

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

CLERK'S OFFICE PROCEDURAL HANDBOOK



JUNE 2008

This handbook has been prepared as a supplement to the Local Rules of the United States District Court for the Eastern District of Pennsylvania. It is intended to provide administrative information and act as a guide for specific procedural areas. However, if there is a conflict between this supplemental guide and the Local or Federal Rules of Procedure, the Rules govern.

I greatly acknowledge Marlene McHugh Anderson, Thomas Clewley, Kevin Dunleavy and Lucy Chin of my staff for their efforts in the production of this handbook.

We welcome any comments or suggestions for improving this handbook. Please forward your comments to: The Office of the Clerk of Court, United States District Court, Eastern District of Pennsylvania, 2609 United States Courthouse, Philadelphia, Pennsylvania 19106-1797 or FAX them to: (215) 597-6390.

**Michael E. Kunz
Clerk of Court**

<http://www.paed.uscourts.gov>

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ELECTRONIC CASE FILING SYSTEM

The United States District Court for the Eastern District of Pennsylvania utilizes an automated civil docketing system, Case Management/Electronic Case Filing (“CM/ECF”).

Effective May 27, 2003, dockets for all civil cases filed since July 1, 1990 and dockets for all criminal cases filed since July 1, 1992 will be available for viewing and printing from the CM/ECF system.

All new civil cases filed in this court are entered into this court’s Electronic Case Filing (“ECF”) system in accordance with provisions of the Electronic Case Filing Procedures (**Appendix A**). CM/ECF provides a new, easy-to-use electronic case filing feature that will allow users to file and view court documents over the Internet. Documents are automatically docketed as part of the filing process and are immediately available electronically. CM/ECF also offers the following benefits:

- 24-hour access to filed documents over the Internet;
- automatic e-mail notice of case activity to attorneys of record and judges;
- ability to download and print documents directly from the court system;
- concurrent access to case files by multiple parties;
- secure storage of documents.

A. **Rule 5.1.2 Electronic Case Filing Procedures.** All cases and documents filed in this court are required to be filed on the ECF system in accordance with provisions of the ECF Procedures, as set forth below unless excepted under these procedures.

1. Definitions

- (a) "*ECF Filing User*" means those who have Court-issued log-ins and passwords to file documents electronically.
- (b) "*Notice of Electronic Case Filing*" means the notice generated by the ECF system when a document has been filed electronically, stating that the document has been filed.
- (c) "*Judge*" means the District Judge assigned to the case, or the Magistrate Judge to whom all or any part of a case has been referred pursuant to 28 U.S.C. § 636.
- (d) "*Court*" shall mean the United States District Court for the Eastern District of Pennsylvania.

2. Scope of Electronic Case Filing

- (a) All civil and criminal cases filed in this court are required to be entered into the court's ECF system in accordance with these ECF Procedures. **Unless an attorney is excused from ECF registration under Section 3 of these ECF Procedures or except** as expressly provided in **Section 16 and other sections** of these ECF Procedures, or as ordered by the judge, all pleadings, documents, motions, memoranda of law, petitions, certificates of service and other documents required to be filed with the clerk of court in connection with a case must be electronically filed.
- (b) The filing of all initial papers in civil cases, such as the complaint and the issuance and service of the summons, and, in criminal cases, the indictment or information, warrant for arrest or summons, will be accomplished by paper copy filed in the traditional manner rather than electronically. Parties must concurrently provide the clerk of court with a computer disk, in PDF format (**Appendix B**) containing a copy of all documents provided in paper form at the time of filing.

All subsequent documents and pleadings must be filed electronically, except as provided in these ECF Procedures or as ordered by the judge. Under this paragraph, all attorneys are required to complete the ECF Validation of Signature form (**Appendix C**), as described in Section 3(c) below.

- (c) Once registered, an ECF Filing User may request to withdraw from participation in the ECF System by providing the clerk of court with written notice of the request which shall be forwarded to the Chief Judge for approval.
- (d) Nothing in these ECF Procedures shall be construed to nullify or contradict the provisions set forth in Rule 26.1 of the Local Rules of Civil Procedure, *Discovery*, directing that interrogatories, requests for production and inspection and requests for admission under Fed. R.Civ.P. 33, 34 and 36 that answers, responses and objections to interrogatories and to Rules 34 and 36, and that requests, notices of depositions and depositions under Fed.R.Civ.P. 30 and 31, shall not be filed with the court.
- (e) Nothing in these ECF Procedures shall be construed to nullify or contradict the provisions set forth in Rule 39.3 of the Local Rules of Civil Procedure, *Records, Files and Exhibits*, directing that the clerk of court maintain custody of all records, files and exhibits in all cases filed in this court until such time as the case is finally resolved, dismissed or abandoned, as set forth in paragraph (e) of Rule 39.3.
- (f) All cases filed in the ECF System in which a notice of appeal is filed shall be governed by Rule 10 of the Federal Rules of Appellate Procedure and relevant Local Rules and internal operating procedures of the United States Court of Appeals for the Third Circuit, with any differences about whether the record truly discloses what occurred in the district court to be submitted to and settled by the judge. Cases in which there is a right of direct appeal to the United States Supreme Court shall be governed by the rules of the United States Supreme

Court.

3. Excuse From Registration; Format of Documents in Electronic Form

An attorney who believes he or she should be excused from registering as an ECF Filing User may apply for an exception to this rule by detailed letter to the clerk of court, who shall forward the letter to the chief judge for decision. Thereafter, attorneys and others who are excused from registering as ECF Filing Users in accordance with this section are required to comply with the procedures set forth below.

- (a) All complaints must be submitted on disk in portable document format (PDF) at the time of filing, so that the complaint may be entered into the District Court's ECF system, and must be accompanied by a courtesy copy of the complaint in paper format for use by the court; under this paragraph, all attorneys are required to complete the ECF Validation of Signature form (**Appendix C**), as described in Paragraph (c) below.
- (b) All documents filed by an attorney who has been excused from registering as an ECF Filing User, as defined under this rule, must be submitted on disk in PDF, so that the filings may be entered into the District Court's ECF system, and must be accompanied by a courtesy copy of the document in paper format for use by the court; under this paragraph, all attorneys are required to complete the ECF Validation of Signature form, as described in Paragraph (c) below.
- (c) Attorneys who complete the ECF Validation of Signature form will receive a signature code which must be used by the attorney on the signature line of all courtesy copies submitted with a disk for purposes of signature validation pursuant to Rule 11 of the Federal Rules of Civil Procedure; the document as submitted under Section 3 of this rule will constitute the original document, except for those documents which are excluded from the provisions of rule as set forth in Section 16 of the rule; attorneys are required to have submitted a

completed ECF Validation of Signature form just once in order to file all complaints and documents in all subsequent cases in this court.

- (d) Service of process will continue to be made in accordance with those provisions set forth in Rule 5 of the Federal Rules of Civil Procedure.
- (e) For convenience of attorneys who do not have access to compatible hardware or software, a computer with PDF conversion capability is available in the Clerk's Offices at Philadelphia and Allentown, with assistance for PDF conversion provided by Clerk's Office staff as needed; attorneys who have reason for not providing this material on disk are required to notice the Clerk's Office in writing attached to the document, explaining the reason for not providing this material on disk.
- (f) Attorneys who have been excused under this section from registering as ECF Filing Users are requested to register and participate in the court's Program for Facsimile Service of Notice to Counsel or Litigants in Civil and Criminal Cases.
- (g) Those documents and categories of cases which are now excluded from the provisions of this section consistent with the policy of the Judicial Conference of the United States, as may be amended from time to time, are set forth in this rule (**Appendix A, Section 16**).

B. **Eligibility, Registration and Password.**

- (a) Unless otherwise excused, attorneys admitted to the bar of this court, including those admitted pro hac vice, are required to register as ECF Filing Users of the court's ECF system. Registration is in a form prescribed by the clerk of court (**Appendix D**) and requires the Filing User's name, address, telephone number, Internet e-mail address and a declaration that the attorney is admitted to the bar of this court and is a member in good standing.

- (b) Upon the approval of the judge, a party to a case who is not represented by an attorney may register as an ECF Filing User in the ECF System solely for purposes of the action. Registration is in a form prescribed by the clerk of court and requires identification of the case as well as the name, address, telephone number and Internet e-mail address of the party. If, during the course of the case, the party retains an attorney who appears on the party's behalf, the attorney must advise the clerk of court to terminate the party's registration as a Filing User upon the attorney's appearance.
- (c) Registration as an ECF Filing User constitutes agreement to receive and consent to make electronic service of all documents as provided in these ECF Procedures in accordance with Rule 5(b)(2)(D) of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, as referenced in Rule 49(b) of the Federal Rules of Criminal Procedure. This agreement and consent is applicable to all future cases until revoked by the ECF Filing User.
- (d) Once registration is completed, the ECF Filing User will receive notification of the user log-in and password. ECF Filing Users agree to protect the security of their passwords and immediately notify the clerk of court by telephone, with said notification confirmed immediately thereafter in writing delivered by e-mail, facsimile or hand-delivery to the attention of the clerk of court, if they learn that their password has been compromised. Users may be subject to sanctions by the judge for failure to comply with this provision. For security reasons, the court recommends that ECF Filing Users periodically change their passwords, which shall be done by notifying the clerk of the court who shall implement the change.

C. Signature.

- (a) The user log-in and password required to submit documents to the ECF System serve as the ECF Filing User's signature on all electronic documents filed with the court. They also serve as a signature for

purposes of Rule 11(a) of the Federal Rules of Civil Procedure, the Local Rules of this court, and any other purpose for which a signature is required in connection with proceedings before the court. Each document filed electronically must, if possible, indicate that it has been electronically filed. Electronically filed documents must include a signature block and must set forth the name, address, telephone number and the attorney's state bar identification number, if applicable. In addition, the name of the ECF Filing User under whose log-in and password the document is submitted must be preceded by an "s/" and typed in the space where the signature would otherwise appear.

(b) No ECF Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

(c) Documents requiring signatures of more than one party must be electronically filed either by: (1) submitting a scanned document containing all necessary signatures; (2) representing the consent of the other parties on the document; (3) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than three business days after filing; or (4) any other manner approved by the court.

D. **Excluded Cases and Documents.** A list of types of documents and categories of cases, which are presently excluded from the provisions of ECF Procedures, as may be amended from time to time, is attached hereto and made a part of ECF Procedures (**Appendix A, Section 16**).

E. **Training Seminars.** ECF training is available to members of the bar, paralegals, secretaries and automation support staff. For information regarding participation in the court's CM/ECF system, see **Appendix E**.

FILING A CIVIL ACTION

The filing of **all** initial papers in civil cases, such as the complaint and the issuance and service of the summons, and, in criminal cases, the indictment or information, warrant for arrest or summons, will be accomplished by paper copy filed in the traditional manner rather than electronically. Parties must concurrently provide the clerk of court with a computer disk, PDF format containing a copy of all documents provided in paper form at the time of filing. All subsequent documents and pleadings must be filed electronically, except as provided in ECF Procedures or as ordered by the judge. Under this paragraph, all attorneys are required to complete the ECF Validation of Signature form, as described in Section 3(c) of the ECF Procedures.

All new civil actions are to be filed on 8½" x 11" paper in the Clerk's Office, Room 2609, second floor of the Federal Courthouse, or in the divisional office in Allentown, Pennsylvania between the hours of 8:30 a.m. and 5:00 p.m. Filings are accepted by mail, as well as in person. The addresses are:

United States District Court
Eastern District of Pennsylvania
U.S. Courthouse
601 Market Street, Room 2609
Philadelphia, PA 19106-1797
(215) 597-7704

United States District Court
U.S. Courthouse and Federal Building
504 West Hamilton Street, Suite 1601
Allentown, PA 18101-1500
(610) 434-3896

The cost for filing a civil action is \$350.00. Payment may be made in three forms: cash, credit card, or checks made payable to "**Clerk, U.S. District Court**".

All subsequent filings, motions, pleadings and other papers are to be filed electronically by the ECF system or on disk in PDF format accompanied by a courtesy copy, by mail or in person in Room 2609 at the courthouse in Philadelphia or Suite 1601 at the divisional office in Allentown.

Counsel should include the following in the drafting of the complaint or petition: (a) name of court; (b) name and address of both parties, in caption form; (c) title of action; (d) a short and plain statement of the grounds upon which the court's jurisdiction depends; (e) a short and plain statement of the claim showing that the pleader is entitled to relief; (f) a demand for judgment for the relief to which the plaintiff deems himself entitled; (g) jury demand; and (h) name, address, Pennsylvania attorney identification number and signature of plaintiff's attorney.

A. Civil Justice Expense and Delay Reduction Plan

In response to a mandate by the Civil Justice Reform Act of 1990 and in an effort to reduce the cost and delay of civil litigation in the federal courts, this district adopted The Civil Justice Expense and Delay Reduction Plan with an effective date of December 31, 1991. A copy of the plan can be obtained by contacting Aida Ayala at 267-299-7099. This district was selected as a pilot district and was required to implement a plan by December 31, 1991. An Advisory Group was appointed in April 1991 to prepare a report and recommendation on the status of the Eastern District of Pennsylvania. Based on this report, the judges adopted the expense and delay reduction plan.

