party having the affirmative of the issue shall open the cause by stating generally what the party expects to prove. The opposite party shall either then, or after the opening party has closed its evidence in chief, state generally what the party expects to prove. After all the evidence on each side is in, the party having the affirmative of the issue shall argue the cause to the court or jury, as the case may be, and shall, during such argument, state fully all of its points and refer to all of its authorities, or be precluded from a reply. The party holding the negative of the issue shall then argue its case, and the party having the affirmative shall close.

(2) Unless otherwise permitted by the court, counsel shall conduct the examination of witnesses and argument to the court or jury from the lectern, and counsel shall rise upon making objections or otherwise addressing the court.

(3) Not later than the close of each day of trial, counsel shall provide to opposing counsel a list of the witnesses he or she intends to call the following day of trial. This requirement may be modified for good cause shown.

(4) The parties may request to present exhibits in electronic format to jurors by including the request in their pretrial order as set forth in LCR 16 and by reiterating the request to the assigned judge prior to or during the final pretrial conference.

(5) Additional information regarding the availability and use of courtroom technology is available on the court's website.

(i) Examination of Witnesses

At trial only one attorney for a party shall examine or cross-examine any witness unless otherwise ordered by the court.

(j) Expert Witnesses

Except as otherwise ordered by the court, a party shall not be permitted to call more than one expert witness on any subject.

(k) Exclusion of Witnesses

Counsel will be responsible for monitoring compliance with an order excluding witnesses from the courtroom during trial.

(l) Presence of Attorneys

It is the right and duty of attorneys to be present in the courtroom at all times the court may be in session. If an attorney voluntarily absents himself or herself during such times or when the jury is deliberating, that attorney waives his or her right to be present and consents to such proceedings as may take place in the courtroom during his or her absence.

LCR 44 THROUGH 46

RESERVED

LCR 47

JURORS

(a) Examination of Jurors

The court will conduct a voir dire examination of the prospective trial jurors. To aid in the examination, counsel shall submit to the court, at such time as the court may direct, any questions they request be included in the examination. In addition, counsel may examine the prospective jurors directly if and to the extent permitted by the court.

(b) Reserved

(c) Reserved

(d) Contacting Jurors

Counsel shall not contact or interview jurors or cause jurors to be contacted or interviewed after trial without first having been granted leave to do so by the court.

LCR 48 THROUGH 50

RESERVED

LCR 51

JURY INSTRUCTIONS

(a) Reserved

(b) Reserved

(c) Reserved

(d) Reserved

(e) Joint Instructions

Twenty-one days before jury instructions are due, the parties shall exchange proposed jury instructions, verdict forms, and, if necessary, special interrogatories. Plaintiff is responsible for submitting proposed standard civil instructions and proposed instructions on any issue on which plaintiff bears the burden of proof. Defendant is responsible for submitting proposed instructions on any issue on which defendant bears the burden of proof. The parties shall confer with the objective of filing with the court one set of agreed-upon instructions, verdict forms, and interrogatories which addresses all elements of all claims and defenses in the case.

(f) Disputed Instructions

If the parties cannot agree on one complete set of instructions, verdict forms, and interrogatories, they shall file two documents with the court. The first document, titled "Joint Instructions," shall reflect all agreed-upon instructions, verdict forms, and interrogatories. The second document, titled "Joint Statement of Disputed Instructions," shall present each disputed instruction, verdict form, and/or interrogatories in the following order:

> (1) At the top of the page, the proposed language shall be set forth with an identification of the party proposing it and a statement of any legal authority in support of the proposed language (not to exceed one page);
>
> (2) Immediately following the proposed language and supporting legal authority, the opposing party shall set forth its alternative language, if any, and its objections to the proposed language along with any legal authority in support of the objections (not to exceed one page).

(g) Format

Each proposed instruction, whether filed jointly or under objection, shall be submitted on numbered paper. Each proposed instruction shall bear a unique instruction number and brief title at the top of the page. At the bottom of the page, the parties shall identify the source(s) of the proposed instruction if the source is a model or pattern jury instruction; otherwise, the parties must include other citations to relevant authority.

The parties shall propose instructions from the most recent version of the Manual of Model Jury Instructions for the Ninth Circuit (see www.wawd.uscourts.gov) wherever appropriate. If Washington State law is to be applied to a particular issue and the federal model instructions are not applicable, the parties shall advise the court of any applicable portion of the Washington Pattern Jury Instructions--Civil, and either propose that instruction or explain why the court should not give it. Any modifications to instructions taken from the above sources or from any other form instructions must be specifically noted such that the court and opposing parties are able to identify each modification. Any authority supporting the modification shall also be noted.

A table of contents shall be included with all jury instructions submitted to the court. The table of contents shall set forth the following information:

(1) the number of the instruction;

(2) a brief title of the instruction;

(3) the source of the instruction;

(4) the page number of the instruction; and

(5) the proposing party(ies).

For example:

Number	Title	Source	Page No.	Party
3	Burden of Proof	9th Cir. 5.1	4	plaintiff
4	Disability Defined	WPIC 330.32	18	defendant

(h) Filing

The "Joint Instructions" and any "Joint Statement of Disputed Instructions" shall be filed and shall be attached as a Word or WordPerfect compatible file to an e-mail sent to the e-mail orders address of the assigned judge pursuant to the court's electronic filing procedures. The assigned judge may impose additional requirements for submitting proposed jury instructions during a pre-trial conference, in the applicable case management order, or by other order. Further clarification may be obtained by reviewing the assigned judge's web page at http:// www.wawd.uscourts.gov and/or by contacting the assigned judge's courtroom deputy.

(i) Copy of Instructions for Jury Use

The court will provide written copies of the instructions to the jury.

LCR 52 THROUGH 53

RESERVED

LCR 54

JUDGMENT; COSTS

(a) through (c) Reserved

(d) Costs

(1) *Motion to Tax Costs/Bill of Costs*. The party in whose favor a judgment is rendered, and who seeks to recover costs, shall, within twenty-one days after the entry of judgment, file and serve a motion for costs and necessary disbursements, also known as a bill of costs. The motion for costs shall be noted for consideration pursuant to LCR 7(d)(3). All costs shall be specified, so that the nature of the charge can be readily understood. The movant shall verify, in a declaration sworn under penalty of perjury by the party, an attorney of record, or an agent having knowledge of the facts, that each requested cost is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed.. The fees referred to in this section refer to filing fees, witness fees, and other types of fees but not to attorney's fees. The movant may use a Bill of Costs form, available on the court's website, to list the costs and complete the required declaration.

If the party in whose favor judgment is rendered fails to file a motion for costs, all costs, other than statutory costs, shall be deemed to be waived.

(2) *Additional Briefing*. A party objecting to any item of costs shall file opposition papers at the time set forth in LCR 7(d)(3). The moving party shall file a reply, if any, at the time set forth in LCR 7(d)(3).

(3) *Taxation by Clerk*. Motions for costs shall be considered by the clerk. All motions for costs will be decided by the clerk on the written filings and without oral argument unless the clerk specifically directs the parties to appear for a hearing. The clerk shall allow such items specified in the motion which are properly chargeable as costs.

In taxing costs, the following rules shall be observed:

(A) The attendance, travel, and subsistence fees of witnesses, for actual and proper attendance, shall be allowed in accordance with 28 U.S.C. § 1821, whether such attendance was procured by subpoena or was voluntary;

(B) Reasonable premiums paid on undertakings or bonds or security stipulations shall be allowed where the same have been furnished by reason of express requirement of law, rule, or court order;

(C) Expenditures incident to the litigation which were ordered by the court as essential to a proper consideration of the case shall be allowed;

(D) All other costs shall be taxed in accordance with 28 U.S.C. §§ 1920, 1921, 1923, 1927, and 2412.

The clerk typically will not tax costs beyond those set forth in the statutes listed above. A party seeking additional costs may file a motion, directed to the court, seeking an award of the excess costs.

(4) *Appeal*. The taxation of costs by the clerk shall be final, unless modified on appeal to the district court judge or magistrate judge to whom the case was assigned. An appeal may be taken by filing a motion to retax which shall be filed and served within seven days after costs have been taxed and which shall specify the ruling(s) of the clerk to which the party objects. The motion to retax shall be noted for consideration pursuant to LCR 7(d)(3).

(5) *Attorney's Fees.* A motion for attorney's fees should not be included in the motion for costs to the clerk but should be directed to the court pursuant to Fed. R. Civ. P. 54(d), which sets forth requirements for the timing and contents of the motion.

LCR 55

DEFAULT; DEFAULT JUDGMENT

(a) Entry of Default

Upon motion by a party noted in accordance with LCR 7(d)(1) and supported by affidavit or otherwise, the clerk shall enter the default of any party against whom a judgment for affirmative relief is sought but who has failed to plead or otherwise defend. The affidavit shall specifically show that the defaulting party was served in a manner authorized by Fed. R. Civ. P. 4. A motion for entry of default need not be served on the defaulting party. However, in the case of a defaulting party who has entered an appearance, the moving party must give the defaulting party written notice of the requesting party's intention to move for the entry of default at least fourteen days prior to filing its motion and must provide evidence that such notice has been given in the motion for entry of default.

(b) Judgment on Default

(1) *No Default Judgment Absent a Default.* No motion for judgment by default should be filed against any party unless the court has previously granted a motion for default against that party pursuant to LCR 55(a) or unless default otherwise has been entered.

(2) *Supporting Evidence Required.* Plaintiff must support a motion for default judgment with a declaration and other evidence establishing plaintiff's entitlement to a sum certain and to any nonmonetary relief sought.

(A) Plaintiff shall provide a concise explanation of how all amounts were calculated, and shall support this explanation with evidence establishing the entitlement to and amount of the principal claim, and, if applicable, any liquidated damages, interest, attorney's fees, or other amounts sought. If the claim is based on a contract, plaintiff shall provide the court with a copy of the contract and cite the relevant provisions.