B. Designation Form

The designation form (**Appendix F**) is to be used by counsel to designate the category of the cause of action for the purpose of assignment to the appropriate calendar. It is to be completed by plaintiff's counsel and submitted at the time of filing.

The court requires two (2) copies of the designation form. Additional forms are not required for additional defendants, nor are additional forms required when the United States Government or an officer or agency thereof is involved.

Instructions for Completing the Designation Form

1. **Address of Plaintiff and Defendant.** House or apartment address, street, city, county and zip code are required in this section.
2. **Place of Accident.** The place of the accident, incident, or transaction;

house or apartment address, street, city, county and zip code are required in this section. Note: Counsel should continue on reverse side if additional space is needed to fully explain this matter.

3. **Disclosure Statement.** In accordance with Federal Rule of Civil Procedure 7.1(a), *Disclosure Statement*, a nongovernmental corporate party to an action or proceeding in a district court must file copies of a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or state that there is no such corporation (**Appendix G**).

A party must file the Rule 7.1(a) statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court, and promptly file a supplemental statement upon any change in the information that the statement requires.

4. **Related Cases.** This refers to pending cases or cases disposed of in the United States District Court for the Eastern District of Pennsylvania within a *one-year period*.

If the case is related, counsel must indicate the case number, the presiding judge, and the date terminated.

5. **Civil Category Checklist.** Counsel are required to determine whether the action arises under: (a) federal question, Title 28 U.S.C. § 1331; or (b) diversity, Title 28 U.S.C. § 1332. Counsel must check off the one specific category within the appropriate classification to which that case pertains. This is for the purpose of proper case assignment by classification.
6. **Arbitration Certification.** The arbitration certification is used to determine whether or not the case exceeds the damages threshold of \$150,000, which is the maximum amount for any arbitration proceeding. Counsel are advised to refer to Local Civil Rule 53.2, Section 3, Paragraph C, which states that damages will be presumed to be less than \$150,000 and thus eligible for arbitration unless counsel, at the time of filing, states

that the damages exceed that amount. The effect of this certification is to remove the case from eligibility for arbitration. Date and signature must be included in this section.

7. **Date and Signature.** The date of filing and signature of counsel is required in this section.

C. **Civil Cover Sheet (Form JS 44)**

The Civil Cover Sheet (**Appendix H**) is required by the Clerk of Court for the purpose of initiating the civil docket sheet. It is completed by plaintiff's counsel and submitted at the time of filing. Only one civil cover sheet is required by the court to accompany the complaint, regardless of whether or not the United States of America, or an officer of an agency thereof, is a party.

Instructions for Completing Civil Cover Sheet

1. **Parties.** The complete name(s) and address(es) of plaintiff(s) and defendant(s) are required in this section.

2. **Attorneys.**

Plaintiff's Attorney: Firm name, address, Pennsylvania bar identification number and telephone number is required.

Defendant's Attorney: Firm name, address, Pennsylvania bar identification number and telephone number, if known.

3. **Jurisdiction.** Counsel should place an "X" in the appropriate box corresponding to the jurisdictional basis of the action.

The following order of priority should be utilized in cases where more than one basis of jurisdiction is set out in the complaint.

(a) United States Plaintiff. Jurisdiction is based on 28 U.S.C. §§ 1345 and 1348. Suits by agencies and officers of the United States are in this category.

(b) United States Defendant. Jurisdiction is based on 28 U.S.C. § 1346 and includes suits against agencies and officers of the United States.

(c) Federal Question. Various statutes give the district court jurisdiction to hear and determine controversies where federal rights between parties are covered by statute or Constitution.

(d) Diversity of Citizenship. This refers to suits under 28 U.S.C. § 1332. In this situation, parties are residents of different states.

Note: If diversity is checked, it must be further categorized in the box to the right.

4. **Nature of Suit**. Counsel must indicate the general description of the suit by placing an "X" in the appropriate box. If more than one possible category applies, select the most explicit and specific classification.

Note: Only one check mark is to be made in this area.

Explanatory information for social security. In the section for Social Security, six possible types of claims or actions are listed.

Suit Code Number	Abbreviation for Cause of Action	Substantive Statement Explaining Type
861	HIA	All claims for health insurance benefits (Medicare) under Title XVIII, Part A, of the Social Security Act, as amended. Also includes claims by hospitals, skilled nursing facilities, etc. for certification as providers of services under the program. (42 U.S.C. § 395f(b)).
862	BL	All claims for "black lung" benefits under Title IV, Part B, of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. § 923).
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title II of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability (42 U.S.C. § 405(g)).
863	DIWW	All claims filed for widows' or widowers' insurance benefits based on disability under Title XVI of the Social Security Act, as amended (42 U.S.C. § 405(g)).
864	SSID	All claims for supplemental security income payments based upon disability filed under Title XVI of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors' benefits under Title II of the Social Security Act, as amended. (42 U.S.C. § 405(g)).

5. **Origin.** Counsel are required to indicate which one of the seven possible categories is applicable to the case being filed. The following explanatory guidelines should be consulted in this matter.

(a) Original Proceeding - This category will be the appropriate one for most cases.

(b) Removed from State Court - Proceedings initiated in the State Courts may be removed to the District Court under Title 28 U.S.C. § 1441.

(c) Remanded from Appellate Court - Use the date of remand as the filing date.

(d) Reinstated or Reopened - Use the reopening date as the filing date.

(e) Transferred from Another District - Self-explanatory.

(f) Multidistrict Litigation - Use when a multidistrict case is transferred into this district (Title 28 U.S.C. § 1407).

(g) Appeal to District Judge from Magistrate Judgment - Self-explanatory.

6. **Cause of Action.** In this section, a citation must be used for the U.S. civil statute under which the filing is made. In addition, a brief statement of the cause of action must also be included by counsel.

7. **Class Action.** This item should be checked if the case is alleged to be a class action under Fed. R. Civ. P. 23.

Demand: The dollar amount which is sought in the case should be inserted in this space.

Jury Demand: Counsel should check "yes" in this section only if a jury trial is demanded in the complaint.

8. **Related Case(s), if any.** This section is used to reference related pending cases, if any. If there are related pending cases or cases disposed of within a one-year period, insert the docket numbers and the corresponding judges' names for such cases.
9. **Date and Signature.** The date of filing and the signature should be the final insertion on the civil cover sheet.

D. Case Management Track Designation Form

Each civil case will be assigned to one of the following tracks (**Appendix I**):

1. **Habeas Corpus** - Cases brought under 28 U.S.C. § 2241 through § 2255.
2. **Social Security** - Cases requesting review of a decision of the Secretary of Health and Human Services denying the plaintiff Social Security benefits.
3. **Arbitration** - Cases designated for arbitration under Local Civil Rule 53.2.
4. **Asbestos** - Cases involving claims for personal injury or property damage from exposure to asbestos.
5. **Special Management** - Cases that do not fall into tracks 1 through 4 or that need special or intense management by the court due to one or more of the following factors:
 - (a) large number of parties;
 - (b) large number of claims;
 - (c) complex factual issues;
 - (d) large volume of evidence;
 - (e) problems locating or preserving evidence;
 - (f) extensive discovery;
 - (g) exceptionally long time needed to prepare

- for disposition;
- (h) decision needed within an exceptionally short time;
- (l) need to decide preliminary issues before final disposition.

6. **Standard Management** - Cases that do not fall into any of the other tracks.

E. Verifications

Verifications or affidavits are not required to be filed with a complaint, except: (a) where the complaint seeks entry of a temporary restraining order [Federal Rule of Civil Procedure 65(b)]; and (b) in shareholder derivative actions (Federal Rule of Civil Procedure 23.1). In lieu of a verification or an affidavit, it is appropriate to submit an unsworn declaration in the form set forth in 28 U.S.C. § 1746.

F. Filing an Amended Complaint

A party may amend the complaint once, as a matter of course, at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, a party may amend the complaint any time within 20 days after it is served, otherwise, a party may amend the pleading only by leave of court or by written consent of the adverse party.

G. Class Action Complaints - Local Rule 23.1

Class action complaints must bear next to their caption the legend, "Complaint - Class Action". In addition, they must set forth certain "Class Action Allegations" which are described in Local Civil Rule 23.1.

H. Copies of Complaints

It is not necessary to deliver multiple copies of the complaint and amended complaint to the Clerk's Office to be served on the defendants. It is only necessary to

deliver an original complaint or an original amended complaint for filing. The Clerk's Office will process all completed summonses and return them to counsel for service on the opposing party.

I. Service of Process

Defendants have 20 days after the service of the summons and complaint to file an answer to the complaint unless otherwise ordered by the court.

The U.S. Attorney has 60 days after service to file an answer to the complaint in actions against the United States of America, an officer or agency thereof.

J. Waiver of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving cost of the service of the summons and complaint. A defendant who, after being notified of an action and asked to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause is shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must, within the time specified on the waiver form, serve on the plaintiff's attorney (or unrepresented party) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against the defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

If you need additional information on filing complaints contact Mary Chase,

Operations Manager, at 267-299-7012.

DOCUMENTS

The original docket sheets, record files, and indices to all cases are available for inspection in the Clerk's Office, Room 2609, in Philadelphia or in Suite 1601 of the divisional office in Allentown. The civil dockets are divided among ten clerks and the last digit of each case number determines the docket clerk to whom the case is assigned for processing.

The following personnel perform case processing duties in the civil section in the Philadelphia Clerk's Office:

(#1) Rob Fehrle	.....	267-299-7001
(#2) Angela Peso	.....	267-299-7002
(#3) James Deitz	.....	267-299-7003
(#4) Anne Caridi	.....	267-299-7004
(#5) Kimberly Williams	.....	267-299-7005
(#6) Michele Helmer	.....	267-299-7006
(#7) Joseph Lavin	.....	267-299-7007
(#8) Gayle Norman	.....	267-299-7008
(#9) Amanda Heavey	.....	267-299-7009
(#10) Frank DelCampo	.....	267-299-7010

At the divisional office in Allentown, Pennsylvania, contact Evelyn Renner at (610) 434-3896.

Criminal case processing is divided among clerks - Dennis Taylor, 267-299-7160, James Hamilton, 267-299-7024, Kevin Eibel, 267-299-7035 and Mark Ciamachelo, 267-299-7145. Carlos Cardona, 267-299-7023, reviews overall compliance with the Speedy Trial Act. The Magistrate Judges' Docket Clerk is Mark Ciamachelo, 267-299-7145.

Rule 11 of the Federal Rules of Civil Procedure requires that every pleading, motion and other paper of a party represented by an attorney be signed by the attorney. Please be sure to date the pleadings, attach a certificate of service, and include the address and

phone number of counsel. It is not necessary to send a cover letter when filing routine pleadings. However, if you are filing a pleading which requires special attention please include a cover letter.

The user log-in and password required to submit documents to the ECF system serve as the ECF Filing User's signature on all electronic documents filed with the court. They also serve as a signature for purposes of Rule 11(a) of the Federal Rules of Civil Procedure, the Local Rules of this court, and any other purpose for which a signature is required in connection with proceedings before the court. Each document filed electronically must, if possible, indicate that it has been electronically filed. Electronically filed documents must include a signature block and must set forth the name, address, telephone number and the attorney's state bar identification number, if applicable. In addition, the name of the ECF Filing User under whose log-in and password the document is submitted must be preceded by an "s/" and typed in the space where the signature would otherwise appear. Documents requiring signatures of more than one party must be electronically filed either by: (1) submitting a scanned document containing all necessary signatures; (2) representing the consent of the other parties on the document; (3) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than three business days after filing; or (4) any other manner approved by the court.

A. Copies of Paper Documents

For filing paper documents, a disk in PDF format of all motions, memoranda and briefs is needed, accompanied by a courtesy copy. We suggest you do not combine pleadings but file a separate pleading for each action in which a resolution is sought. When filing individual pleadings, it is easier and more efficient for the judge to have the option to sign an order ruling on the individual pleading rather than have to prepare an order.

It is important that pleadings be assembled with all documents in support thereof attached in sets. This ensures proper filing and also enables the judge to have complete sets. Note: The Clerk's Office does not date-stamp copies of pleadings unless accompanied by self-addressed, stamped envelopes.

B. Certificate of Service

When filing pleadings, it is necessary to attach a certificate of service indicating the names of all counsel and/or parties you have served.

When an ECF Filing User electronically files a pleading or other document using the ECF system, a Notice of Electronic Case Filing shall automatically be generated by the system, and shall be sent automatically to all parties entitled to service under the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Local Rules of the Eastern District of Pennsylvania who have consented to electronic service. Electronic service of the Notice of Electronic Case Filing constitutes service of the filed document to all such parties and shall be deemed to satisfy the requirements of Rule 5(b)(2)(D) of the Federal Rules of Civil Procedure and Rule 49 of the Federal Rules of Criminal Procedure.

All documents filed using the ECF system shall contain a Certificate of Service stating that the document has been filed electronically and is available for viewing and downloading from the ECF system. The Certificate of Service must identify the manner in which service on each party was accomplished, including any party who has not consented to electronic service.

C. Third-Party Complaint

Leave of court is not necessary to file a third-party complaint if it is filed by the defendant within 10 days after service of the original answer to the complaint. However, leave of court is necessary if the defendant files the third-party complaint after the expiration of 10 days of the filing of the answer. Counsel must file a Motion for Leave to File a Third-Party Complaint, together with a memorandum, proposed order and the proposed third-party complaint. When the judge signs the order, the clerk will process the complaint. (See Rule 14, Federal Rules of Civil Procedure.)

D. Excluded Personal Identifiers - Local Rule of Civil Procedure 5.1.3

As documents in civil cases may be available for personal inspection in the office of the clerk at the United States Courthouse, or, if filed electronically, may be made available on the court's Electronic Case Filing system, such personal identifiers as Social Security numbers, dates of birth, financial account numbers and names of minor children should be modified or partially redacted in all documents filed either in traditional paper form or

electronically (**Appendix J**).

E. Electronic Case File Privacy - Local Rule of Criminal Procedure 53.2

In compliance with the policy of the Judicial Conference of the United States and the E-Government Act of 2002, and in order to promote electronic access to documents in the criminal case files while also protecting personal privacy and other legitimate interests, 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, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the court:

- (1) **Social Security numbers.** If an individual's Social Security number must be included, only the last four digits of that number should be used.
- (2) **Names of minor children.** If the involvement of a minor child must be mentioned, only the initials of the child should be used.
- (3) **Dates of birth.** In an individual's date of birth must be included, only the year should be used.
- (4) **Financial account numbers.** If financial account numbers are relevant, only the last four digits of the number should be used.
- (5) **Home addresses.** If a home address must be included, only the city and state should be listed.

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may file an unredacted document under seal. This document shall be retained by the court as part of the record. The court may, however, still require the party to file a redacted copy for the public file. Trial exhibits may be safeguarded by means other than redaction, and the court may modify this rule to fit the requirements of particular cases.

The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk need not review filings for compliance with this rule.

F. Sealed Pleadings

Sealed cases and documents ordered to be placed under seal are excluded from the provisions of the ECF Procedures (**Appendix A**) and must be filed in paper format filed in the traditional manner and not electronically. A motion to file documents under seal may be filed electronically unless prohibited by law. The order of the court authorizing the filing of documents under seal may be filed electronically unless prohibited by law. A paper copy of the order must be attached to the documents under seal and be delivered to the clerk of court. Include a cover letter identifying the contents of the envelope and information pertaining to the sealing of the document and/or case. The envelope containing the sealed pleading should reflect the caption and case number and should also identify the type of pleading contained in the envelope. If a document is being filed and sealed pursuant to a protective order or other order, refer to the sealed document in your cover letter. Please include the word "SEALED" near the top margin of the letter to alert the person opening the mail to exercise caution in processing the envelope.

Local Rule of Civil Procedure 5.1.5 provides that a document in a civil action may be filed under seal only if:

- (1) the civil action is brought pursuant to a federal statute that prescribes the sealing of the record or of certain specific documents; or
- (2) the Court orders the document sealed.

Where a document is sealed pursuant to § 5.1.5(a)(1), the continued status of the document under seal shall be governed by the relevant federal statute. If no federal statute governs, §§ 5.1.5(b)(2) and (c) shall apply.

When a document is sealed pursuant to § 5.1.5(a)(2), the document, if it remains in the custody of the Court, shall not be unsealed for two years after the conclusion of the civil action including all appeals, unless the Court orders otherwise.

If a document is still sealed at the conclusion of the two-year period and the Court has not entered an order continuing its sealed status beyond that time, the Clerk of Court shall notify the attorney for the party having submitted the sealed document at the attorney's address on the docket that the document will be unsealed unless the attorney or the submitting party advises the Clerk within sixty (60) days that said attorney or submitting party objects. If the attorney or submitting party objects to the unsealing of the

document or if the Clerk's notification is returned unclaimed, the Court will make a determination, on a case-by-case basis, whether to maintain the document under seal, to unseal it, or to require further notification.

G. False Claims Act Cases

All False Claims Act cases are opened by the docket clerk and filed **under seal** and placed on a paper docket. The Complaint is docketed and no summons is issued. The Complaint is impounded and sent to the assigned Judge.

The Government may file a number of motions for an extension of the seal on the False Claims Act cases. If the Government files a Notice of Election to Decline Intervention or Election to Intervene, it is docketed and forwarded to the Court. If there is a complaint or an amended complaint attached to the notice, it is also docketed and forwarded to the Court. A summons is never issued unless directed by the court.

Only upon Court order is the complaint unsealed. At this point, the court will issue an order directing the Clerk's Office and the U.S. Attorney's Office how to proceed.

H. Pleadings that are NOT Filed

The following pleadings are not filed pursuant to Local Civil Rule 26.1 - Discovery:

- Requests for Production of Documents;
- Requests for Admissions;
- Interrogatories;
- Answers to Interrogatories;
- Notices of Deposition;
- Depositions.

I. Facsimile Transmission of Notice of Orders in Civil and Criminal Cases

Attorneys who do not register to participate in the ECF program are requested to register and participate in the court's Program for Facsimile Service of Notice to Counsel or Litigants in Civil and Criminal Cases (the "Fax Noticing Program"). This program

allows attorneys and pro se litigants to waive the provisions of Federal Rule of Civil Procedure 77(d) or Federal Rule of Criminal Procedure 49(c), which requires service of Notice of Orders and Judgments by means of mail, and instead consent to receive Notice of Orders and Judgments by means of facsimile transmission.

Forms of Consent to Receive Notice of Orders and Judgments by means of Facsimile Transmission and Waiver of the Provisions of Fed.R.Civ.P. 77(d) or Fed.R.Crim.P. 49(c) Providing for said Notice by means of Mail are available through the Clerk's Office (**Appendix K**). Execution of the Facsimile Transmission Authorization form authorizes the Clerk of Court to serve notice of the entry of Orders or Judgments pursuant to Fed.R.Civ.P. 77(d) or Fed.R.Crim.P. 49(c) by facsimile in lieu of notice by means of mail. The Facsimile Transmission Authorization form also serves as Notice to and Authorization for the Clerk of Court to keep your name and the relevant information on file so that the Facsimile Transmission Authorization form will apply to all pending and future civil and criminal cases in which the attorney or pro se litigant is, or will be, either counsel or a party to litigation.

The waiver of the provisions providing for notice of the entry of Orders or Judgments by mail will include all pending civil and criminal cases in the Eastern District of Pennsylvania for the pro se litigant and all pending civil and criminal cases in the Eastern District of Pennsylvania in which the attorney either represents a party or is a party to the litigation, except for grand jury proceedings and impounded cases.

The Clerk of Court will make three attempts to transmit the Notice of Entry of Orders and Judgments by means of Facsimile. If after three attempts facsimile transmission is unsuccessful, Notice shall be made by means of mail pursuant to Fed.R.Civ.P. 77(d) or Fed.R.Crim.P. 49(c).

J. Mail

The court in its ongoing commitment to provide more timely notice and enhance the level of service to members of the bar, litigants and the public, has joined efforts with the U.S. Postal Service to implement procedures to streamline and facilitate the delivery and processing of mail directed to and from the U.S. Courthouse.

Mail Sent to Counsel

In order to expedite delivery of notices from judicial officers and the clerk of court, members of the bar are requested to furnish the following information by completing an Information Form (**Appendix L**): Name; Bar I.D. number; Firm, Address; City; State; **Zip Code and 4-digit extension number** and Facsimile number. Please return the completed form to the clerk of court at:

Michael E. Kunz, Clerk of Court
United States District Court
for the Eastern District of Pennsylvania
U.S. Courthouse
601 Market Street, Room 2609
Philadelphia, PA 19106-1797

or, by facsimile to: (215) 597-6390, (267) 299-7135 or (610) 434-6174.

Mail Sent to the Court

In order to take full advantage of these procedures, all mail sent to the United States District Court for the Eastern District of Pennsylvania at 601 Market Street, Philadelphia, PA and divisional office locations should include both the **zip code and 4-digit extension number**. Accordingly, all mail submitted to a judicial officer should be addressed as follows:

Name of Judicial Officer	Michael E. Kunz, Clerk of Court
United States District Court	United States District Court
for the Eastern District of Pennsylvania	for the Eastern District of Pennsylvania
U.S. Courthouse	U.S. Courthouse
601 Market Street, Room # ____	601 Market Street, Room 2609
Philadelphia, PA 19106-____	Philadelphia, PA 19106-1797

The use of bar coding technology currently available in word processing software packages in addressing envelopes is encouraged. A listing of the room numbers and Zip Code and 4-digit extension numbers of the judicial officers is available in the Clerk's Office

(Appendix M).

MOTIONS

An application to the court for an order (unless made during a hearing or trial) shall be made in writing stating with particularity the grounds therefor, and shall set forth the relief sought. [See Federal Rule of Civil Procedure 7(b)(1) and Local Civil Rule 7.1(a).]

All motions shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation. [See Federal Rule of Civil Procedure 10(a).]

Every motion not certified as uncontested must be accompanied by a brief containing a concise statement of the legal contentions and authorities relied upon in support of the motion. Every motion shall be accompanied by a form of order which, if approved by the court, would grant the relief sought by the motion. Uncontested motions must be accompanied by a written statement as to the date and manner of service of the motion and supporting brief.

Every motion of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign each motion and state their correct address as indicated. [See Federal Rule of Civil Procedure 7(b)(3).]

A brief in opposition to the motion, together with such answer or other response as may be appropriate, is required if the served party opposes the motion.

The response to the motion must be made within 14 days after service of the motion and supporting brief. [See Local Civil Rule 7.1(c).]

SUMMONS

Summonses shall be prepared by counsel (**Appendix N**). At the time of the filing of a complaint, all summonses shall be submitted to the Clerk of Court's office for signature and seal. Each defendant's name as it appears on the complaint (without its addresses) is to be typed on a summons and submitted to the deputy clerk. The original and sufficient

copies for each defendant will be returned to counsel. To issue a second summons, file a Praecipe to Issue Alias Summons, naming the defendants.

JURISDICTION

The Eastern District of Pennsylvania includes the counties of Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, Northampton, and Philadelphia. Please take note that effective April 19, 1999, jurisdiction of the county of Schuylkill was transferred to the U.S.D.C. Middle District of Pennsylvania.

Court for the Eastern District is held at Philadelphia, Reading, Allentown and Easton. When it appears from the designation form filed by counsel, or from the complaint, petition, motion, answer, response, indictment, information or other pleading in a civil or criminal case, that a plaintiff or defendant resides in or that the accident, incident, or transaction occurred in the counties of Berks, Lancaster, Lehigh, or Northampton, said case shall be assigned or reassigned for trial and pretrial procedures to a judge assigned to hear cases from Reading, Allentown or Easton.

All other cases, unless otherwise directed by the court, shall be tried in Philadelphia, and as each case is filed, assigned to a judge, who shall thereafter have charge of the case for all purposes. (See Local Civil Rule 40.1)

The Office of the Clerk of Court maintains two Clerk's Offices and accepts all filings in Philadelphia and Allentown, Pennsylvania at the following addresses:

United States District Court
Eastern District of Pennsylvania
U.S. Courthouse
601 Market Street, Room 2609
Philadelphia, PA 19106-1797
(215) 597-7704

and

United States District Court

Edward N. Cahn United States Courthouse and Federal Building
504 West Hamilton Street, Suite 1601
Allentown, PA 18101-1500
(610) 434-3896

SUBPOENAS

(Rule 45, Federal Rules of Civil Procedure as amended December, 1991 and Rule 17, Federal Rules of Criminal Procedure)

A. Civil

Under Rule 45 of the Federal Rules of Civil Procedure, attorneys are authorized to issue subpoenas in the name of any court in which they are authorized to practice, and in the case of a deposition or a production of documents taking place in another district, in the name of the court where the deposition or the production is to take place. Attorneys issuing subpoenas must comply with the appropriate Federal Rules and with Local Rules.

Although it is no longer necessary that subpoenas be issued by the Clerk, the Clerk still has the authority to do so. In those instances in which counsel elects to have the Clerk of Court issue the subpoena, an original and one copy is needed for each witness to be served. The requirement that a subpoena be issued under seal has been abolished. For a foreign deposition (deposition being taken in a state other than Pennsylvania), subpoenas are issued in blank by the Clerk's office, completed and served by counsel. They are not signed by the court where the original notice to take the deposition is filed.

All subpoenas may be served by a person who is not a party and is not less than 18 years of age. There is no provision in the rules for subpoenas to be served by mail.

Pursuant to F.R.C.P. 45 (b) (2), a subpoena may be served anywhere within the district. However, subpoenas may only be served outside the district if they are within 100 miles of the place designated in the subpoena for the deposition, trial, production of documents, hearing, or inspection. The federal rules also permit the service of a subpoena that is outside of the district but within the state if certain conditions are met. See, F.R.C.P. 45(b)(2). All subpoenas must be accompanied by a check made payable to the witness for the witness fee (\$40 per day) and mileage (50.5 cents per mile, round trip).

A copy of the subpoena is left with the witness and the original subpoena is returned to counsel.

B. Criminal

Under Rule 17 of the Federal Rules of Criminal Procedure, the Clerk of Court or the Magistrate Judge hearing the matter shall issue subpoenas. An original and one copy is needed for each witness to be served. All subpoenas issued by the Clerk are: 1) completed by counsel; 2) signed by the Clerk of Court; and 3) have the seal of the court over the name of the Clerk of Court before being served on the witness.