(B) If plaintiff is seeking interest and claims that an interest rate other than that provided by 28 U.S.C. § 1961 applies, plaintiff shall state the rate and the reasons for applying it. For prejudgment interest, plaintiff shall state the date on which prejudgment interest began to accrue and the basis for selecting that date.

(C) If plaintiff seeks attorney's fees, plaintiff must state the basis for an award of fees and include a declaration from plaintiff's counsel establishing the reasonable amount of fees to be awarded, including, if applicable, counsel's hourly rate, the number of hours worked, and the tasks performed.

(3) *By the Clerk.* The clerk may not enter judgment by default in the case of a defaulting party who has entered an appearance, or who is an infant or incompetent, or who is or

may be in the military service. In addition, a claim for "reasonable attorney's fees" is not for a sum certain under Fed. R. Civ. P. 55(b)(1) unless the complaint states the amount of fees sought. Motions to have the clerk enter a default judgment shall be noted in accordance with LCR 7(d)(1). A motion for entry of default judgment by the clerk need not be served on the defaulting party.

(4) *By the Court.* In all other cases, including instances where a defaulting party has entered an appearance, is an infant or incompetent, or is or may be in the military service, a motion for entry of a judgment by default must be addressed to the court. If there has been no appearance in the action by the defaulting party, the motion shall be noted in accordance with LCR 7(d)(1), but it need not be served on the defaulting party and notice of the motion need not be given to the defaulting party. If the defaulting party has appeared, the motion shall be noted in accordance with LCR 7(d)(3), and service of all papers filed in support of the motion must be made at the defaulting party's address of record. In the absence of an address of record, service shall be made at the defaulting party's last known address. The court may conduct such hearing or inquiry upon a motion for entry of judgment by default as it deems necessary under the circumstances of the particular case.

LCR 56 THROUGH 64

RESERVED

LCR 65

TEMPORARY RESTRAINING ORDERS

(a) Reserved

(b) Temporary Restraining Order

(1) *Issuance Without Notice Disfavored:* Motions for temporary restraining orders without notice to and an opportunity to be heard by the adverse party are disfavored and will rarely be granted. Unless the requirements of Fed. R. Civ. P. 65(b) for issuance without notice are satisfied, the moving party must serve all motion papers on the opposing party before or contemporaneously with the filing of the motion and include a certificate of service with the motion. The motion must also include contact information for the opposing party's counsel or for an unrepresented party.

(2) *Length of Motion; Noting Date*: The motion must not exceed twenty-four pages in length and may be noted for the same day it is filed.

(3) *Procedure:* Counsel must file emergency motions electronically unless the case is sealed in its entirety. Pro se parties who choose not to file electronically should, if possible, bring their emergency motions to the court during normal business hours to avoid the delay of mailing. After the motion is filed, the filer must promptly call the Clerk's Office at (206) 370-8400 to advise the court that it has filed an emergency motion. The clerk will promptly assign a judge and advise his or her chambers of the emergency nature of the filing. The court may consider the motion on the papers or schedule a hearing.

(4) *Proposed Order:* A motion for a temporary restraining order must include a proposed order specifically setting forth the relief requested and describing in reasonable detail the act or acts to be restrained or required.

(5) *Response:* Unless the court orders otherwise, the adverse party must (1) file a notice indicating whether it plans to oppose the motion within twenty-four hours after service of the motion, and (2) file its response, if any, within forty-eight hours after the motion is served. The response may not exceed twenty-four pages in length, and no reply will be permitted. If the movant meets the requirements of Fed. R. Civ. P. 65(b), the court may grant the motion without awaiting a response.

(6) *Courtesy Copy:* If the motion or response is filed electronically and, together with any supporting documents, it exceeds 50 pages in length, the filing party must deliver a courtesy copy to the Clerk's Office for chambers on the same day the motion is filed. Local Civil Rule 10 contains additional requirements regarding courtesy copies.

LCR 65.1

BONDS

(a) Qualifications of Surety--Cash Deposit

Every bond must be secured by either:

(1) a cash deposit equal to the amount of the bond, or

(2) a corporation authorized by the Secretary of the Treasury of the United States to act as surety on official bonds under 31 U.S.C. §§ 9301-9306, which corporation shall have on file with the clerk one of the following:

(i) proof that the corporation is incorporated in Washington,

(ii) a certified copy of the power of attorney appointing a resident agent for service of process in this district, or

(iii) proof that the corporation has a resident agent who is an official of the State of Washington authorized or appointed under Washington law to receive service of process on the corporation.

(b) Bail Reform Act

In criminal cases where conditions of release have been set under the bail reform act, a bond with sureties other than as set out in paragraph (a) of this rule may be approved by a judicial officer.

(c) Court Officers as Sureties

No clerk, marshal, member of the bar, or other officer of this court will be accepted as surety on any bond or other undertaking in any action or proceeding in this court. Cash deposits on bonds may be made by members of the bar on oral certification that the funds are the property of a specified person who has signed as surety on the bond. Upon voiding of the bond, such moneys shall be returned to the surety alone and not to the attorney.

LCR 66

RECEIVERS

In the exercise of the authority vested in the district courts by Rule 66 of the Federal Rules of Civil Procedure, this rule is promulgated for the administration of estates by receivers or by other similar officers appointed by the court. In respects other than administration of the estate, any civil action in which the appointment of a receiver or other similar officer is sought, or which is brought by or against such an officer, is governed by the Federal Rules of Civil Procedure and by these rules.

(a) Inventories

Unless the court otherwise orders, a receiver or similar officer as soon as practicable after appointment and not later than 20 days after the receiver has taken possession of the estate, shall file an inventory of all the property and assets in the receiver's possession or in the possession of others who hold possession as the receiver's agent, and in a separate schedule, an inventory of the property and assets of the estate not reduced to possession by the receiver but claimed and held by others.

(b) Reports

Within six months after the filing of the inventory, and at regular intervals of six months thereafter until discharged, or at such other times as the court may direct, the receiver or other similar officer shall file reports of receipts and expenditures and of the receiver's acts and transactions in an official capacity.

(c) Compensation of Receivers, Attorneys and Others

The compensation of receivers or similar officers, of their counsel, and of all those who may have been appointed by the court to aid in the administration of the estate, the conduct of its business, the discovery and acquirement of its assets, the formation of reorganization plans, and the like, shall be ascertained and awarded by the court in its discretion. Such an allowance shall be made only on such notice to creditors and other persons in interest as the court may direct. The notice shall state the amount claimed by each applicant.

(d) Administration of Estates

In all other respects the receiver or similar officer shall administer the estate as nearly as may be in accordance with the practice in the administration of estates in bankruptcy, except as otherwise ordered by the court.

(e) Dismissal

No action in which a receiver has been appointed shall be dismissed by any party except by leave of court and on such notice to other parties as the court may prescribe.

LCR 67

REGISTRY FUNDS

(a) Investment of Registry Funds

Funds deposited in the Registry of the Court will be invested in an interest bearing money market account at an institution in accordance with the guidelines set up by the Administrative Office of the Court and approved by the court.

The clerk is directed to deduct from the income earned on the investment a fee as proscribed by the Judicial Conference of the United States and set by the Director of the Administrative Office of the Court.

(b) Disbursement of Registry Funds

All motions for disbursement of registry funds shall specify the principal sum initially deposited, the amount(s) of principal funds to be disbursed and to whom the disbursement is to be made. Each proposed order shall contain the following language: "... the clerk is authorized and directed to draw a check(s) on the funds deposited in the registry of this court in the principal amount of $_____ plus all accrued interest, minus any statutory users fees, payable to (name of payee) and mail or deliver the check(s) to (name of payee).” If more than one check is to be issued pursuant to a single order, the portion of principal and interest due each payee must be separately stated.

The court requires the mailing address(es), Social Security number(s) or Tax ID(s) of the disbursement recipients be provided to the Clerk and shall not be filed in the record.

LCR 68 THROUGH 71.1

RESERVED

LCR 72

MAGISTRATE JUDGES; PRETRIAL ORDERS

Except as otherwise provided by court order or rule, objections to a magistrate judge's order or recommended disposition, or any response thereto, shall not exceed twelve pages.

(a) Nondispositive Matters

Any objection filed pursuant to this subsection must be noted for consideration for the day it is filed. No response shall be filed unless requested by the court. The request will set a date when the response is due, and may limit briefing to particular issues or points raised by the objections, may authorize a reply, and may prescribe page limitations.

(b) Dispositive Motions and Prisoner Petitions

A party must file and serve any objections to a magistrate judge's recommended disposition within 14 days after being served unless the court enlarges the time period in a specific case. The party filing the objections must note them on the motions calendar pursuant to LCR 7 for a date no earlier than 14 days after the objections are filed. Any response to the objections must be filed by the day before the noting date. No reply will be considered.

LCR 73

MAGISTRATE JUDGES; TRIAL BY CONSENT

(a) Trial by Consent

When authorized by 28 U.S.C. § 636(c), and subject to the consent of the parties, a magistrate judge may conduct a civil action or proceeding, including a trial. In cases that are assigned to a district judge, the clerk may seek consent of the parties, or parties may request at any time that the court reassign the case to a magistrate judge.

More information regarding magistrate judges and the assignment of cases to them can be found on the court's website and in this district's United States Magistrate Judges' Rules.

LCR 74 THROUGH 76

RESERVED

LCR 77

CONDUCTING BUSINESS; CLERK'S AUTHORITY

(a) Regular Sessions of Court

The court shall be in continuous session throughout the year in Seattle and in Tacoma. The court may establish other locations in this district for holding court pursuant to General Order. Nothing in this rule shall prohibit the court from conducting proceedings via electronic transmission in lieu of live court proceedings.