All subpoenas may be served by a person who is not a party and is not less than 18 years of age. There is no provision in the rules for subpoenas to be served by mail.

All subpoenas must be accompanied by a check made payable to the witness for the witness fee (\$40.00 per day) and mileage (50.5 cents per mile, round trip) unless the subpoena was issued on behalf of the United States or the court has determined upon an *ex parte* motion that the defendant is financially unable to pay.

A criminal subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the United States. Subpoenas which are directed at witnesses in a foreign country shall be issued in accordance with 28 U.S.C. § 1783.

For more detailed information on criminal subpoenas, refer to Federal Rule of Criminal Procedure 17.

FOREIGN SUBPOENAS **(Rule 45, Federal Rules of Civil Procedure)**

A foreign subpoena is one issued out of a court other than where the original case is pending. For example, a case is pending in California but counsel would like to take the deposition of someone in the Eastern District of Pennsylvania.

A. Filing Procedure in Out-Of-State Court

Counsel should complete the subpoena forms, attach a check for the witness fee and mileage in the sum of \$40.00 per day, plus 50.5 cents per mile, round trip, and send them, together with the stamped copy of the notice to take the deposition, to the United States District Court nearest where the deponent resides. The referred court where the deposition shall issue will stamp the name of the clerk, have the form signed by a deputy and affix the seal of its court over the signature.

B. Service

Service of the deposition subpoena must be by process server. There is no provision for service by mail. The subpoena is left with the witness, together with the witness fee. Counsel should make arrangements with a special process server for serving the subpoena.

C. To Contest

To contest a foreign (deposition) subpoena, file a motion to quash the deposition subpoena in the district where the subpoena was issued. File an original motion with the court. The case is filed as a miscellaneous case, with an associated filing fee of \$39.00.

D. Attendance

A person to whom a civil subpoena for the taking of a deposition is directed may be required to attend at any place within 100 miles from the place where the person resides, is employed or transacts business in person, is served, or at such other convenient place as is fixed by an order of court.

DISCOVERY

In accordance with Local Civil Rule 26.1, discovery material is not filed with the court. The party serving the discovery material or taking the deposition shall retain the original and be the custodian of it. Every motion governing discovery shall identify and set forth, verbatim, the relevant parts of the interrogatory, request, answer, response, objection, notice, subpoena or deposition. Any party responding to the motion shall set forth, verbatim, in that party's memorandum any other part that the party believes necessary to the court's consideration of the motion.

TEMPORARY RESTRAINING ORDER (T.R.O.)

The assigned judge will set a time (usually the same day you file the T.R.O.) to meet with you and opposing counsel, if any. File the case in the Clerk's Office and give the clerk sufficient time to assemble the case for the judge and prepare the docket. If the judge grants the temporary restraining order, it is the responsibility of counsel for plaintiff to make service of the T.R.O. on the defendants.

We suggest you call Mary Chase, the Operations Manager, at 267-299-7012 with any questions.

WRITS OF GARNISHMENT, ATTACHMENT AND EXECUTION

Writs of Garnishment and Attachment are prepared by counsel, filed with the Clerk's Office for processing and served by the U.S. Marshal. Counsel is responsible for Notice to opposing counsel. Notice must be given to all Owners of the Property (**Appendix O**).

You must wait 10 days before you can execute on a judgment, unless a Motion to Vacate, Motion to Stay, Motion for Reconsideration, or Motion for a New Trial is pending. If counsel requests, we will process the Praecipe for a Writ of Garnishment or Execution immediately, referring the matter to the assigned judge, if available, or to the judge's chambers for guidance (See, Rule 62, Federal Rules of Civil Procedure).

FILING OF JUDGMENT BY DEFAULT

A. Rule 55(a), Federal Rules of Civil Procedure

You must file a request with the Clerk for the entry of a default for want of answer or other defense. Set forth the following information: (1) defendant was properly served on a particular date; (2) the time for defendant to file an answer to the complaint has expired; (3) that as of the date of the filing of the request for entry of the default, no answer (or motion to dismiss or motion for summary judgment) has been filed; (4) instruct the Clerk to enter a default against the defendant (name the defendant if more than one in a case) for want of answer or other defense.

If the defendant is an individual, be sure that the defendant was served a copy of the complaint by either special process server, or waiver of service provisions of the Federal Rules of Civil Procedure Rule 4(d) or otherwise in accordance with Federal Rules of Civil Procedure Rule 4.

B. Rule 55(b), Federal Rules of Civil Procedure

To file a request for judgment by default for an individual, file an affidavit indicating the individual is (1) not an infant; (2) not incompetent; (3) not in the military; (4) amount due and owing; and (5) form of judgment.

To file a request for judgment by default for a corporation, file only an affidavit of amount due. If the amount asked for in the complaint differs from that asked for in the proposed judgment, the affidavit of amount due should explain the discrepancy.

MULTIDISTRICT LITIGATION

Due to the volume of litigation and the complexity of procedural requirements, those cases that are classified as being multidistrict litigation are governed by a separate and unique set of procedural rules. These rules are contained in the Procedural Manual for Multidistrict Litigation. Counsel may review this manual in the Clerk's Office, Room 2609, or may purchase copies from the Multidistrict Litigation Panel in Washington, D.C. Specific requests for information and related inquiries should be directed to Michael J. Beck, Clerk of the Panel, Multidistrict Litigation Panel, One Columbus Circle, N.E., Suite G-255, North Lobby, Washington, D.C. 20002-8004 or at (202) 502-2800.

The deputy clerks with general responsibility for local involvement in multidistrict litigation matters are Sharon Carter (267-299-7019), Tom Dempsey (267-299-7018), and Nicole D'Urso (267-299-7017).

On July 29, 1991, the Judicial Panel on Multidistrict Litigation entered an opinion and order transferring all asbestos cases that were not on trial and were pending outside the Eastern District of Pennsylvania to this Court and assigning them to the late Honorable Charles R. Weiner for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407, MDL 875, In Re: Asbestos Product Liability Litigation. MDL 875 has been

reassigned to the Honorable James T. Giles. The deputy clerk with general responsibility is Tom Dempsey (267-299-7018).

ARBITRATION

Our arbitration program provides litigants with a more prompt and less expensive alternative to the traditional courtroom trial. It has been in operation since 1978 and includes all civil cases (except social security cases, cases in which a prisoner is a party, cases alleging a violation of a constitutional right and cases where jurisdiction is based on 28 U.S.C. § 1343) where money damages only are sought in an amount not exceeding \$150,000. Counsel are advised to refer to Local Civil Rule 53.2 for the specific types and categories of cases that are considered to be eligible for arbitration.

A. Procedure for Cases Eligible for Arbitration

When a complaint is filed, our local civil rule provides that damages are presumed to be not in excess of \$150,000 unless counsel certifies that the damages exceed that amount. Immediately after the answer is filed, the attorneys receive a letter from the Clerk's Office advising them of the date for the arbitration hearing and also notifying them that discovery must be completed within 90 days. The clerk schedules the arbitration hearing for a specific day, usually a date about four months after an answer has been filed. In the event a party files a motion for judgment on the pleadings, summary judgment, or similar relief, our local rule provides that the case may not be heard until the court has ruled on the motion. However, the filing of a motion after the judge designates the arbitrators who will hear the case (usually about 30 days prior to the arbitration hearing) shall not stay the arbitration unless the judge so orders.

B. Trial Procedure

Although the Federal Rules of Evidence are designated as guides for the admissibility of evidence at the arbitration hearing, copies or photographs of exhibits must be marked for identification and delivered to the adverse party at least ten days prior to arbitration. The arbitrators shall receive such exhibits in evidence without formal proof, unless counsel has been notified at least five days prior to the hearing that their opponent intends to raise an issue concerning the authenticity of the exhibit. The arbitration hearing

is not recorded unless a party at their own expense arranges for a recording. The arbitrators are authorized to change the date of the arbitration hearing, provided it takes place within 30 days of the date originally scheduled.

C. Arbitrators

We currently have 1480 lawyers certified as arbitrators. In order to qualify for certification, the lawyer must be admitted to practice before our court, be a member of the bar for at least five years, and be determined by our Chief Judge to be competent to perform the duties of an arbitrator. An arbitrator receives \$150 for each case arbitrated. Three arbitrators are appointed for each case. They are randomly selected by the Clerk and each panel of three arbitrators is composed of one whose practice is primarily representing plaintiffs, one whose practice is primarily representing defendants, and one whose practice does not fit either category. The arbitrators are scheduled for hearing dates several months in advance. However, it is not until the judge signs the order designating the arbitrators who will hear the case (approximately 30 days prior to the arbitration hearing) that counsel learn the identity of the arbitrators and the arbitrators become aware of the case assigned to them.

D. Arbitrators' Award

Immediately after the hearing, the arbitrators make a simple award, e.g., "Award in favor of defendant" or "Award in favor of plaintiff in the amount of \$X against (naming one or more defendants)." The arbitrators are instructed that they should not file findings of fact, conclusions of law nor opinions of any kind. The arbitrators' award shall be entered as the final judgment of the Court, unless within 30 days of the filing of the award a party demands a trial de novo.

E. Demand for Trial De Novo

Upon the filing of a demand for trial de novo, the case proceeds as if it had never been heard by the arbitrators.

APPEALS

A. Civil

In civil cases, you have 30 days to file an appeal, unless the government is a party, in which case you have 60 days. The time commences from the date the order or judgment is entered on the docket (calendar days, not working days). A cross appeal should be filed 14 days from the filing of the first appeal.

All cases filed in the ECF System in which a notice of appeal is filed shall be governed by Rule 10 of the Federal Rules of Appellate Procedure and relevant Local Rules and internal operating procedures of the United States Court of Appeals for the Third Circuit, with any differences about whether the record truly discloses what occurred in the district court to be submitted to and settled by the judge. Cases in which there is a right of direct appeal to the United States Supreme Court shall be governed by the rules of the United States Supreme Court.

For cases filed in paper format, an original notice of appeal, a copy for each counsel of record, a copy for the Third Circuit Court of Appeals and a copy for the District Court Judge are needed.

B. Criminal

In criminal cases you have 10 days to file an appeal. Cross appeals should also be filed within 10 days.

For cases filed in paper format, an original notice of appeal, a copy for all counsel of record, a copy for the Third Circuit Court of Appeals and a copy for the District Court Judge are needed. Also needed is the Clerk's Information Sheet concerning criminal cases in which a notice of appeal is filed.

If the attorney is court-appointed, pursuant to the provisions of the Criminal Justice Act, a filing fee is not required.

C. Report and Recommendation of U.S. Magistrate Judge

A party has 10 days to file objections. An original and one copy is required.

D. Bankruptcy

A party has 10 days to file a bankruptcy appeal to the District Court. This appeal is filed in the Bankruptcy Court. An original and copies for all counsel of record are required. Counsel must file designation of record on appeal (Bankruptcy Rule 8006).

E. Patent, "Little Tucker Act" and Claims Court Transfer Cases

Appeals in patent and "Little Tucker Act" cases [28 U. S. C. §§ 1295 (a) (1) - (2)] from certain interlocutory orders in these cases [28 U.S.C. § 1295(c)], and from orders transferring or refusing to transfer cases to the United States Claims Court [28 U.S.C. § 1292 (d)(4)(B)], go to the United States Court of Appeals for the Federal Circuit. Federal Circuit Rules, practice notes, and appendix of forms are found in the Rules of Practice Before the United States Court of Appeals for the Federal Circuit, available from the Clerk of that Court upon request. Call (202) 633-6550 or write to 717 Madison Place, N.W., Washington, DC 20439.

F. Service

Appellate Rule 25(c) outlines the procedures for service of the notice of appeal.

The Clerk of Court is responsible for serving a copy of the notice of appeal by mail to counsel of record other than the appellant. The date the notice of appeal was filed is noted on each copy served. A notation is made on the docket by the clerk of the names of the parties to whom copies are mailed and the date of mailing.

G. Filing Fee

The \$5 filing fee for the notice of appeal and the \$450 docket fee for the Court of Appeals are tendered to the Clerk of Court at the time of filing the notice of appeal. If the fee is not paid within 14 days after docketing, the clerk is authorized to dismiss the appeal.

H. Preparation of the Record on Appeal

Rule 11 of the Federal Rules of Appellate Procedure provide for certification and transmittal of the original district court records file and exhibits to the Court of Appeals. However, the United States Court of Appeals for the Third Circuit has initiated an experimental program for retention of records in the district courts. In order to monitor record and case management, the district courts have been directed to retain the court records and to transmit to the Court of Appeals a certified copy of the docket entries in lieu of the entire record.

However, Rule 11 of the Third Circuit Rules provides that all reinstated parts of the record are to be transmitted if any party or the court requests such at any time during the pendency of the proceeding.

Rule 11 requires the appellant within 10 days after filing of the notice of appeal to order from the court reporter a transcript of the proceedings not already on file that the appellant deems necessary for inclusion in the record (**Appendix P**). Rule 11 of the Third Circuit Rules also requires that a deposit be made with the court reporter of the estimated cost of transcript.

Any questions you may have concerning appeals should be directed to Orlando Medina, Jr., 267-299-7015.

CERTIFICATION OF JUDGMENT (AO 451)

Check Appellate Rule 4(a)(4) before issuing an AO 451. Also check the docket sheet for any post-judgment motions which may have the effect of "staying" the execution on the judgment.

The clerk does not have the authority to issue an AO 451 if a Motion to Vacate the Judgment, Motion for Reconsideration, or Motion to Stay is pending or unless the "appeal time" has expired except when ordered by the court that entered the judgment for good cause shown. (28 U.S.C. § 1963, as amended.) The appeal time commences to run from the date the judgment is entered on the docket, unless otherwise ordered by the Court. The clerk is not authorized to issue an AO 451 before the expiration of the appeal time because the case may be "reversed" on appeal and result in substantial loss to plaintiff because of the executions on the property of the defendant.

Normally, all civil cases may be appealed within 30 days from the date of entry of the final judgment on the docket. The United States always has 60 days within which to file an appeal. Be sure to attach a certified copy of the judgment to the AO 451 form.

REFERRAL TO UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. § 636(c) and Local Civil Rule 72.1, U.S. Magistrate Judges may conduct, upon consent of all the parties in a civil case, any or all proceedings, including a jury or non-jury trial, and order the entry of a final judgment.

Your decision to consent, or not to consent, to the referral of your case to a U.S. Magistrate Judge for disposition is entirely voluntary and should be communicated solely to the Clerk of Court. Appropriate consent forms for this purpose are available from the Clerk's Office (**Appendix Q**).

Only if all the parties in the case consent to the referral to a magistrate judge will either the district court judge or the magistrate judge be informed of your decision. The judge will then decide whether or not to refer the case to a magistrate judge for disposition, but no action eligible for arbitration will be referred by consent of the parties until the arbitration has been concluded and trial de novo demanded pursuant to Local Civil Rule 53.2. The court may, for good cause shown on its motion, or under extraordinary circumstances shown by any party, vacate a referral of a civil matter to a magistrate judge.

When a case is referred to a magistrate judge for all further proceedings, including the entry of final judgment, the final judgment may be appealed directly to the Court of Appeals for the Third Circuit, unless the parties elect to have the case reviewed by the appropriate district judge (in which event any further appeal to the Court of Appeals would only be by petition for leave to appeal). Accordingly, in executing a consent form, you will be asked to specify which appeal procedure you elect (see Local Civil Rule 72.1).

POST JUDGMENT INTEREST RATE

In accordance with 28 U.S.C. § 1961 and 40 U.S.C. § 258, interest shall be allowed on any money judgment in a civil case recovered in a district court. Execution therefor may be levied by the marshal, in any case where, by the law of the State in which such court is

held, execution may be levied for interest on judgments recovered in the courts of the State. Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment. Requests for the current rate and any questions should be directed to Mary Chase, Operations Manager (267-299-7012) or Richard Sabol, Assistant Operations Manager (267-299-7011). Current rates are available through a link to the Federal Reserve from our website, <http://www.paed.uscourts.gov>.

TAXATION OF COSTS

A. District Court Costs in General

It is well-established that costs may not be imposed in federal district courts except where they are authorized by either a statute or a rule of court. Abrams v. Lightolier, Inc., 50 F.3d 1204 (3d Cir. 1995). With regard to district court costs, the federal taxation statute, 28 U.S.C. §1920, lists those items of district court costs taxable in the first instance by the Clerk of the District Court. Buchanan v. Stanships, Inc., 485 U.S. 265 (1988); In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000). These items of district court costs taxable in the first instance by the Clerk, as listed in 28 U.S.C. §1920, are:

- “(1) Fees of the clerk or marshal;
- “(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
- “(3) Fees and disbursements for printing and witnesses;
- “(4) Fees for exemplification and copies of papers necessarily obtained for use in the case;
- “(5) Docket fees under section 1923 of this title (i.e. 28 U.S.C. §1923); (and,)
- “(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special

interpretation services under section 1828 of this title (i.e. 28 U.S.C. §1828)."

The prevailing party, having had judgment entered in its favor, may file a bill of costs for any items detailed in 28 U.S.C. § 1920. The bill of costs will then be forwarded to the deputy clerk responsible for taxation of costs. The section of §1920 requiring one day's notice simply means that at least one day must elapse between the filing of the bill of costs and the taxing of costs; as a practical matter, it is usually necessary in the Eastern District of Pennsylvania for much more than one day to process a taxation of costs request pursuant to §1920 and these procedures.

Costs will not be taxed until the underlying litigation is completed, and until after any period in which an appeal may be raised has lapsed; this is based on the simple principle that until the underlying litigation is over, the issue of who is the ultimately "prevailing party" has not yet been determined. Fleischer v. AAP, Inc., 36 F.R.D. 31 (S.D.N.Y. 1964). Once the issue of who is the ultimately prevailing party has been finally determined, the clerk shall send an identical letter to both parties (or their counsel) asking for objections in writing from the non-prevailing party within fourteen (14) days, with the prevailing party then having fourteen (14) days to respond. The clerk will make a determination based on the bill of costs itself, and the arguments made in writing (if any); in addition, any relevant statutes, rules of court, and/or caselaw may play a role in the Clerk's determination of whether district court costs should be taxed and, if warranted, in what amount. After making his determination, the clerk will thereafter enter a written taxation of costs opinion, accompanied, if warranted, by a judgment. A true and correct copy of the taxation opinion and any attached judgment shall be forwarded to all parties of record, or their counsel. Costs are effective as of the date the Clerk's judgment is entered on the docket. Either party can appeal the Clerk's taxation opinion and/or judgment to the presiding Article III judicial officer within 5 days, pursuant to F.R.C.P. 54(d)(1). Buchanan v. Stanships, Inc., 485 U.S. 265 (1988); In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000). See, also, Nelson v. Darragh Co., 120 F.R.D. 517 (W.D. Ark. 1988). The bill of costs must be accompanied by an affidavit pursuant to 28 U.S.C. § 1924 stating that the district court costs sought are correct and were actually and necessarily incurred; such an affidavit from counsel is given great weight in a Clerk's Taxation of Costs proceeding. Schauffler v. United Assoc. of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, 246 F.2d 867 (3d Cir. 1957);

Lachance v. Harrington, 965 F.Supp. 630 (E.D. Pa. 1997). See also, Women's Federal Savings and Loan Association of Cleveland v. Nevada National Bank, 108 F.R.D. 396 (D. Nevada 1985); Morrissey v. County Tower Corp., 568 F.Supp. 980 (E.D. Mo. 1983).

B. Burden of Proof

As stated previously, it is well-established that costs shall not be imposed in federal district courts except where they are authorized by either a federal statute or a federal rule of court. Abrams v. Lightolier, Inc., 50 F.3d 1204 (3d Cir. 1995). The federal taxation statute, 28 U.S.C. §1920, lists those items of district court costs taxable by the Clerk of Court; Federal Rule of Civil Procedure 54(d)(1) is incorporated into the law of Clerk's Taxations of Costs established by 28 U.S.C. §1920. Crawford Fitting Company v. J. T. Gibbons, Inc., 482 U.S. 437 (1987). Federal Rule of Civil Procedure 54(d)(1) directs that "costs other than attorney fees" (i.e. those district court costs authorized by 28 U.S.C. §1920) "shall be allowed as of course to the prevailing party unless the court otherwise directs" (emphasis added). This language creates a heavy presumption that "**the 'prevailing party' automatically is entitled to costs**" as a matter of course, once it has been shown that the district court costs sought are, at least arguably, of those types of costs taxable by the Clerk pursuant to Federal Rule of Civil Procedure 54(d)(1). Buchanan v. Stanships, Inc., 485 U.S. 265, 268 (1988)(emphasis added). Accord, In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); Abrams v. Lightolier, Inc., 50 F.3d 1204 (3d Cir. 1995); Smith v. SEPTA, 47 F.3d 97 (3d Cir. 1995); Institutionalized Juveniles v. Secretary of Public Welfare, 758 F.2d 897 (3d Cir. 1985); Pearlstine v. United States, 649 F.2d 194 (3rd Cir. 1981); Delaney v. Capone, 642 F.2d 57 (3d Cir. 1981); Samuel v. University of Pittsburgh, 538 F.2d 991 (3d Cir. 1976); ADM Corp. v. Speedmaster Packing Corp., 525 F.2d 662 (3d Cir. 1975); City of Rome, Italy v. Glanton, 184 F.R.D. 547 (E.D. Pa. 1999); Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998); Action Alliance for Senior Citizens of Greater Philadelphia v. Shapp, 74 F.R.D. 617 (E.D. Pa. 1977). This heavy presumption is based on the federal policy that a Clerk's Taxation of Costs is seen as a ministerial act in civil cases, and is not seen as a penalty. Abrams v. Lightolier, Inc., 50 F.3d 1204 (3d Cir. 1995); Smith v. SEPTA, 47 F.3d 97 (3d Cir. 1995); Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998). See also, Weseloh-Hurtig v. Hepker, 152 F.R.D. 198 (D. Kansas 1993). A consequence of this presumption is that the losing party must overcome the presumption in favor of the taxing of district court costs. In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998). Another

consequence of this presumption is that denial of district court costs to a prevailing party is considered punitive against that prevailing party. Smith v. SEPTA, 47 F.3d 97 (3d Cir. 1995); Institutionalized Juveniles v. Secretary of Public Welfare, 758 F.2d 897, 926 (3rd Cir. 1985); Pearlstine v. United States, 649 F.2d 194 (3rd Cir. 1981); Delaney v. Capone, 642 F.2d 57 (3d Cir. 1981); Samuel v. University of Pittsburgh, 538 F.2d 991 (3d Cir. 1976); ADM Corp. v. Speedmaster Packing Corp., 525 F.2d 662 (3d Cir. 1975). Another consequence of this presumption is that if the Clerk of Court denies otherwise allowable district court costs to a prevailing party, the Clerk must specifically state what bad act, defect or impropriety on the part of that prevailing party leads the Clerk to deny otherwise allowable district court costs to that prevailing party. Pearlstine v. United States, 649 F.2d 194, 198-9 (3rd Cir. 1981); ADM Corp. v. Speedmaster Packaging Corp., 525 F.2d 662, (3rd Cir. 1975). See, also, In Re Olympia Brewing Co. Securities Litigation, 613 F.Supp. 1286, 1302 (N.D. Ill. 1985).

There is a recurring theme that the prevailing party may recover those types of costs listed in 28 U.S.C. §1920 that were necessary for his counsel's effective preparation, judged in light of the situation existing at the time the costs were incurred, regardless of whether the items for which costs are sought were actually used. In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3rd Cir. 2000); In Re: Kulicke & Soffa Industries Inc. Securities Litigation, 747 F.Supp. 1136 (E.D.Pa. 1990), aff'd, 944 F.2d 897 (3rd Cir. 1991); ADM Corp. v. Speedmaster Packing Corp., 525 F.2d 662 (3d Cir. 1975); Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992); Raio v. American Airlines, 102 F.R.D. 608 (E.D.Pa. 1984). See, also, Charter Medical Corp. v. Cardin, 127 F.R.D. 111 (D. Maryland 1989); Women's Federal Savings and Loan Association of Cleveland v. Nevada National Bank, 108 F.R.D. 396 (D. Nevada 1985); International Wood Processors v. Power Dry, Inc., 598 F.Supp. 299 (D.S.C. 1984); Morrissey v. County Tower Corp., 568 F.Supp. 178 (E.D.Mo. 1983); Gillam v. A. Shyman, Inc., 31 F.R.D. 271 (D. Alaska 1962). Moreover, the bill of costs must be accompanied by an affidavit from counsel for the prevailing party stating under penalty of perjury that the costs are correct and were actually and necessarily incurred; the existence of such an affidavit in a Clerk's Taxation of Costs proceeding is given very great weight with respect to the aforesaid burden of proof in favor of the taxation of those types of costs listed in the taxation statute. Schauffler v. United Assoc. of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, 246 F.2d 867 (3d Cir. 1957); Lachance v. Harrington, 965 F.Supp. 630 (E.D. Pa. 1997). See, also, Women's Federal Savings and Loan Association of Cleveland v. Nevada National Bank, 108 F.R.D. 396 (D. Nevada 1985); Morrissey v. County

Tower Corp., 568 F.Supp. 980 (E.D. Mo. 1983).

C. General Objections to a District Court Bill of Costs in its Entirety

As stated previously, the general rule is that the types of district court costs listed in 28 U.S.C. §1920 are automatically taxed. Although this general rule creates a heavy presumption in favor of allowing district court costs, this presumption can be rebutted by use of one of several general objections (that is, objections to a bill of costs in its entirety) available to the losing party. Individual courts vary as to the weight given to these objections. What follows is an analysis of these general objections in the United States District Court for the Eastern District of Pennsylvania.