(b) Reserved

(c) Text Only Docket Orders

The clerk of court may issue text only docket orders for any act within the clerk's authority. A text only docket order is an order electronically entered on the case docket without an attached document and is as official and binding as if the clerk of court had signed a document containing the text. If the one or more of the parties are unrepresented and do not file electronically, the clerk of court will mail to those recipients a copy of the Notice of Electronic Filing of the text only docket order.

LCR 78

PHOTOGRAPHY, BROADCASTING, AND PERSONAL ELECTRONIC DEVICES IN THE COURTHOUSE

(a) Photography, Televising, Broadcasting

The taking of photographs or the electronic recording of proceedings in the courtroom or its environs in connection with any judicial proceeding, and the broadcasting of judicial proceedings by radio, television or other means is prohibited, except as authorized by the Judicial Conference of the United States or the Judicial Council of the Ninth Circuit.

As used herein, "judicial proceeding" means: (1) any trial, naturalization proceeding or ceremonial occasion in any United States District Court; (2) any proceeding before any bankruptcy judge or United States magistrate judge; (3) sessions of the grand jury; (4) any person participating in a judicial proceeding, including petit and grand jurors. "Courtroom" of a United States District Court means the foyer, witness room, and all space behind the double doors containing the courtroom number and the name of the judge. "Courtroom" of a United States magistrate judge means any place where a judicial proceeding is conducted.

"Environs" means any area located within the interior confines of the United States Courthouse, including but not limited to the entrances, hallways, stairwells, corridors, foyers and lobbies therein.

With the consent of the presiding judge or under such conditions as the presiding judge may prescribe, some variations of this rule may be allowed for ceremonial occasions.

(b) Personal Electronic Devices in the Courthouse

Cellular telephones, mobile devices, personal cameras, tape recorders, tablet computers, and pagers may be brought into the courthouse; however, they must be turned off whenever those devices are brought into a courtroom, chambers, or agency office area. Laptop computers may be brought into the courthouse, and with the permission of the presiding judge, may be used during court proceedings. All other electronic devices and their use are prohibited without the specific authority of the Judge presiding over a particular matter or by the Chief Judge of this district.

LCR 79

RECORDS KEPT BY THE CLERK

(a) through (e) Reserved

(f) Files-Custody and Withdrawal

All files and records of the court shall remain in the custody of the clerk and no record or paper belonging to the files of the court shall be taken from the custody of the clerk without a special order of the court or judge and a proper receipt signed by the person obtaining the record or paper. No such order will be made except upon urgent grounds stated in a written application for such order.

(g) Custody and Disposition of Exhibits, Depositions

After being marked for identification, all exhibits, except weapons, drugs, or other sensitive materials, shall be placed in the custody of the clerk during the duration of the trial, unless otherwise ordered by the court. Any weapons or other sensitive exhibits shall be held in the custody of the counsel offering the exhibits during the trial. Upon completion of the trial, all exhibits shall be returned to counsel offering them, unless otherwise ordered by the court. A party or his attorney who has custody of an exhibit shall keep it available for the use of the court or an appellate court, and shall grant the reasonable request of any party to examine or reproduce the exhibit for use in the proceeding. This obligation shall continue until any appeal has been finally resolved or time for filing a notice of appeal or petition for writ of certiorari has expired.

(h) Judicial Review of Administrative Proceedings

Unless an extension of time is obtained from the court on a showing of good cause, in any action seeking review of a final decision of an administrative agency, the record of the agency proceeding shall be filed (1) within thirty days of the filing of the complaint or petition when the administrative agency is the plaintiff or petitioner; or (2) with the answer or return when the administrative agency is the defendant or respondent.

LCR 80 THROUGH 83

RESERVED

LCR 83.1

ATTORNEYS; ADMISSION TO PRACTICE

(a) The Bar of this Court

The bar of this court consists of those who have been admitted to practice before this court.

(b) Eligibility

An attorney is eligible for admission to the bar of this court if he or she is (1) a member in good standing of the Washington State Bar, or (2) a member in good standing of the bar of any state and employed by the United States or one of its agencies in a professional capacity and who, while being so employed may have occasion to appear in this court on behalf of the United States or one of its agencies.

(c) Procedure for Admission

(1) *Admissions.* With the exception of applicants for conditional admission, each applicant for admission to the bar of this court shall file with the clerk a Petition for Admission to Practice. The petition must include the certificates of two reputable members of the bar of this court attesting to the petitioner's good moral character. The certificates must be completed by members of this court's bar who either reside or maintain an office for the practice of law in the Western District of Washington. The petition form can be downloaded from the court's website. The clerk will examine the petition and if in compliance with this rule, the petition for admission will be granted.

(2) *Conditional Admission.* In the case of an attorney for the United States or one of its agencies who is not a member of the Washington State Bar, he or she must file a Petition for Conditional Admission to Practice, which can be downloaded from the court's website, and state the department or agency by which he or she is employed and the circumstances justifying the proposed admission to the bar of this court. The right of such an attorney to practice before this court is conditioned upon his or her continuing to be so employed. If a conditionally admitted attorney ceases to be employed as an attorney for the United States or one of its agencies, the conditional admission will be revoked and the attorney must file a petition for admission as set forth in LCR 83.1(c)(1) and pay the applicable fee.

(d) Permission to Participate in a Particular Case *Pro Hac Vice*; Responsibilities of Local Counsel

(1) *Admission Pro Hac Vice.* Any member in good standing of the bar of any court of the United States, or of the highest court of any state, or of any organized territory of the United States, and who neither resides nor maintains an office for the practice of law in the Western District of Washington normally will be permitted upon application and upon a showing of particular need to appear and participate in a particular case *pro hac vice*. The party must also be represented by local counsel, who shall fulfill the

responsibilities set forth below. Attorneys who are admitted to the bar of this court but reside outside the district need not associate with local counsel.

An application for leave to appear *pro hac vice* shall be promptly filed with the clerk and shall set forth: (1) the name and address of the applicant's law firm; (2) the basis upon which "particular need" is claimed; (3) a statement that the applicant understands that he or she is charged with knowing and complying with all applicable local rules; (4) a statement that the applicant has not been disbarred or formally censured by a court of record or by a state bar association; and (5) a statement that there are no pending disciplinary proceedings against the applicant. This application, which can be downloaded from the court's website, must be filed electronically by local counsel. Applications filed under this rule will be approved or disapproved by the clerk.

(2) *Responsibilities of Local Counsel.* To qualify to serve as local counsel, an attorney must have a physical office within the geographic boundaries of the Western District of Washington and be admitted to practice before this court.

Local counsel must review, sign, and electronically file the applicant's *pro hac vice* application. By agreeing to serve as local counsel and by signing the *pro hac vice* application, local counsel attests that he or she is authorized and will be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court.

In addition to those responsibilities and any assigned by the court, local counsel must review and sign all motions and other filings, ensure that all filings comply with all local rules of this court, and remind *pro hac vice* counsel of the court's commitment to maintaining a high degree of professionalism and civility from the lawyers practicing before this court as set forth in the Introduction to the Civil Rules.

LCR 83.2

ATTORNEY APPEARANCE AND WITHDRAWAL

(a) Entry of Appearance

An attorney eligible to appear may enter an appearance in a civil case by signing and filing a Notice of Appearance, complaint, amended complaint, answer, amended answer, Notice of Removal, motion to intervene, or motion for joinder on be half of the party the attorney represents.

(b) Withdrawal of Attorneys

(1) With the exception of a change of counsel within the same law firm, no attorney shall withdraw an appearance in any case, civil or criminal, except by leave of court. Leave shall be obtained by filing a motion or a stipulation and proposed order for withdrawal or, if appropriate, by complying with the requirement of CrR 5(g). A motion for withdrawal shall be noted in accordance with LCR 7(d)(3) or CrR 12(c)(7) and shall include a certification that the motion was served on the client and opposing counsel. A stipulation and proposed order for withdrawal must (1) be signed by all opposing counsel or pro se parties, and (2) be signed by the party's new counsel or by the party. If a withdrawal will leave a party unrepresented, the motion to withdraw must include the party's address and telephone number. The attorney will ordinarily be permitted to withdraw until sixty days before the discovery cut off date in a civil case, and at the discretion of the court in a criminal case.

(2) Where there has simply been a change of counsel within the same law firm, an order of substitution is not required; the new attorney should file a Notice of Appearance and the withdrawing attorney should file a Notice of Withdrawal. However, where there is a change in counsel that effects a termination of one law office and the appearance of a new law office, the substitution must be effected in accordance with subsection (b)(1), which requires leave of court.

(3) A business entity, except a sole proprietorship, must be represented by counsel. If the attorney for a business entity, except a sole proprietorship, is seeking to withdraw, the attorney shall certify to the court that he or she has advised the business entity that it is required by law to be represented by an attorney admitted to practice before this court and that failure to obtain a replacement attorney by the date the withdrawal is effective may result in the dismissal of the business entity's claims for failure to prosecute and/or entry of default against the business entity as to any claims of other parties.

(4) When a party is represented by an attorney of record in a case, the party cannot appear or act on his or her own behalf in that case, or take any step therein, until after the party requests by motion to proceed on his or her own behalf, certifies in the motion that he or she has provided copies of the motion to his or her current counsel and to the opposing party, and is granted an order of substitution by the court terminating the party's attorney

as counsel and substituting the party in to proceed pro se; provided, that the court may in its discretion hear a party in open court, notwithstanding the fact that he or she is represented by an attorney.

(5) When an attorney suddenly becomes unable to act in a case due to death, incapacity, removal or suspension, the party for whom he or she was acting as attorney must, before any further proceedings are had in the action on his or her behalf, unless such party is already represented by another attorney, (i) appoint another attorney who must enter an appearance in accordance with subsection (a) or (ii) seek an order of substitution to proceed pro se in accordance with subsection (b)(4).