(1) **Indigence.** One common defense is the alleged indigence of the losing party. As stated previously, Federal Rule of Civil Procedure 54(d)(1) creates a heavy presumption in favor of an automatic award of costs, once it has been shown that the costs sought are, at least arguably, of those types of costs listed in the taxation statute, 28 U.S.C. §1920. Economic disparity between the parties is not a basis for disallowing costs, and a very strong presumption exists that consideration of the alleged "equities" does not favor a disallowance of costs by the court. In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); Smith v. SEPTA, 47 F.3d 97 (3d Cir. 1995); Action Alliance for Senior Citizens of Greater Philadelphia v. Shapp, 74 F.R.D. 617 (E.D. Pa. 1977). Accord, Weaver v. Toombs, 948 F.2d 1004 (6th Cir. 1991). The Clerk may tax costs not only in those situations where the losing party is less affluent than the prevailing party, but also where the losing party is actually indigent. Action Alliance for Senior Citizens of Greater Philadelphia, Inc. v. Shapp, 74 F.R.D. 617, 620 (E.D. Pa. 1977). Even complete and utter inability to pay is not grounds for a disallowance of costs. In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998). Likewise, even the granting of in forma pauperis status to the losing party does not rebut this strong presumption. Washington v. Patlis, 916 F.2d 1036 (5th Cir. 1990); Chevrette v. Marks, 558 F.Supp. 1133 (M.D. Pa. 1983).

(2) **Bankruptcy.** Judicial proceedings relating to a claim against a debtor who has filed for bankruptcy are void ab initio absent relief from the automatic stay. Constitution Bank v. Tubbs, 68 F.3d 685 (3rd Cir. 1995). This rule includes proceedings for taxation of costs; costs may not be taxed against a debtor in bankruptcy because of the

automatic stay provision of the Bankruptcy Code. Franklin Savings Association v. Office of Thrift Supervision, 31 F.3d 1020 (10th Cir. 1994).

(3) **"Chilling Effect" on lawsuits that allegedly address important societal issues.** As stated previously, the language of F.R.C.P. 54(d)(1) creates a heavy presumption in favor of an award of costs, once it has been shown that the costs sought are, at least arguably, of those types of costs listed in the taxation statute, 28 U.S.C. §1920. A non-prevailing plaintiff will sometimes argue that the underlying lawsuit allegedly addressed important issues of public policy, and that an award of costs in that case would allegedly have a "chilling effect" on future lawsuits that address important societal issues. This is not a valid reason to deny costs in light of the directive of F.R.C.P. 54(d)(1) that costs "shall" be taxed "as of course" against the non-prevailing party. In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); Abrams v. Lightolier, Inc., 50 F.3d 1204 (3d Cir. 1995); Smith v. SEPTA, 47 F.3d 97 (3d Cir. 1995); Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998). See, also, McGill v. Faulkner, 18 F.3d 456 (7th Cir. 1994); Pion v. Liberty Dairy Co., 922 F.Supp. 48 (W.D. Mich 1996). This is because taxation of costs is seen as a routine, ministerial act in civil cases, and is not seen as a penalty. Smith v. SEPTA, 47 F.3d 97 (3d Cir. 1995); Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998). See, also, Weseloh-Hurtig v. Hepker, 152 F.R.D. 198 (D. Kansas 1993).

(4) **"Good faith" litigation by the non-prevailing party.** As stated previously, Federal Rule of Civil Procedure 54(d)(1) directs that "costs other than attorney fees" (i.e. those costs authorized by 28 U.S.C. §1920) "shall be allowed as of course to the prevailing party unless the court otherwise directs" (emphasis added). As stated previously, this language creates a heavy presumption in favor of an automatic award of costs, once it has been shown that the costs sought are, at least arguably, of those types of costs listed in the taxation statute, 28 U.S.C. §1920. Good faith litigation is not, in itself, sufficient to rebut the presumption in favor of allowing costs. If costs were taxable only where the losing party acted in bad faith, Federal Rule of Civil Procedure 54(d) would have very little meaning. Popeil Brothers, Inc. v. Schick Electric, Inc., 516 F.2d 772 (7th Cir. 1975); McGuigan v. Cae Lank Corp., 155 FRD 31 (N.D.N.Y. 1994); Phillips v. Cameron Tool Corp., 131 FRD 151 (S. D. Ind. 1990); Maldonado v. Parasole, 66 F.R.D. 388 (E.D.N.Y. 1975). The bare allegation that an action was allegedly brought in good faith and was neither frivolous, unreasonable nor without foundation is not sufficient to overcome the presumption inherent in Fed. P. Civ. P. 54(d)(1) that "costs shall be allowed as of course to

the prevailing party unless the court otherwise directs" (emphasis added). As the court explained in Popeil Brothers v. Schick Electric, 516 F.2d 772 (7th Cir. 1975), "(i)f the awarding of costs could be thwarted every time the unsuccessful party is a normal, average party and not a knave, Rule 54(d) would have little substance remaining." 516 F.2d at 776.

Hence, "good faith litigation does not absolve a party from imposition of costs." Maldonado v. Parasole, 66 F.R.D. 388,390 (E.D.N.Y. 1975). See, also, In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); Smith v. SEPTA, 47 F.3d 97 (3d Cir. 1995); Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998). Accord, McGuigan v. Cae Lank Corp., 155 F.R.D. 31 (N.D.N.Y. 1994); Phillips v. Cameron Tool Corp., 131 F.R.D. 151 (S D. Ind. 1990). It is likewise not relevant that the issues were 'closely contested.' In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); Smith v. SEPTA, 47 F.3d 97 (3d Cir. 1995); Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998). A Clerk's Taxation of Costs proceeding is not a forum for re-examining the underlying facts of the lawsuit or for re-litigating the underlying case. Samaad v. City of Dallas, 922 F.2d 216 (5th Cir. 1991).

(5) "Closely contested issues" and/or "verdict allegedly incorrect."

As stated previously, Federal Rule of Civil Procedure 54(d)(1) directs that "costs other than attorney fees" (i.e. those costs authorized by 28 U.S.C. §1920) "shall be allowed as of course to the prevailing party unless the court otherwise directs" (emphasis added). This language creates a heavy presumption in favor of an award of district court costs, once it has been shown that the costs sought are, at least arguably, of those types of costs listed in the taxation statute, 28 U.S.C. §1920. It is not a valid objection that the issues in the underlying case were closely contested and that the final judgment allegedly could have, or allegedly should have, gone in the other direction. In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); Smith v. SEPTA, 47 F.3d 97 (3d Cir. 1995); Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998). Accord, McGuigan v. Cae Lank Corp., 155 F.R.D. 31 (NDNY 1994); Phillips v. Cameron Tool Corp., 131 F.R.D. 151 (S D. Ind. 1990); Maldonado v. Parasole, 66 F.R.D. 388,390 (EDNY 1975). A Clerk's Taxation of Costs proceeding is not a forum for re-examining the underlying facts of the lawsuit or for re-litigating the underlying civil action. Samaad v. City of Dallas, 922 F.2d 216 (5th Cir. 1991).

(6) Untimely filing of bill of costs. Sometimes, a losing party will argue that the bill of costs was allegedly not filed in a timely fashion. No statute or federal rule of court governs what constitutes a timely filing; in addition, the United States District

Court for the Eastern District of Pennsylvania has no local rule of court governing what constitutes a timely filing. In lieu of any local rule, it has been held that bills of costs must be filed within a "reasonable" time after the conclusion of litigation. Congregation of the Passion, Holy Cross Province v. Touche, Ross & Co., 854 F.2d 219 (7th Cir. 1988); United States v. Hoffa, 497 F.2d 294 (7th Cir. 1974); Nelson v. Darragh Co., 120 F.R.D. 517 (W.D. Ark. 1988); Sudouest Import Sales Corp. v. Union Carbide Corp., 102 F.R.D. 264 (D.P.R. 1984).

(7) **Misconduct by the prevailing party during the litigation process which allegedly led to excessive costs.** As stated previously, Federal Rule of Civil Procedure 54(d)(1) directs that "costs other than attorney fees" (i.e. those costs authorized by 28 U.S.C. §1920) "shall be allowed as of course to the prevailing party unless the court otherwise directs" (emphasis added). This language creates a heavy presumption in favor of an award of costs, once it has been shown that the costs sought are, at least arguably, of those types of costs listed in the taxation statute, 28 U.S.C. §1920. The clerk or court may deny 28 U.S.C. §1920 costs where there has been misconduct by the prevailing party during the litigation process which led to excessive costs; however, the alleged misconduct must have been *very, very bad* for this objection to prevail. In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); Institutionalized Juveniles v. Secretary of Public Welfare, 758 F.2d 897, 926 (3rd Cir. 1985); ADM. Corp. v. Speedmaster Packaging Corp., 525 F.2d 662, 664 (3rd Cir. 1975).

(8) **Less than total success by the prevailing party.** The relevant rule of court, Federal Rule of Civil Procedure 54(d)(1), directs the taxing of costs in favor of "the prevailing party." In the United States District Court for the Eastern District of Pennsylvania, the question of which party prevails is conclusively determined by reading the text of the final entry of judgment. Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998); Lacovara v. Merrill Lynch, Pierce, Fenner & Smith, 102 F.R.D. 959 (E.D. Pa. 1984). See, also, Hines v. Perez, 242 F.2d 459 (9th Cir. 1957); Sperry Rand Corp. v. A-T-O, Inc., 58 F.R.D. 132 (E.D.Va. 1973). This standard is based on the simple fact that a Clerk's Taxation of Costs proceeding is not a forum for re-examining the underlying facts of the lawsuit or for re-litigating the underlying lawsuit. Samaad v. City of Dallas, 922 F.2d 216 (5th Cir. 1991).

The test of whether a plaintiff is "the prevailing party" is whether that plaintiff

obtained any relief; it is not necessary to receive all of the relief sought. Institutionalized Juveniles v. Secretary of Public Welfare, 758 F.2d 897 (3rd Cir. 1985); Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998). See, also, Green Construction Co. v. Kansas Power and Light Co., 153 F.R.D. 670 (D. Kansas 1994); Weseloh-Hurtig v. Hepker, 152 F.R.D. 198 (D. Kansas 1993). The plaintiff is considered the prevailing party and the defendants are considered the non-prevailing parties in those situations where a favorable judgment is entered for plaintiff on any of the claims plaintiff asserted, even if plaintiff is only successful on a fraction of the claims asserted and even if plaintiff obtains only a fraction of the relief sought. Institutionalized Juveniles v. Secretary of Public Welfare, 758 F.2d 897 (3d Cir. 1985). See, also, Zackaroff v. Koch Transfer Co., 862 F.2d 1263 (6th Cir. 1988); First Community Traders, Inc. v. Heinold Commodities, Inc., 766 F.2d 1007 (7th Cir. 1985); Friends for All Children v. Lockheed Aircraft Corp., 725 F.2d 1392 (D.C. Cir. 1984); Superturf, Inc. v. Monsanto Co., 660 F.2d 1275 (8th Cir. 1981); Jones v. Diamond, 594 F.2d 997 (4th Cir. 1979); U.S. v. Mitchell, 580 F.2d 789 (5th Cir. 1978); K-2 Ski Co. v. Head Ski Co., 506 F.2d 47 (9th Cir. 1974); Garonzik v. Whitman Diner, 910 F.Supp. 167 (D.N.J. 1995); Weseloh-Hurtig v. Hepker, 152 F.R.D. 198 (D. Kansas 1993); Bruno v. Western Electric Co., 618 F.Supp. 398 (D. Colorado 1985); Seber v. Daniels Transfer Co., 618 F.Supp. 1311 (W.D. Pa. 1985); Wade v. Mississippi Cooperative Extension Service, 64 F.R.D. 102 (N.D.Miss. 1974); Sperry Rand Corp. v. A-T-O, Inc., 58 F.R.D. 132 (E.D.Va. 1973).

Likewise, the law is clear that where a plaintiff does not prevail on any of his claims, defendants are considered the prevailing parties. Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998); Lacovara v. Merrill Lynch, 102 F.R.D. 959 (E.D. Pa. 1984). See, also, Scientific Holding Co. v. Plessey, 510 F.2d 15 (2nd Cir. 1974). In situations where a plaintiff does not prevail on any of their claims, this rule applies and the defendants are considered the prevailing parties, even where the defendants do not prevail on their counterclaims. Lacovara v. Merrill Lynch, 102 F.R.D. 959 (E.D. Pa. 1984). See, also, Scientific Holding Co. v. Plessey, 510 F.2d 15 (2nd Cir. 1974). It is also important to realize that the judgment that controls the issue of which party prevailed is the judgment at the final level of appeal a case reached. Farmer v. American Arabian Oil Co., 379 U.S. 227 (1964). See, also, Furman v. Cirrito, 782 F.2d 353 (2d Cir. 1986); Knox v. Schweiker, 567 F.Supp. 959 (D.Del. 1983). We note that the party who has prevailed at the final stage a lawsuit reaches is considered the prevailing party for the entire lawsuit and may recover costs related to all stages of the lawsuit; this includes earlier stages at which the ultimately prevailing party did not prevail. Farmer v. American Arabian Oil Co., 379 U.S. 227 (1964).

See, also, Furman v. Cirrito, 782 F.2d 353 (2d Cir. 1986); Knox v. Schweiker, 567 F.Supp. 959 (D.Del. 1983). This is the reason why costs will not be taxed until the underlying litigation is completed, and also until after any period in which an appeal may be raised has lapsed; this is based on the simple principle that until the underlying litigation is over, the issue of who is the ultimately "prevailing party" has not yet been determined. Fleischer v. AAP, Inc., 36 F.R.D. 31 (S.D.N.Y. 1964). Likewise, it is irrelevant that a matter was disposed of by means of summary judgment and did not reach trial. Johnson v. Henderson, 67 F.3d 299 (6th Cir. 1995); Woolfson v. Doyle, 180 F.Supp. 86 (SDNY 1960). Where the plaintiff withdraws his case without receiving any compensation in means of settlement, the defendant may recover costs, even where the decision to withdraw was totally voluntary. Brandt v. Schal Associates, 854 F.2d 948 (7th Cir. 1988); Bishop v. West American Insurance Co., 95 F.R.D. 494 (N.D. Ga. 1982).

(9) **Insufficient itemization.** The bill of costs must be neat and legible.

There is no requirement for receipts; rather, caselaw holds that the key criterion is that costs must be sufficiently itemized to the extent that opposing counsel can make informed objections and the Clerk or Court can make an informed determination of whether requested costs are allowable. Morrissey v. County Tower Corp., 568 F. Supp. 980 (E.D. Mo. 1983); Harceg v. Brown, 536 F.Supp. 125 (N.D. Ill. 1982). Accord, Lachance v. Harrington, 965 F.Supp. 630 (E.D. Pa. 1997); Seidman v. American Mobile Systems, 965 F.Supp. 612 (E.D. Pa. 1997). The bill of costs must be accompanied by an affidavit pursuant to 28 U.S.C. § 1924, signed under penalty of perjury, stating that the costs are correct and were actually and necessarily incurred; the existence of such an affidavit in a Clerk's Taxation of Costs proceeding is given very great weight. Schauffler v. United Assoc. of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, 246 F.2d 867 (3d Cir. 1957); Lachance v. Harrington, 965 F.Supp. 630 (E.D. Pa. 1997). See, also, Women's Federal Savings and Loan Association of Cleveland v. Nevada National Bank, 108 F.R.D. 396 (D. Nevada 1985); Morrissey v. County Tower Corp., 568 F.Supp. 980 (E.D. Mo. 1983). As stated previously, the language of F.R.C.P. 54(d)(1) creates a heavy presumption in favor of an award of costs, once it has been shown that the costs sought are, at least arguably, of those types of costs listed in the taxation statute, 28 U.S.C. §1920.

(10) **Action of the trial court.**

- i. Disallowance of request for attorney fees. An award or disallowance of attorney fees and attorney costs pursuant to Federal Rule of Civil Procedure 54(d)(2) is totally separate and distinct from an award of statutory costs pursuant to Federal Rule of Civil Procedure 54(d)(1). As previously stated, Federal Civil Rule 54(d)(1) costs are routinely assessed as a matter of course; accordingly, Federal Civil Rule 54(d)(1) costs may be assessed even when Federal Civil Rule 54(d)(2) costs are disallowed. Abrams v. Lightolier, Inc., 50 F.3d 1204 (3d Cir. 1995); Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998).
- ii. The Clerk of Court will have no difficulty in those cases where the court has expressly allowed or disallowed district court costs *pursuant to 28 U.S.C. §1920* (that is, district court costs other than attorney fees and attorney costs) in the final order or judgment.
- iii. In any case brought under a specific statute, the clerk's office must check to see if that statute has provisions concerning costs.

(11) **Official Bill of Costs form.** Although there is a standard form provided by the Administrative Office of the United States Courts (**Appendix R**), use of this form is optional; where the official form is not used, district court costs may yet be taxed where the request for costs is neat and legible. Women's Federal Savings and Loan Association of Cleveland v. Nevada National Bank, 108 F.R.D. 396 (D. Nevada 1985).

(12) **Joint and Several liability.** Costs against multiple losing parties are presumptively joint and several, and any losing party seeking to challenge this point bears the burden of demonstrating why district court costs should not be joint and several. In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000).

(13) **Pre-Judgment stipulation.** If the parties have stipulated *prior to the final judgment in the underlying lawsuit* as to how district court costs will be apportioned, that stipulation is controlling. Frigiquip Corp. v. Parker-Hannifin Corp., 75 F.R.D. 605 (W.D. Okla. 1977).

(14) **Cases brought in federal court pursuant to 28 U.S.C. §1332**

(commonly known as “diversity jurisdiction”). Where an action is brought in federal court pursuant to 28 U.S.C. §1332 and there are both state and federal cost-shifting statutes or rules of court that may possibly apply, the federal statute or rule “trumps” the state statute or rule, so that the state procedures may be disregarded, and district court costs may be taxed in diversity jurisdiction cases pursuant to 28 U.S.C. §1920 and Federal Rule of Civil Procedure 54(d)(1). Abrams v. Lightolier, Inc., 50 F.3d 1204 (3d Cir. 1995).

(15) **United States as a party.** Title 28 U.S.C. § 2412 permits taxation against the United States or any agency or official thereof. The Federal Courts Administration Act of 1992 (P.L. 102-572) provides that the United States may recover filing fees when it prevails in a civil action.

(16) **State governments as party.** The Eleventh Amendment to the Constitution does not bar taxation of district court costs against a state government, its agencies or officials. Samuel v. University of Pittsburgh, 538 F.2d 991 (3rd Cir. 1976); Halderman v. Pennhurst State School and Hospital, 533 F.Supp. 631, 639 (E.D. Pa. 1981). See, also, Gay Students Services v. Texas A&M University, 612 F.2d 160, 165 (5th Cir. 1980); Gary W. v. Louisiana, 601 F.2d 240 (5th Cir. 1979); Kovats v. Rutgers, 633 F.Supp. 1469, 1475 (D.N.J. 1986).

(17) **Costs in admiralty cases.** District court clerks may tax 28 U.S.C. 1920 costs in admiralty cases. Copperweld Steel Co. v. DeMag-Mannesmann-Bohler, 624 F.2d 7 (3rd Cir. 1980).

(18) **Interveners.** The prevailing practice is that interveners in agency actions are treated like any other prevailing or losing party. American Truck Assoc., Inc. v. I.C.C., 666 F.2d 167, 169 (5th Cir. 1982); American Railway Supervisors Association v. United States, 582 F.2d 1066, 1067 (7th Cir. 1978); Delta Airlines, Inc. v. Civil Aeronautics Board, 505 F.2d 386 (D.C. Cir.1974); Smith v. Board of School Commissioners of Mobile County, 119 F.R.D. 440, 443 (S.D. Ala. 1988); Monroe v. United Air Lines, Inc., 565 F.Supp. 274 (N.D.Ill 1983).

(19) **Federal Rule of Civil Procedure 68.** As previously stated, it is well-established that costs may not be imposed in federal district courts except where they are authorized by either a statute or a rule of court. Abrams v. Lightolier, Inc., 50 F.3d 1204

(3d Cir. 1995). Federal Rule of Civil Procedure 68 provides that:

“(A) party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party... to the effect specified in the offer, with costs then accrued... (if this offer is not accepted, and subsequently) the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer.”

Rule 68 costs are taxable only by a district court judge, not the district court Clerk.

D. Allowable Items of District Court Costs

The Clerk may only tax those items of district court costs specifically listed in the taxation of costs statute, 28 U.S.C. §1920. Crawford Fitting Company v. J. T. Gibbons, Inc., 482 U.S. 437 (1987); Farmer v. Arabian American Oil Co., 379 U.S. 227 (1964); In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); Abrams v. Lightolier, Inc., 50 F.3d 1204 (3d Cir. 1995); Institutionalized Juveniles v. Secretary of Public Welfare, 758 F.2d 897 (3d Cir. 1985); Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992). This statute states:

"A judge or clerk of any court of the United States may tax as costs the following:

"(1) Fees of the clerk or marshal;

"(2) Fees of the court reporter for all or any part of its stenographic transcript necessarily obtained for use in the case;

"(3) Fees and disbursements for printing and witnesses;

"(4) Fees for exemplification and copies of papers necessarily obtained for use in the case;

"(5) Docket fees under section 1923 of this title (i.e. 28 U.S.C. §1923);

"(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title (i.e. 28 U.S.C. §1828)."

As stated previously, there is a heavy presumption in favor of the automatic taxation of those types of district court costs listed in the taxation statute, 28 U.S.C. §1920. Normally, the Clerk will tailor his taxation of costs opinion around the items requested and the actual objections raised by the losing party or his counsel, and will not raise issues *sua sponte*; however, as the Clerk's power is strictly limited by 28 U.S.C. §1920, a necessary corollary is that if a requested item of district court costs is obviously, without any doubt, never authorized by 28 U.S.C. §1920 under any circumstances, the Clerk may not tax that item as a cost, even where counsel has not raised any objections to the requested item in question. Andrews v. Suzuki Motor Co., 161 F.R.D. 383 (S.D. Ind. 1995).

The following is a discussion of the manner in which the Clerk of the United States District Court for the Eastern District of Pennsylvania addresses issues raised by 28 U.S.C. § 1920.

28 U.S.C. §1920(l)

- Fees of the district court clerk. These fees are routinely taxed pursuant to 28 U.S.C. §1920(l). Proffitt v. Municipal Authority of Borough of Morrisville, 716 F.Supp. 845 (E.D. Pa. 1989), aff'd, 897 F.2d 523 (3d Cir. 1990); Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992); Raio v. American Airlines, 102 F.R.D. 608 (E.D.Pa. 1984). See, also, United States v. Orenic, 110 F.R.D. 584 (W.D. Va. 1986); Bishop v. West American Insurance Co., 95 F.R.D. 494 (N.D.Ga. 1982). We note that costs related to fees of a state clerk related to federal litigation, as well as costs for removal to federal court, are recoverable in federal court pursuant to 28 U.S.C. §1920(1). Raio v. American Airlines, 102 F.R.D. 608 (E.D.Pa. 1984). See, also, United States v. Orenic, 110 F.R.D. 584 (W.D. Va. 1986); Bishop v. West American Insurance Co., 95 F.R.D. 494 (N.D.Ga. 1982). The Federal Courts Administration Act of 1992 (P.L. 102-572) provides that the United States may recover filing fees when it prevails in a civil action. As stated previously, there is a heavy presumption in favor of the automatic taxation of those types of district court costs listed in the taxation statute, 28 U.S.C. §1920.

- Fees of the marshal. Fees of the Marshal pursuant to 28 U.S.C. §1920(1) include costs of service of process, including subpoena service. Proffitt v. Municipal Authority of Borough of Morrisville, 716 F.Supp. 845 (E.D. Pa. 1989), aff'd, 897 F.2d 523 (3d Cir. 1990). Courts interpret this provision of 28 U.S.C. §1920(1) as permitting the taxing of costs for private process servers. Griffith v. Mt. Carmel Medical Center, 157 F.R.D. 499 (D. Kansas 1994); Bass v. Spitz, 522 F. Supp. 1343 (E.D. Mich. 1981). In examining the relevant caselaw concerning taxations of costs by the Clerk of Court, there is a recurring theme that the prevailing party may recover those types of district court costs listed in 28 U.S.C. §1920 that were necessary for his counsel's effective preparation, judged in light of the situation existing at the time the costs were incurred. In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3rd Cir. 2000); In Re: Kulicke & Soffa Industries Inc. Securities Litigation, 747 F.Supp. 1136 (E.D.Pa. 1990), aff'd, 944 F.2d 897 (3rd Cir. 1991); ADM Corp. v. Speedmaster Packing Corp., 525 F.2d 662 (3d Cir. 1975); Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992); Raio v. American Airlines, 102 F.R.D. 608 (E.D.Pa. 1984). See, also, Charter Medical Corp. v. Cardin, 127 F.R.D. 111 (D. Maryland 1989); Women's Federal Savings and Loan Association of Cleveland v. Nevada National Bank, 108 F.R.D. 396 (D. Nevada 1985); International Wood Processors v. Power Dry, Inc., 598 F.Supp. 299 (D.S.C. 1984); Morrissey v. County Tower Corp., 568 F.Supp. 178 (E.D.Mo. 1983); Gillam v. A. Shyman, Inc., 31 F.R.D. 271 (D. Alaska 1962).

As stated previously, there is a heavy presumption in favor of the automatic taxation of those types of district court costs listed in the taxation statute, 28 U.S.C. §1920.

28 U.S.C. §1920(2)

- Fees of the court reporter. As stated previously, the language of Federal Rule of Civil Procedure 54(d)(1) creates a heavy presumption in favor of an automatic award of costs, once it has been shown that the district court costs sought are, at least arguably, of those types of costs listed in the taxation statute, 28 U.S.C. §1920. 28 U.S.C. § 1920(2) allows for "fees of the court reporter for all or any party of the stenographic transcript necessarily obtained for use in the case." This permits both trial transcripts and deposition transcripts.