(6) Unless the attorney withdraws in accordance with these rules, the authority and duty of an attorney of record shall continue after final judgment.

LCR 83.3

STANDARDS OF PROFESSIONAL CONDUCT; CONTINUING ELIGIBILITY TO PRACTICE; ATTORNEY DISCIPLINE

(a) Standards of Professional Conduct

In order to maintain the effective administration of justice and the integrity of the court, attorneys appearing in this district shall be familiar with and comply with the following materials ("Materials"):

(1) The local rules of this district, including the local rules that address attorney conduct and discipline;

(2) The Washington Rules of Professional Conduct (the "RPC"), as promulgated, amended, and interpreted by the Washington State Supreme Court, unless such amendments or additions are specifically disapproved by the court, and the decisions of any court applicable thereto;

(3) The Federal Rules of Civil and Criminal Procedure;

(4) The General Orders of the court.

In applying and construing these Materials, the court may also consider the published decisions and formal and informal ethics opinions of the Washington State Bar Association, the Model Rules of Professional Conduct of the American Bar Association and Ethics Opinions issued pursuant to those Model Rules, and the decisional law of the state and federal courts.

(b) Continuing Eligibility and Maintenance of Good Standing

(1) *Representation of Continuing Eligibility.* By signing any document filed with the court or otherwise participating in any matter before the court, an attorney certifies that he or she is currently eligible to practice before this court. Should the status of an attorney change so that he or she no longer meets the requirements of LCR 83.1(b), he or she shall notify the Clerk of Court in writing no later than 10 days after the change in status.

(2) If the change in status is due to a disciplinary proceeding or criminal conviction, the provisions of LCR 83.3(c) shall apply. Otherwise, upon receipt of a notification of change of status, the Chief Judge, or other district judge who may be assigned to the matter, may issue an Order to Show Cause why the court should not suspend or revoke the attorney's admittance to practice before the court. The Order to Show Cause shall contain:

(a) a reference to the notification of the change of status;

(b) an order directing the attorney to show cause within 30 days why the attorney's admission to practice before this court should not be suspended or revoked;

(c) notification that failure by the attorney to file a timely response to the Order to Show Cause may be deemed to be acquiescence to suspend or revoke the attorney's admission to practice before the court.

(3) If the attorney files a response stating that he or she does not contest the suspension or revocation of his or her admission to practice before this court or the attorney does not respond to the Order to Show Cause within the time specified, then the Chief Judge or other judge assigned to the matter may issue an order suspending or revoking the attorney's admission to practice before this court.

(4) If the attorney files a written response to the Order to Show Cause within the time specified, stating that he or she contests the entry of an order suspending or revoking his or her admission to practice, then the Chief Judge, or other district judge who may be assigned, shall determine whether such an order shall be entered. The judge shall impose an order suspending or revoking the attorney's admission to practice unless the attorney demonstrates by clear and convincing evidence that one or more of the following elements have been shown from the record:

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

(b) there was such an infirmity of proof establishing the reasons underlying the change in status in the other jurisdiction as to give rise to a clear conviction that the court should not accept as final the other jurisdiction's conclusion(s) on that subject;

(c) the imposition of suspension or revocation would result in a grave injustice; or

(d) other substantial reasons exist so as to justify not suspending or revoking the attorney's admission to practice.

(c) Attorney Discipline

(1) *Jurisdiction*. Any attorney admitted to practice before this court, admitted for a particular proceeding and/or who appears before this court is subject to the disciplinary jurisdiction of this court.

(2) *Powers of an Individual Judge to Deal with Contempt or Other Misconduct Not Affected*. Nothing contained in this Rule shall be construed to limit or deny the court the powers necessary to maintain control over proceedings before it, including the contempt powers. Nothing contained in this Rule precludes the court from imposing sanctions for violations of the Local Rules, the Federal Rules of Civil and Criminal Procedure, or other applicable statutes and rules.

(3) *Grounds for Discipline*. An attorney may be subject to disciplinary action for any of the following:

(A) violations of the Standards of Professional Conduct stated in subsection (a) above;

(B) disbarment, suspension, sanctions or other attorney discipline imposed by any federal or state court, bar association or other governing authority of any state, territory, possession, or the District of Columbia, or any other governing authority or administrative body which regulates the practice of attorneys;

(C) conviction of any felony or a misdemeanor involving dishonesty or corruption, including, but not limited to, those matters listed in Rule7.1(a)(2)(B)-(c) of the Washington Rules of Enforcement of Lawyer Conduct ("ELC");

(D) misrepresentation or concealment of a material fact made in an application for admission to the Bar of this court or in a pro hac vice or reinstatement application;

(E) violation of this court's Oath of Attorney.

(4) *Types of Discipline*. Discipline may consist of one or more of the following:

(A) disbarment from the practice of law before this court.

(B) suspension from the practice of law before this court for a specified period;

(C) interim suspension from the practice of law before this court, defined as the temporary suspension of a lawyer from the practice of law pending imposition of final discipline. Examples of situations in which the court will consider interim suspension include:

(i) suspension upon conviction of a serious crime;

(ii) suspension when the lawyer's continuing conduct is likely to cause immediate and serious injury to a client or the public; or

(iii) inability to practice.

(D) reprimand, defined as a form of public discipline which declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice before this court;

(E) admonition, defined as a form of non-public discipline which declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice before this court;

(F) The following types of discipline may be imposed alone or in conjunction with other types of discipline. If imposed alone or in conjunction with a reprimand, these other types of discipline need not be made public by the court:

(i) probation, with or without conditions;

(ii) restitution;

(iii) fines and/or assessment of costs; and

(iv) referral to another appropriate disciplinary authority.

Any discipline imposed may be subject to specific conditions, which may include, but are not limited to, continuing legal education requirements, counseling and/or supervision of practice.

(5) *Discipline Initiated by the Court*.

(A) Authority of the Court. The court has the inherent authority to govern the conduct of attorneys practicing law before it.

(B) Initiation of a Grievance. A United States District Court Judge, Bankruptcy Judge, or Magistrate Judge may present to the Chief Judge a written grievance alleging that an attorney has violated any of the standards of conduct specified in this Rule and recommending the imposition of discipline against that attorney. The Chief Judge shall review the grievance and determine whether the grievance should be dismissed or pursued further.

If the Chief Judge determines that the grievance should be pursued, he or she may refer it to another judge who shall review the record and evaluate the evidence. If the Chief Judge initiates the grievance, he or she must refer it to another judge. If, at any time during the evaluation of a grievance, the Chief Judge or the assigned judge determines that the grievance would be more appropriately addressed by the Washington State Bar Association or other governing authority or administrative body which governs the practice of attorneys, the Chief Judge and the judge who referred the grievance may refer the matter to another authority or dismiss the grievance.

(C) Notice and Hearing.

(i) If, after reviewing the record, the assigned judge determines that the matter should not be pursued, he or she will inform the Chief Judge. If the assigned judge concludes that a disciplinary proceeding should be conducted, he or she will issue an order to show cause to the respondent attorney explaining the alleged misconduct and inviting the attorney to show cause why he or she should not be disciplined. The notice shall be sufficiently clear and specific to inform the respondent attorney of the alleged misconduct. The order to show must also state that the failure to file a timely response may be deemed

acquiescence to the imposition of discipline. The order to show cause shall be e-mailed and mailed to the attorney at the last known addresses the attorney provided to the court.

(ii) The attorney will be afforded at least thirty days to present any objections and show cause why discipline should not be imposed, and the order to show cause must include the deadline.

(iii) The attorney may request a hearing and choose to be represented by counsel at his or her own expense. There is no right to court appointed counsel or to a jury at the disciplinary proceeding.

(iv) During the hearing, if one is requested, or in the attorney's response to the order to show cause, the respondent attorney may submit any evidence or statements to rebut the grievance. The court may impose disciplinary sanctions only after the respondent attorney is afforded the opportunity to present evidence and argument in rebuttal and/or mitigation.

(v) If the attorney fails to file a timely response to the order to show cause, the assigned judge will review the record and determine whether the imposition of discipline is warranted.

(D) Confidentiality. During the pendency of the disciplinary proceedings, the allegations and other records of the proceeding will remain confidential and will not be made a part of the public record.

(E) Recommendation to the Chief Judge. Within a reasonable time after the hearing, if one has been requested, or after receiving the attorney's response to the order to show cause, the assigned judge shall make findings of fact and conclusions of law and recommend the disciplinary action, if any, to be taken. The assigned judge will transmit his or her findings of fact and conclusions of law, recommendation, and the record to the Chief Judge.

(F) Imposition of Discipline. The Chief Judge will review the documents transmitted by the assigned judge under subparagraph (E) and determine whether discipline should be imposed and if so, the appropriate discipline. If the Chief Judge initiated the grievance, then the matter shall be referred to the judge who is next in seniority for review and a determination. The appropriate disciplinary sanction to be imposed is within the court's discretion. However, in determining the proper disciplinary sanction, the court may refer to the American Bar Association Standards for Imposing Lawyer Sanctions. In addition, the court may, in its discretion, use as a guide any federal or state case law the court deems helpful.

(6) *Reciprocal Discipline*.

(A) For purposes of this section, "discipline by any other jurisdiction" refers to discipline imposed by any federal or state court, bar association or other governing authority of any state, territory, possession, or the District of Columbia, or any other

governing authority or administrative body which regulates the practice of attorneys.

(B) For purposes of this section, "discipline by any other jurisdiction" refers only to suspension, disbarment or other disciplinary action which temporarily or permanently deprives an attorney of the right to practice law.

(C) Upon receipt of a copy of an order or other official notification that he or she has been subjected to discipline by any other jurisdiction, an attorney who is also subject to the disciplinary jurisdiction of this court shall provide the Clerk of Court with a copy of such disciplinary letter, notice or order.

(D) Any attorney subject to the disciplinary jurisdiction of this court who resigns from the Bar of any other jurisdiction while disciplinary proceedings are pending against the attorney in that jurisdiction shall promptly notify the Clerk of Court of such resignation.

(E) Upon receipt of reliable information that an attorney subject to the disciplinary jurisdiction of this court has been subjected to discipline by any other jurisdiction, or has resigned from the Bar of any other jurisdiction while an investigation or proceeding for discipline was pending, the Chief Judge, or other district judge who may be assigned to the matter, may issue an Order to Show Cause why reciprocal discipline should not be imposed by this court. The Order to Show Cause shall contain:

> (i) a reference to the order or other official notification from the other jurisdiction;
>
> (ii) an order directing the attorney to show cause within 30 days why reciprocal discipline should not be imposed by this court;
>
> (iii) an order directing that if the attorney chooses to respond to the order and to contest the imposition of reciprocal discipline, he or she must produce a certified copy of the entire record from the other jurisdiction or persuade the court that less than the entire record will suffice;
>
> (iv) notification that failure by the attorney to file a timely response to the Order to Show Cause may be deemed to be acquiescence to reciprocal discipline.

(F) If the attorney files a response stating that he or she does not contest the imposition of reciprocal discipline from this court, or if the attorney does not respond to the Order to Show Cause within the time specified, then the court may issue an order of reciprocal discipline. In fashioning the sanction to be imposed, the court may be guided by the discipline imposed by the other jurisdiction. The order imposing reciprocal discipline shall be issued by the Chief Judge or other district judge who may be assigned to the matter.

(G) If the attorney files a written response to the Order to Show Cause within the time specified, stating that he or she contests the entry of an order of reciprocal discipline, then the Chief Judge, or other district judge who may be assigned, shall determine whether an order of reciprocal discipline shall be entered. The judge shall impose an order of reciprocal discipline, unless the attorney demonstrates by clear and convincing evidence that one or more of the following elements appear from the record on which the original discipline is predicated;

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

(ii) there was such an infirmity of proof establishing the misconduct as to give rise to a clear conviction that the court should not accept as final the other jurisdiction's conclusion(s) on that subject;

(iii) the imposition of like discipline would result in a grave injustice; or

(iv) other substantial reasons exist so as to justify not accepting the other jurisdiction's conclusion(s).

(7) *Discipline Based Upon a Criminal Conviction*.

(A) Any attorney subject to the disciplinary jurisdiction of this court shall promptly notify the Clerk of Court of the attorney's conviction of any felony or a misdemeanor involving dishonesty or corruption, including, but not limited to, those matters listed in Rule 7.1(a)(2)(B)-(c) of the ELC (hereafter, "crime" or "criminal conviction").

(B) Upon receipt of reliable proof that an attorney has been convicted of any of those matters identified in paragraph A above, the court shall enter an order of interim suspension, suspending the attorney from engaging in the practice of law in this court pending further order. Upon good cause shown, the court may set aside such suspension where it appears to be in the interest of justice to do so.

(C) The court shall forthwith issue an order to the subject attorney directing the attorney to show cause why the conviction or the facts underlying the conviction do not affect the attorney's fitness to practice law and why the attorney should not be subject to discipline based upon the conviction. The Order to Show Cause shall contain:

(i) a copy of or a reference to the notification to the court that the attorney has been convicted of a crime;

(ii) an order directing the attorney to show cause within 30 days why the criminal conviction or underlying facts do not affect the attorney's fitness to practice law, and why discipline should not be imposed by this court;

(iii) notification that failure by the attorney to file a timely response to the Order to Show Cause may be deemed acquiescence to discipline based upon the criminal conviction.

(D) If the attorney files a response stating that he or she does not contest the imposition of discipline by this court based upon the criminal conviction, or if the attorney does not respond to the Order to Show Cause within the time specified, then the court may issue an order of discipline.

(E) If the attorney files a written response to the Order to Show Cause within the time specified, stating that the criminal conviction or its underlying facts do not affect the attorney's fitness to practice law or stating that he or she contests the entry of an order of discipline, then the court shall determine whether discipline should be imposed.

(F) The discipline to be imposed shall be within the court's discretion. The court may consider the underlying facts of the criminal conviction, the sentence imposed on the attorney, the gravity of the criminal offense, whether the crime involved dishonesty or corruption, the effect of the crime on the attorney's ability and fitness to practice law, and any other element the court deems relevant to its determination.

(G) Upon the court's receipt of reliable proof demonstrating that the underlying criminal conviction has been reversed or vacated, any suspension order entered under subparagraph (7)(B) and any other discipline imposed solely as a result of the conviction may be vacated.

(8) *Disciplinary Orders and Notices*.

(A) Any order of discipline, except for non-public forms of discipline, as stated in subparagraph (4)(E)-(F) herein, shall be a public record.

(B) The court shall cause copies of all orders and notices of discipline, except for an admonition, to be given to the Clerk of Court, the Clerk of the United States District Court for the Eastern District of Washington, the Clerk of the United States Bankruptcy Court for the Western District of Washington, the Clerk of the United States Court of Appeals for the Ninth Circuit, the Washington State Bar Association, and the appropriate disciplinary bodies in the jurisdictions in which the court knows the disciplined attorney is admitted to practice.

(9) *Reinstatement*.

(A) No attorney who has been suspended or disbarred from practice before this court may resume practice before the court until reinstated by order of the court.

(B) Any attorney who has been suspended or disbarred from practice before this court may not apply for reinstatement until the expiration of such period of time as the court shall have specified in the order of suspension or disbarment.

(C) Any attorney who has been disbarred or suspended from practice pursuant to the provisions of subparagraph (6) (reciprocal discipline) may apply for reinstatement based upon a change of the attorney's status in the jurisdiction whose imposition of discipline upon the attorney was the basis for the imposition of reciprocal discipline by the court.

(D) Any attorney whose admission to practice before this court was suspended or revoked pursuant to LCR 83.3(b) may apply for reinstatement if the attorney becomes eligible again under LCR 83.1.

(E) Petitions for reinstatement shall be filed with the Clerk of Court, who will transmit the petition to the Chief Judge. The petition must include a copy of this court's prior order of suspension or disbarment, a copy of an order of reinstatement from another jurisdiction if the petitioner is seeking reinstatement based on such an order, and a concise statement of facts claimed to justify reinstatement. Petitioners for reinstatement after disbarment must also file a Petition for Admission to Practice before this court and pay the applicable fee.

Upon receipt of a petition for reinstatement, the Chief Judge shall consider the matter or refer it to another designated judge. The petitioner shall have the burden of demonstrating that he or she is qualified and able to practice law before this court and that the circumstances that led to the suspension or disbarment have changed. After consideration, the court shall enter an appropriate order.

(F) Expenses incurred in the investigation and proceedings for reinstatement may be assessed by the court against the petitioning attorney, regardless of the outcome of the proceedings.

LCR 83.4

LEGAL INTERNS

(a) Admission to Limited Practice

Qualified law students and graduates of approved law schools may be admitted to the status of legal intern and be granted a limited license to engage in the practice of law only as provided in this rule. To qualify, an applicant must:

(1) Be a student duly enrolled and in good academic standing at an approved law school with legal studies completed amounting to not less than two-thirds of a prescribed three-year course of study or five-eighths of a prescribed four-year course of study; or

(2) Make the application before expiration of nine months following graduation from an approved law school, and submit satisfactory evidence thereof to the court; and

(3) Certify in writing under oath that the applicant has read, is familiar with, and will abide by, the Washington State Rules of Professional Conduct and this rule.

(b) Procedure

The applicant shall submit to the clerk a completed Application for Leave to Appear as a Legal Intern, which can be downloaded from the court's website. No fee shall be required.

(1) The application shall give the name of, and shall be signed by, the supervising lawyer who, in doing so, shall assume the responsibilities of supervising lawyer set forth in this rule if the applicant is granted a limited license as a legal intern. The supervising lawyer shall be relieved of such responsibilities upon the termination of the limited license or at an earlier time if the supervising lawyer or the applicant gives written notice to the court requesting that the supervising lawyer be so relieved.

(2) Upon receipt of the application, the clerk shall forward it to a district judge or magistrate judge, who will approve or disapprove the application and return it to the clerk.

(c) Scope of Practice

A legal intern shall be authorized to engage in the limited practice of law only as authorized by the provisions of this rule. A legal intern shall be subject to all laws and rules governing lawyers admitted to this court and shall be personally responsible for all services performed as an intern.

(1) A judge may exclude a legal intern from active participation in a case filed with the court in the interest of orderly administration of justice or for the protection of a litigant or witness, and shall thereupon grant a continuance to secure the attendance of the supervising lawyer.

(2) No legal intern may receive payment from a client for the intern's services. However, nothing contained herein shall prevent a legal intern from being paid for services by the intern's employer or to prevent the employer from making such charges for the service of the legal intern as may otherwise be proper. A legal intern, the intern's supervising lawyer or a lawyer from the same office shall, before the intern undertakes to perform any services for a client, inform the client of the legal intern's status, and obtain the client's consent to be represented by a legal intern.

(3) A legal intern may advise or negotiate on behalf of a person referred to the intern by the supervising lawyer. A legal intern may prepare necessary pleadings, motions, briefs or other documents. It is not necessary in such instances for the supervising lawyer to be present.

(4) A legal intern may participate in all court proceedings, including depositions, provided the supervising lawyer or another lawyer from the same office is present. Unless otherwise ordered by the court, the supervising lawyer or another lawyer from the same office shall be present while a legal intern is participating in court proceedings. Ex parte and agreed orders may be presented to the court by a legal intern without the presence of the supervising lawyer or another lawyer from the same office.

(d) Supervising Lawyer

The supervising lawyer shall be admitted to practice before this court. The supervising lawyer shall have been actively engaged in the practice of law for at least three years at the time the application is filed.

(1) The supervising lawyer or another lawyer from the same office shall direct, supervise and review all of the work of the legal intern and both shall assume personal professional responsibility for any work undertaken by the legal intern while under the lawyer's supervision. All pleadings, motions, briefs, and other documents prepared by the legal intern shall be reviewed by the supervising lawyer or a lawyer from the same office as the supervising lawyer. When a legal intern signs any correspondence or legal document, the intern's signature shall be followed by the title "legal intern" and, if the document is prepared for presentation to a court or for filing with the clerk thereof, the document shall also be signed by the supervising lawyer or lawyer from the same office as the supervising lawyer.

(2) Supervision shall not require that the supervising lawyer be present in the room while the legal intern is advising or negotiating on behalf of a person referred to the intern by the supervising lawyer, or while the legal intern is preparing the necessary pleadings, motions, briefs, or other documents.

(3) As a general rule, no supervising lawyer shall have supervision over more than one legal intern at any one time. However, in the case of (i) the Federal Public Defender or the U.S. Attorney, the supervising lawyer may have supervision over two legal interns at one time, or (ii) a clinical course offered by an approved law school where such course has been approved by its dean and is directed by a member of its faculty, each full-time clinical supervising lawyer may have supervision over ten legal interns at one time.

(4) A lawyer currently acting as a supervising lawyer may be terminated as a supervising lawyer at the discretion of the court. When an intern's supervisor is so terminated, the intern shall cease performing any services under this rule and shall cease holding himself or herself out as a legal intern until written notice of a substitute supervising lawyer, signed by the intern and by the new and qualified supervising lawyer, is given to the court.

(5) The failure of a supervising lawyer, or lawyer acting as a supervising lawyer, to provide adequate supervision or to comply with the duties set forth in this rule shall be grounds for disciplinary action by the court.

(6) For purposes of the attorney-client privilege, an intern shall be considered a subordinate of the lawyer providing supervision for the intern.

(7) For purposes of this provision of this rule which permit a lawyer from the same office as the supervising lawyer to sign documents or be present with a legal intern during court appearances, the lawyer so acting must be one who meets all of the qualifications for becoming a supervising lawyer under this rule.

(e) Term of Limited Admission to Practice

A limited admission to practice as a legal intern shall be valid, unless revoked, for a period of not more than 24 consecutive months, provided that a person shall not serve as a legal intern more than 12 months after graduation from law school.

(1) A limited admission to practice before the court is granted at the sufferance of the court and may be revoked at any time upon the court's own motion.

(2) An intern shall immediately cease performing any services under this rule and shall cease holding himself out as a legal intern (i) upon termination for any reason of the intern's limited license under this rule; or (ii) upon the resignation of the intern's supervising lawyer; or (iii) upon the suspension or termination by the court of the supervising lawyer's status as supervising lawyer; or (iv) upon the withdrawal of approval of the intern pursuant to this rule.

LCR 84

RESERVED

LCR 85

TITLE AND CITATIONS

The local rules of this district should be cited "Local Rules W.D. Wash. __." The rule number should be preceded by "LCR" for the Local Civil Rules,[1] by "CrR" for the Local Criminal Rules, and by "MJR" for rules governing proceedings before magistrate judges. The Local Patent Rules may be cited as "Local Patent Rules," and the Local Admiralty Rules may be cited "Local Admiralty Rules."

[1] Other Local Rules of this court may continue to reference the Local Civil Rules as "CR."

LCR 86

EFFECTIVE DATE

These local rules, as amended, shall apply to every civil case pending in the Western District of Washington, without regard to when the case was filed. The rules were last revised effective December 1, 2012.[1]

[1] For actions pending on December 1, 2012, if fewer than 14 days remain to perform an act otherwise governed by these rules, the provisions of the local rules that were in effect on November 30, 2012 shall apply to that act.

LCR 87

REFERRAL OF BANKRUPTCY CASES AND PROCEEDINGS

(a) Cases and Proceedings Referred to Bankruptcy Judges

Pursuant to 28 U.S.C. §157(a), this court hereby refers to the bankruptcy judges of this district all cases under Title 11, and all proceedings arising under Title 11 or arising in or related to a case under Title 11. If a bankruptcy judge determines that entry of a final order or judgment by a bankruptcy judge would not be consistent with Article III of the United States Constitution in a particular proceeding referred under this local rule and determined to be a core matter, the bankruptcy judge shall, unless otherwise ordered by the district court, hear the proceeding and submit proposed findings of fact and conclusions of law to the district court. The district court may treat any order of the bankruptcy court as proposed findings of fact and conclusions of law in the event the district court concludes that the bankruptcy judge could not have entered a final order or judgment consistent with Article III of the United States Constitution.

(b) Motions to Enforce Rule

To the extent the referral described in subparagraph (a) has not otherwise been effected by the clerk of the district court, any party to a proceeding pending in the district court may move the district court to enforce the referral as to such proceeding or any part thereof.

(c) Motions to Withdraw the Reference

A motion to withdraw the reference must not be filed with this court but must be filed with the clerk of the bankruptcy court pursuant to Local Rule W.D. Wash. Bankr. 5011-1, which sets forth the procedure for filing such motions and transmitting them to the district court for consideration.

LCR 88

BANKRUPTCY APPEALS

(a) Bankruptcy Appellate Panel

(1) Pursuant to 28 U.S.C. § 158(b)(6), this court hereby authorizes a bankruptcy appellate panel to hear and determine appeals from judgments, orders, and decrees entered by bankruptcy judges from this district, subject to the limitations set forth in subparagraphs (2) through (4).

(2) The bankruptcy appellate panel may hear and determine only those appeals in which all parties to the appeal consent thereto pursuant to paragraph (b) of this rule.

(3) The bankruptcy appellate panel may hear and determine appeals from final judgments, orders, and decrees entered by bankruptcy judges and, with leave of the bankruptcy appellate panel, appeals from interlocutory orders and decrees entered by bankruptcy judges.

(b) Form and Time of Consent

The consent of a party to allow an appeal to be heard and determined by the bankruptcy appellate panel shall be deemed to have been given unless written objection thereto is timely made in accordance with the Orders Establishing and Continuing the Bankruptcy Appellate Panel of the Ninth Circuit.

(c) Rules Governing Bankruptcy Appeals

(1) Practice in such bankruptcy appeals as may come before this district shall be governed by Part VIII of the Rules of Bankruptcy Procedure, except as provided in this order or in rules subsequently adopted by this district court.

(2) Notwithstanding subparagraph (1), the time for filing appellant's, appellee's, and reply briefs for consideration by the district court shall be 40 days, 30 days, and 14 days, respectively, in lieu of the time limits specified in Rule 8009(a) of the Rules of Bankruptcy Procedure; provided, however, that the district court or the bankruptcy appellate panel may shorten these time limits in appropriate cases.

(3) Notwithstanding subparagraph (1), unless otherwise ordered by the court, appellant’s and appellee’s initial briefs shall not exceed thirty pages, and appellant’s reply brief shall not exceed twenty pages.

LCR 89

NOTICE OF BANKRUPTCY FILING

If a party files for bankruptcy during the pendency of any action before this court, that party shall notify the court within three days by filing a Notice of Bankruptcy Filing. The Notice must identify the filing party, the date of the filing, the court where the filing occurred, and set forth the party's position regarding whether the action is subject to the automatic stay of 11 U.S.C. § 362. If the filing party has not filed the required Notice and another party learns of the bankruptcy filing, that party must file the Notice within five days of learning of the bankruptcy filing. The court may impose sanctions on one or more parties that fail to file the required Notice.

LCR 90 THROUGH 99

RESERVED

LCR 100

PETITIONS FOR HABEAS CORPUS AND MOTIONS PURSUANT TO TITLE 28 U.S.C. § 2255

(a) Form and Content

Motions filed pursuant to 28 U.S.C. § 2255 must use or substantially follow this district's form, which is available on the court's website. Upon request, the clerk shall provide blank copies of forms prescribed by this court for petitions for writs of habeas corpus and motions filed pursuant to 28 U.S.C. § 2255. The petitioner shall provide all information required by the form.

(b) In Forma Pauperis

See LCR 3.

(c) Place of Filing

See LCR 3.

(d) Filing the Petition

Petitioners shall send to the clerk an original completed petition or motion form for filing and two copies of the petition.

(e) Verification

If a petition or motion is not made and verified by the party in custody, the person making such petition or motion shall verify the same on behalf of such party in custody, and shall set forth therein the reason why it is not made and verified by the party in custody, and shall state he or she knows the facts set forth therein, or if upon information and belief, the sources of his or her information shall be stated.

LCR 101

REMOVED CASES

(a) If the complaint filed in state court does not set forth the dollar amount prayed for, a removal petition shall nevertheless be governed by the time limitation of 28 U.S.C. § 1446(b) if a reasonable person, reading the complaint of the plaintiff, would conclude that the plaintiff was seeking damages in an amount greater than the minimum jurisdictional amount of this court. The notice of removal shall in that event set forth the reasons which cause petitioner to have a good faith belief that the plaintiff is seeking damages in excess of the jurisdictional amount of this court notwithstanding the fact that the prayer of the complaint does not specify the dollar damages being sought.

(b) In cases removed from state court, the removing defendant(s) shall file contemporaneously with the notice of removal a copy of the operative complaint, which must be attached as a separate "attachment" in the electronic filing system and labeled as the "complaint" or "amended complaint." Defendant must include a certificate of service which lists all counsel and pro se parties who have appeared in the action with their contact information, including email address. In addition, a copy of any Jury Demand filed in the state court must be filed as an attachment and labeled "Jury Demand." The removing defendant(s) shall, within fourteen days of filing the notice of removal, file with the clerk of this court black-on-white copies of all additional records and proceedings in the state court, together with defendant's or defense counsel's verification that they are true and complete copies of all the records and proceedings in the state court proceeding. The copies need not be certified or exemplified by the state court, and the added cost of certification or exemplification will not be allowed as a cost item under 28 U.S.C. § 1920(4) unless certification is required after an opposing party challenges the accuracy of the copies. Records and proceedings in the state court, filed with the notice of removal, need not be refiled.

(c) If a motion is pending and undecided in the state court at the time of removal, it will not be considered unless and until the moving party notes the motion on this court's calendar in accordance with LCR 7(d).

(d) In a case removed from state court, a party must comply with Fed. R. Civ. P. 81(c) to preserve any right to a trial by jury.

(e) In a case removed from state court, the removing party must include in the notice of removal a paragraph titled, "Intradistrict Assignment" that identifies any basis for reassigning the case to the Seattle Division or to the Tacoma Division pursuant to the assignment criteria listed in LCR 3(d). If the removal is based on diversity, the notice of removal must also, to the extent possible, identify the citizenship of the parties, and, if any of the parties is a limited liability corporation (LLC), a limited liability partnership (LLP), or a partnership, identify the citizenship of the owners/partners/members of those entities to establish the court's jurisdiction.

(f) Parties asserting removal under 28 U.S.C. § 1452 ("Removal of claims related to bankruptcy cases") should file their notice of removal with the Clerk of the Bankruptcy Court. A party

should not file the notice with the Clerk of the District Court for the Western District of Washington.

LCR 102

COMPLEX, MULTIPLE AND MULTIDISTRICT LITIGATION

(a) Definitions

"Complex litigation," as used in these rules, includes one or more related cases which present unusual problems and which require extraordinary treatment, including but not limited to the cases ordinarily designated as "protracted" or "big."

"Multiple litigation," as used in these rules, is two or more complex civil cases with one or more common questions of fact pending in one district.

"Multidistrict litigation," as used in these rules, is two or more civil cases with one or more common questions of fact pending in more than one federal district.

The policy of the court is to identify complex, multiple and multidistrict litigation as expeditiously as possible, and to apply where appropriate the provisions of the Manual for Complex Litigation (the most current edition is maintained by the Seattle Ninth Circuit Library).

(b) Multidistrict Litigation

Whenever a party knows or learns that its pending case involves all or a material part of the same subject matter and all or substantially the same parties as another action that is pending in any other federal court, the party must file a Notice of Pendency of Other Action within five days of learning of the other action as set forth in LCR 3(g).

LCR 103

PRISONER COMPLAINTS UNDER CIVIL RIGHTS ACT, 42 U.S.C. § 1983

(a) Form of Complaint

Complaints filed pursuant to the Civil Rights Act, 42 U.S.C. § 1983 by or on behalf of prisoners, shall be typewritten or legibly handwritten, and signed by each plaintiff. Such complaints shall be on the forms supplied by the court unless the district judge or magistrate judge, upon finding that the complaint is understandable and that it conforms with the local rules and Federal Rules of Civil Procedure, in his or her discretion, accepts for filing a complaint that is not submitted on the appropriate forms.

(b) Forma Pauperis

See LCR 3.

(c) Place of Filing

See LCR 3(d).

(d) File Original Complaint; No Copies Required

Plaintiff shall send to the clerk an original complaint form for filing; plaintiff is not required to file additional copies. Plaintiff should keep a copy of the complaint for his or her own records; the clerk will not routinely return a copy of the complaint to plaintiff.

LCR 104

SUPPLEMENTAL REQUIREMENTS FOR FIRST HABEAS CORPUS PETITIONS IN CAPITAL CASES

(a) Applicability

This rule shall govern the procedures for a first petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 in which petitioner seeks relief from a judgment imposing a penalty of death. A subsequent filing may be deemed a first petition under this rule if the original filing was not dismissed on the merits. This rule is intended to supplement the Rules Governing § 2254 Cases and is not intended to alter or amend those rules. The application of this rule to a particular petition may be modified by the district judge to whom the petition is assigned.

(b) Notices From Washington Attorney General

The Washington Attorney General shall send to the clerk of this court a monthly report summarizing the status of each case wherein a Washington court has imposed the sentence of death.

(c) Notice From Petitioner's Counsel

Whenever counsel determines that a petition will be filed in this court, he or she shall promptly file with the clerk of this court and send to the Washington Attorney General's Corrections Division a written notice of intention to file a petition. The notice shall state the name of the petitioner, the district in which petitioner was convicted, the place of petitioner's incarceration, and the status of petitioner's state court proceedings. The notice is for the information of the court only, and failure to file the notice shall not preclude the filing of the petition.

(d) Counsel

(1) *Appointment of Counsel*. Each petitioner shall be represented by counsel, unless petitioner has clearly elected to proceed pro se and the court is satisfied, after a hearing, that petitioner's election is intelligent and voluntary.

Unless petitioner is proceeding pro se or is represented by retained counsel, counsel shall be appointed in every such case at the earliest practicable time. A panel of attorneys qualified for appointment in death penalty cases will be recruited and maintained by the Federal Public Defender. The Federal Public Defender will accept and review referrals to this panel from interested associations and bar groups.

When a death judgment is affirmed by the Washington Supreme Court and subsequent proceedings in the state courts have been concluded, if counsel is willing to continue representation in the federal habeas corpus proceedings, the Federal Public Defender shall review counsel's performance in the state courts and make a recommendation of whether that counsel should be appointed in federal court.

If state post-conviction counsel is available to continue representation in the federal court, and if he or she is deemed qualified to do so by the Federal Public Defender, there is a presumption in favor of continued representation except where state post-conviction counsel was also counsel at trial.

In light of this presumption, it is expected that appointed counsel who is willing to continue representation and who has been determined by the Federal Public Defender to be qualified to do so would ordinarily file a motion for appointment of counsel on behalf of his or her client together with the client's federal habeas corpus petition. If, however, counsel for any reason wishes to confirm his or her appointment before preparing the petition, counsel may move for appointment before filing the petition.

If state appellate counsel is not available to represent petitioner in the federal habeas corpus proceedings, or if appointment of state appellate counsel would be inappropriate for any reason, the court shall appoint counsel upon application of petitioner. The clerk of court shall have forms available for such application. A model form for such application is annexed to this rule. Counsel shall be appointed from the panel of qualified attorneys maintained by the Federal Public Defender, who may suggest one or more specific counsel for appointment. If application for appointment of counsel is made before a finalized petition has been filed, the application shall be assigned to a district judge in the same manner that a finalized petition would be assigned, and counsel shall be appointed by the assigned judge. The judge so assigned shall continue to preside over the proceedings through their conclusion.

(2) *Second Counsel*. Appointment and compensation of second counsel shall be governed by § 2.11 of Volume VII of the Guide to Judiciary Policies and Procedures, Appointment of Counsel in Criminal Cases, and by 21 U.S.C. § 848(q).

(e) Filing

Petitions as to which venue lies in this district shall be filed in Seattle.

Petitions shall be completed in conformance with LCR 100. All petitions (a) shall state whether petitioner has previously sought relief arising out of the same matter from this court or any other federal court, together with the ruling and reasons of such court, and (b) shall set forth any scheduled execution date. The above requirements do not apply to preliminary petitions filed under Section (h)(2), below.

An original and three copies of the petition shall be filed by counsel for the petitioner. A pro se petitioner need only file the original. No filing fee is required.

The clerk will immediately notify the Washington Attorney General's Corrections Division when a petition is filed.

When a petition is filed by a petitioner who was convicted outside this district, the clerk will immediately advise the clerk of the court of the district in which the petitioner was convicted.

(f) Assignment to District Judges

Notwithstanding the general assignment plan of this court, petitions shall be assigned to the district judges of the court as follows:

(1) The clerk shall establish a separate category for these petitions, to be designated with the title "Capital Case."

(2) All active district judges of this court shall participate in the assignments without regard to intra district venue.

(3) Petitions in the Capital Case category shall be assigned blindly and randomly by the clerk to an active district judge of the court. If the assigned judge has already presided over at least one Capital Case during his or her tenure as a federal judge in this district, but other active judges have not, then the clerk will reassign the case until each active district judge has had one Capital Case. At such time as each active district judge has had one Capital Case, the blind assignment process will start again until each active district judge has had two Capital Cases, and so on.(4) If the petitioner has previously sought relief in this court with respect to the same conviction, the petition will be assigned to the district judge, if he or she is still sitting, who was assigned to the prior proceeding unless such district judge has taken senior status and has elected not to hear capital habeas corpus petitions.

(5) Pursuant to 28 U.S.C. § 636(b)(1)(B), and not inconsistent with law, United States magistrate judges may be designated by the court to perform all duties under this rule, including evidentiary hearings.

(g) Transfer of Venue

Subject to the provisions of 28 U.S.C. § 2241(d), it is the policy of this court that a petition should be heard in the district in which the petitioner was convicted, rather than in the district of petitioner's present confinement.

If an order for the transfer of venue is made, the district judge will order a stay of execution which shall continue until such time as the transferee court acts upon the petition or the order of stay.

(h) Stays of Execution

(1) *Stay Pending Final Disposition*. Upon the filing of a first petition, unless the petition is patently frivolous, the judge will order a stay of execution pending final disposition of the petition in this court.

(2) *Temporary Stay for Appointment of Counsel*. Where counsel in the state court proceedings withdraws at the conclusion of the state court proceedings or is otherwise not available or qualified to proceed, the Federal Public Defender will designate an attorney from the panel who will assist an indigent petitioner in filing pro se applications for appointment of counsel and for temporary stay of execution. This application shall be

substantially in the form annexed hereto and shall be accompanied by a statement, describing one or more federal grounds for relief, which shall be deemed to be a petition for writ of habeas corpus with leave granted a priori to amend the petition upon appointment of counsel. Upon the filing of this application and statement, the district court shall issue a temporary stay of execution and appoint counsel from the panel of attorneys certified for appointment. The temporary stay will remain in effect for forty-five (45) days unless extended by the court.

(3) *Temporary Stay for Preparation of the Petition*. Where counsel new to the case is appointed, upon counsel's application for a temporary stay of execution accompanied by a specification of nonfrivolous issues to be raised in the petition, the district court shall issue a temporary stay of execution unless only frivolous issues are presented. If no filing was made under paragraph (h)(2) above, the specification of nonfrivolous issues required under this paragraph shall be deemed to be a petition for writ of habeas corpus with leave having been granted to amend the petition. The temporary stay will remain in effect for one hundred twenty (120) days to allow newly appointed counsel to prepare and file the finalized petition. The temporary stay may be extended by the court upon a subsequent showing of good cause.

(4) *Temporary Stay for Transfer of Venue*. See paragraph (g) of this rule.

(5) *Stay Pending Appeal*. If the petition is denied and a certificate of probable cause for appeal is issued, the court will grant a stay of execution which will continue in effect until the court of appeals acts upon the appeal of the order of stay.

(6) *Notice of Stay*. Upon the granting of any stay of execution, the clerk will immediately notify the Superintendent of the Washington State Penitentiary, the Washington Attorney General, and the prosecuting attorney of the county in which the conviction was obtained. The Washington Attorney General shall ensure that the clerk has a 24 hour telephone number to the Superintendent.

(i) Procedures for Considering the Petition

Unless the district judge dismisses the petition under Rule 4 of the Rules Governing § 2254 Cases, the following schedule and procedure shall apply subject to modification by the district judge for good cause shown. Requests for enlargement of any time period in this Rule shall comply with LCR 7(d)(2) and Fed. R. Civ. P. 6.

(1) Respondent shall as soon as practicable, but in any event on or before twenty (20) days from the date of service of the finalized petition, lodge with the court and serve petitioner's lead counsel with the following:

(A) Transcripts of all state trial court proceedings;

(B) Appellant's and respondent's briefs on direct appeal to the Washington Supreme Court, and the opinion or orders of that court;

(C) Petitioner's and respondent's briefs in any state court post-conviction proceedings, and all opinions, orders, and transcripts of such proceedings;

(D) Copies of all pleadings, opinions, and orders in any previous federal habeas corpus proceeding filed by petitioner, or on petitioner's behalf, which arose from the same conviction;

(E) An index of all materials described in items (A) through (D) above. Such materials are to be marked and numbered so that they can be uniformly cited.

If any items identified in paragraphs (A) through (D) above are not available, respondent shall state when, if at all, such missing material can be lodged.

(2) If counsel for petitioner claims that respondent has not complied with the requirements of paragraph (1), counsel for petitioner shall immediately notify the court in writing, with a copy to respondent.

(3) As soon as practicable after the filing of the record, the court shall set a status conference to determine a schedule for further proceedings.

(j) Evidentiary Hearing

If an evidentiary hearing is held, the court will order the preparation of a transcript of the hearing, which is to be immediately provided to petitioner and respondent for use in briefing and argument. Upon the preparation of the transcript, the court may establish a reasonable schedule for further briefing and argument of the issues considered at the hearing.

(k) Rulings

The court's rulings may be in the form of a written opinion which will be filed, or in the form of an oral opinion on the record in open court, which will be promptly transcribed and filed.

The clerk will immediately notify the Superintendent of the Washington State Penitentiary, the Washington Attorney General, and the prosecutor of the county of conviction whenever relief is granted on a petition.

The clerk will immediately notify the clerk of the United States Court of Appeals for the Ninth Circuit by telephone of (i) the issuance of a final order denying or dismissing a petition without a certificate of probable cause, or (ii) the denial of a stay of execution.

When a notice of appeal is filed, the clerk will transmit the available records to the Court of Appeals immediately.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

_____,	)	
	)	
Petitioner,	)	
	)	Case No. ____
v.	)	
	)	APPLICATION FOR
_____,	)	WRIT OF HABEAS
Superintendent of Washington	)	CORPUS; APPLICA-
State Penitentiary,	)	TION FOR APPOINT-
	)	MENT OF COUNSEL;
Respondent.	)	REQUEST FOR STAY
_____	)	OF EXECUTION

My name is _____. I am a prisoner in state custody under sentence of death. I was convicted and sentenced in the _____County Superior Court. My death sentence was affirmed by the Washington Supreme Court on _, 20_____. My scheduled execution date is _____, 20___.

I was tried and I am being held in violation of my federal constitutional rights, including the following:

(1) _____;
(2) _____;
(3) _____;
(Include at least one federal ground for relief)

The attorney representing me in my most recent state court proceedings in connection with my conviction and death sentence has informed me that he/she is unable to represent me in federal habeas corpus proceedings. I am indigent and have substantially no assets. I hereby request that the court appoint an attorney to represent me in my petition for writ of habeas corpus in this court.

I also request that the court stay my execution at this time until counsel has been appointed and permit me leave to amend this petition after counsel has had opportunity to assist me. I declare under penalty of perjury that the foregoing is true and correct.

DATED: _____ _____
Signature of Prisoner

CIVIL RULES

APPENDIX A. DEFENDANT'S SECOND MOTION FOR PROTECTIVE ORDER

See LCR 10(e)(1)

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABC CORPORATION, Plaintiff, v. XYZ COMPANY, INC., Defendant.	)	No. C12-1234RSL DEFENDANT'S SECOND MOTION FOR PROTECTIVE ORDER NOTE ON MOTION CALENDAR: [insert date]

[Insert Text]

Law Firm of Lawyers
10,000 Fifth Avenue
Seattle, Washington 98104
(206) 555-5555

CIVIL RULES

APPENDIX B. SUBMISSION REGARDING REQUEST FOR PRODUCTION

See LCR 37

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JONES ACTOR, Plaintiff, v. BIG ROSE FLOWER COMPANY, Defendant.	)	No. C01-9999RSL LCR 37 SUBMISSION REGARDING REQUEST FOR PRODUCTION NO. 17 NOTE ON MOTION CALENDAR: [insert date]

I. MOVING PARTY'S INTRODUCTORY STATEMENT

Defendant Big Rose Flower Company is the moving party for this submission. Plaintiff Jones Actor is seeking more than $2.5 million in damages, claiming that at the time he purchased Big Rose stock, Big Rose allegedly failed to disclose that the property owned by Big Rose for growing flowers would be unable to produce a suitable crop in 2000. It is claimed that these alleged misstatements violated Section 10(b) of the 1934 Securities Exchange Act and the Washington Securities Act.

These allegations are untrue. Further, Actor is a director of a company that is also in the flower business, Fleurs 'R' Nous Company, and he was undoubtedly aware of the problems caused by the 1999 drought, which affected all flower producing companies in the Northwest.

II. RESPONDING PARTY'S STATEMENT

Jones Actor purchased nearly $3 million of stock in Big Rose--stock that is worth less than $500,000 today. He purchased this substantial amount of stock because of glowing reports from Big Rose regarding its prospects for future profits.

However, things were not as rosy as they seemed. All of Big Rose's land holdings used to produce flowers were not only severely parched by the 1999 drought, but also contaminated with chemicals because of a mistake in choosing fertilizers. Big Rose knew that it was unlikely that

these chemicals could be removed from the soil in time to produce a profitable crop for 2000. When this information was finally disclosed to the public, Big Rose stock plummeted in value.

III. DISPUTED DISCOVERY REQUESTS

REQUEST FOR PRODUCTION 17: Please produce all income tax returns for 1995 through 2000 for the Fleurs 'R' Nous Company.

RESPONSE: Actor objects to this request on the grounds that it calls for information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Further, the information sought is confidential.

Moving Party's Argument

Actor claims that he was deceived by the alleged omissions of information from Big Rose's public statements. To defend against this claim, Big Rose will show that Actor is a sophisticated individual, who was aware of the risks in the flower business and who also had information obtained by Fleurs 'R' Nous regarding the problems that Big Rose was having with its land at the time he was buying Big Rose stock. Defendants in security cases are properly allowed to obtain tax returns, because they help show the plaintiff's degree of sophistication and understanding of the risks of investment. *Davis v. Big Co.*, 123 F.3d 777, 788 (9th Cir. 1999). Further, the tax return may identify individuals with knowledge of Actor's understanding of the industry.

Responding Party's Response

While it is true that tax returns may be produced to show the degree of sophistication of a securities plaintiff, the tax returns sought here are not Actor's personal tax returns, but rather the tax returns for a company in which he is a director and part owner. That company is not a party to these proceedings. Non-parties should not be forced to produce their tax returns absent very compelling reasons. *Westminster v. Abbey*, 867 F.3d 309, 312 (9th Cir. 1999). No compelling reasons have been presented. Fleurs 'R' Nous is not a publicly traded company, and its financial and other information is maintained as confidential. It is a competitor of Big Rose, and disclosure of this information through discovery could be harmful.

Moving Party's Reply

Actor's supposed concern about Fleurs 'R' Nous' confidential information can be addressed through a protective order. Big Rose will agree not to disclose this information to persons other than counsel and experts absent agreement of the parties or further order of the court. While Fleurs 'R' Nous is not a party, its tax returns may contain information about money spent addressing the drought problem that was common to several floral companies. Thus, the information could lead to the discovery of admissible evidence.

CERTIFICATION

I certify that the full response by the responding party has been included in this submission, and that prior to making this submission the parties conferred to attempt to resolve this discovery dispute in accordance with LCR 37(a).

DATED:

_____

Ira Just (WSBA #1234) Attorneys for Big Rose Company Moving Party

LCR 37 SUBMISSION
(C01-9999RSL)

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