- Trial transcripts. There is a recurring theme in 28 U.S.C. §1920 litigation that the prevailing party may recover district court costs that were necessary for his counsel's

effective preparation, judged in light of the situation existing at the time the costs were incurred. In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); In Re: Kulicke & Soffa Industries Inc. Securities Litigation, 747 F.Supp. 1136 (E.D.Pa. 1990), aff'd, 944 F.2d 897 (3rd Cir. 1991); ADM Corp. v. Speedmaster Packing Corp., 525 F.2d 662 (3d Cir. 1975); Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992); Raio v. American Airlines, 102 F.R.D. 608 (E.D.Pa. 1984). See, also, Charter Medical Corp. v. Cardin, 127 F.R.D. 111 (D. Maryland 1989); Women's Federal Savings and Loan Association of Cleveland v. Nevada National Bank, 108 F.R.D. 396 (D. Nevada 1985); International Wood Processors v. Power Dry, Inc., 598 F.Supp. 299 (D.S.C. 1984); Morrissey v. County Tower Corp., 568 F.Supp. 178 (E.D.Mo. 1983); Gillam v. A. Shyman, Inc., 31 F.R.D. 271 (D. Alaska 1962). Applying this general standard to the specific situation of a request for trial transcripts, the majority position, which has been adopted in the United States District Court for the Eastern District of Pennsylvania is that a trial transcript is seen as necessarily obtained within the purview of the statute where it is necessary for counsel's effective trial preparation, judged in light of the situation existing at the time of the ordering of the transcript, regardless of whether it was actually used. In Re: Kulicke & Soffa Industries Inc. Securities Litigation, 747 F.Supp. 1136 (E.D.Pa. 1990), aff'd, 944 F.2d 897 (3rd Cir. 1991). See, also, International Wood Processors v. Power Dry, Inc., 598 F.Supp. 299 (D.S.C. 1984). As stated previously, there is a heavy presumption in favor of the automatic taxation of those types of costs listed in the taxation statute, 28 U.S.C. §1920.

- Depositions. There is a recurring theme in 28 U.S.C. §1920 litigation that the prevailing party may recover district court costs that were necessary for his counsel's effective preparation, judged in light of the situation existing at the time the costs were incurred, even where the items for which costs are sought were not used. In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); In Re: Kulicke & Soffa Industries Inc. Securities Litigation, 747 F.Supp. 1136 (E.D.Pa. 1990), aff'd, 944 F.2d 897 (3rd Cir. 1991); ADM Corp. v. Speedmaster Packing Corp., 525 F.2d 662 (3d Cir. 1975); Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992); Raio v. American Airlines, 102 F.R.D. 608 (E.D.Pa. 1984). See, also, Charter Medical Corp. v. Cardin, 127 F.R.D. 111 (D. Maryland 1989); Women's Federal Savings and Loan Association of Cleveland v. Nevada National Bank, 108 F.R.D. 396 (D. Nevada 1985); International Wood Processors v. Power Dry, Inc., 598 F.Supp. 299 (D.S.C. 1984); Morrissey v. County Tower Corp., 568 F.Supp. 178 (E.D.Mo. 1983); Gillam v. A. Shyman, Inc., 31 F.R.D. 271 (D. Alaska 1962). Applying this general standard to the specific situation of a request for deposition

transcripts, the statutory standard of necessity is satisfied where the taking of the depositions appears to have been reasonably necessary to counsel's effective preparation in light of the situation existing at the time of the taking, even where the depositions were not used. In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3rd Cir. 2000); In Re: Kulicke & Soffa Industries Inc. Securities Litigation, 747 F.Supp. 1136 (E.D.Pa. 1990), aff'd, 944 F.2d 897 (3rd Cir. 1991); Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992); Raio v. American Airlines, 102 F.R.D. 608 (E.D.Pa. 1984). As stated previously, there is a heavy presumption in favor of the automatic taxation of those types of costs listed in the taxation statute, 28 U.S.C. §1920.

- Daily copy. Even where the transcript is "necessarily obtained" within the meaning of the statute, counsel may not always recover costs in having it prepared on an expedited basis (a.k.a. "daily copy" rate). Daily copy rates have been allowed where trial circumstances, judged at the time of the taking, justify such a schedule. In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3rd Cir. 2000); Tracy v. Goldberg, 203 F.Supp. 188 (E.D. Pa. 1962). See, also, Charter Medical Corp. v. Cardin, 127 F.R.D. 111 (D. Maryland 1989); Harrisburg Coalition Against Ruining the Environment v. Volpe, 65 F.R.D. 608 (M.D. Pa. 1974).

- Videotaped testimony. Modern caselaw states that costs related to both stenographically recorded testimony and videotaped testimony fall within the definition of "transcripts." Morrison v. Reichhold Chems., 97 F.3d 460 (11th Cir. 1996); Commercial Credit Equipment Corp. v. Stamps, 920 F.2d 1361 (7th Cir. 1990); United International Holdings v. Wharf, Ltd., 174 F.R.D. 479 (D. Colo. 1997); Weseloh-Hurtig v. Hepker, 152 F.R.D. 198 (D. Kansas 1993); Deaton v. Dreis & Krump Mfg. Co. (N.D. Ohio 1991).

28 U.S.C. §1920(3)

- Printing costs. District court Printing costs are recoverable pursuant to 28 U.S.C. § 1920(3). Proffitt v. Municipal Authority of Borough of Morrisville, 716 F.Supp. 845 (E.D. Pa. 1989), aff'd, 897 F.2d 523 (3d Cir. 1990); Shannon v. United States Department of Housing and Urban Development, 433 F.Supp. 249 (E.D. Pa. 1977). There is a recurring theme in 28 U.S.C. §1920 litigation that the prevailing party may recover district court costs that were necessary for his counsel's effective preparation, judged in light of the situation existing at the time the costs were incurred, even where the items for which costs are

sought were not used. In Re: Kulicke & Soffa Industries Inc. Securities Litigation, 747 F.Supp. 1136 (E.D.Pa. 1990), aff'd, 944 F.2d 897 (3rd Cir. 1991); ADM Corp. v. Speedmaster Packing Corp., 525 F.2d 662 (3d Cir. 1975); Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992); Raio v. American Airlines, 102 F.R.D. 608 (E.D.Pa. 1984). See, also, Charter Medical Corp. v. Cardin, 127 F.R.D. 111 (D. Maryland 1989); Women's Federal Savings and Loan Association of Cleveland v. Nevada National Bank, 108 F.R.D. 396 (D. Nevada 1985); International Wood Processors v. Power Dry, Inc., 598 F.Supp. 299 (D.S.C. 1984); Morrissey v. County Tower Corp., 568 F.Supp. 178 (E.D.Mo. 1983); Gillam v. A. Shyman, Inc., 31 F.R.D. 271 (D. Alaska 1962). As stated previously, there is a heavy presumption in favor of the automatic taxation of those types of district court costs listed in the taxation statute, 28 U.S.C. §1920.

- Witness fees. 28 U.S.C. §1920(3) authorizes the Clerk to tax district court witness fees. Witness fees are capped by the witness fee statute, 28 U.S.C. §1821; 28 U.S.C. §1821(b) limits witness appearance fees to \$40.00 per day; 28 U.S.C. § 1821(c) sets limits on witness travel and mileage costs; 28 U.S.C. § 1821(d) limits witness subsistence (meals and lodging) allowances in "high cost" areas such as the Eastern District of Pennsylvania to \$167.00 per day. On three separate occasions, the United States Supreme Court has held that the witness fee statute (28 U.S.C. §1821 or its direct predecessor statute) is incorporated by reference into 28 U.S.C. §1920(3) (or its direct predecessor statute). Crawford Fitting Company v. J. T. Gibbons, Inc., 482 U.S. 437 (1987); Farmer v. Arabian American Oil Co., 379 U.S. 227 (1964); Henkel v. Chicago, St. Paul, Minneapolis and Omaha Railroad Company, 284 U.S. 444 (1932).

Pursuant to 28 U.S.C. §1821(b), appearance costs for witnesses are not allowable in excess of \$40.00 per day of appearance. This limit applies to both fact and expert witnesses, except where the expert witness is court-appointed pursuant to 28 U.S.C. §1920(6). Crawford Fitting Company v. J. T. Gibbons, Inc., 482 U.S. 437 (1987); In re Philadelphia Mortgage Trust, 930 F.2d 306 (3rd Cir. 1990); West Virginia University Hospitals v. Casey, 885 F.2d 11 (3rd Cir. 1989); Dr. Bernard Heller Foundation v. Lee, 847 F.2d 83 (3rd Cir. 1988); Dominic v. Hess Oil V.I. Corp., 841 F.2d 513 (3rd Cir. 1988).

There is a recurring theme in 28 U.S.C. §1920 litigation that the prevailing party may recover district court costs that were necessary for his counsel's effective preparation, judged in light of the situation existing at the time the costs were incurred, even where the

items for which costs are sought were not used. In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); In Re: Kulicke & Soffa Industries Inc. Securities Litigation, 747 F.Supp. 1136 (E.D.Pa. 1990), aff'd, 944 F.2d 897 (3rd Cir. 1991); ADM Corp. v. Speedmaster Packing Corp., 525 F.2d 662 (3d Cir. 1975); Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992); Raio v. American Airlines, 102 F.R.D. 608 (E.D.Pa. 1984). See, also, Charter Medical Corp. v. Cardin, 127 F.R.D. 111 (D. Maryland 1989); Women's Federal Savings and Loan Association of Cleveland v. Nevada National Bank, 108 F.R.D. 396 (D. Nevada 1985); International Wood Processors v. Power Dry, Inc., 598 F.Supp. 299 (D.S.C. 1984); Morrissey v. County Tower Corp., 568 F.Supp. 178 (E.D.Mo. 1983); Gillam v. A. Shyman, Inc., 31 F.R.D. 271 (D. Alaska 1962). Accordingly, witness appearance fees actually incurred by the prevailing party are taxable for every day a witness is present in court with a reasonable "good faith" expectation on the part of the prevailing party's counsel that the witness may have to testify, even where that witness did not actually testify. Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998). See, also, Nissho-Iwai Co. v. Occidental Crude Sales, 729 F.2d 1530 (5th Cir. 1984); Quy v. Air America, Inc., 667 F.2d 1059 (D.C. Cir. 1981); Marino v. Town of Kirkland, 146 F.R.D. 49 (N.D.N.Y. 1993); Morrissey v. County Tower Corp., 568 F. Supp. 980 (E.D. Mo. 1983); Independence Tube Corp. v. Copperweld Corp., 543 F.Supp. 706 (N.D.Ill. 1982); Christian v. Tackett, 86 F.R.D. 220 (N.D. Miss. 1979); Gillam v. A. Shyman, Inc., 31 F.R.D. 271 (D. Alaska 1962). Authority also permits the taxing of costs for "travel days," where reasonable. Dr. Bernard Heller Foundation v. Lee, 847 F.2d 83 (3rd Cir. 1988); Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998); Raio v. American Airlines, 102 F.R.D. 608 (E.D.Pa. 1984). See, also, Louisiana Power and Light Co. v. Kellstrom, 50 F.3d 319 (5th Cir. 1995). Likewise, subsistence fees and travel costs are taxable where the need to travel was reasonable, judged in light of the situation existing at the time the costs were incurred. Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998); Raio v. American Airlines, 102 F.R.D. 608 (E.D. Pa. 1984). See, also, Women's Federal Savings and Loan Association of Cleveland v. Nevada National Bank, 108 F.R.D. 396 (D. Nevada 1985).

No witness fees are taxable for witnesses who are parties to the litigation. Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998). See, also, Bee v. Greaves, 910 F.2d 686 (10th Cir. 1990); Heverly v. Lewis, 99 F.R.D. 135, 136 (D.Nev. 1983). Witness fees are taxable for employees of a corporate party as long as they are not real parties in interest to the litigation. Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998). See, also, Todd Shipyards Corp. v. Turbine Services, Inc., 592 F.Supp. 380, 400 n.24 (E.D. La.

1984); Morrison v. Alleluia Cushion Co., 73 F.R.D. 70, 71 (N.D. Miss. 1976); Sperry Rand Corp. v. A-T-O Co., 58 F.R.D. 132 (E.D. Va. 1973).

The so-called "100-mile rule," limiting witness travel expenses to 100 miles, has been increasingly disregarded as antiquated. Raio v. American Airlines, 102 F.R.D. 608 (E.D. Pa. 1984). See, also, Quy v. Air America, Inc., 667 F.2d 1059 (D.C. Cir. 1981); Shevin v. Lederman, 92 F.R.D. 752 (D. Colo. 1981).

As stated previously, the language of Federal Rule of Civil Procedure 54(d)(1) creates a heavy presumption in favor of an automatic award of costs, once it has been shown that the costs sought are, at least arguably, of those types of costs listed in the taxation statute, 28 U.S.C. §1920.

28 U.S.C. §1920(4) Exemplification and copies of papers.

a. Copies of Documentary Evidence and Demonstrative Evidence

Courts have traditionally seen costs related to the production of copies of documentary evidence as recoverable district court costs under 28 U.S.C. §1920(4) when these copies were "necessarily obtained for use in the case." Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992); Raio v. American Airlines, 102 F.R.D. 608 (E.D.Pa. 1984). See, also, Haagen Dazs v. Double Rainbow Gourmet Ice Cream, 920 F.2d 587 (9th Cir. 1990); Robinson v. Burlington Northern Railroad Co., 963 F.Supp. 691 (N.D. Ill. 1997); Postednik v. Sullivan, 718 F.Supp. 1097 (S.D.N.Y. 1989); Grider v. Kentucky & ITR Co., 101 F.R.D. (W.D. Ky. 1984). Based on this caselaw, such documentary evidence consists of items such as police reports, weather reports, medical records, personnel records, business records, land records, newspapers, tax records, and the like. Likewise, costs for copies of demonstrative evidence, such as photos, maps, blow-ups, charts, diagrams and the like, are seen as allowable under 28 U.S.C. §1920(4) as exemplification when these items were "necessarily obtained for use in the case." In re: Kulicke and Soffa Industries Securities Litigation, 747 F.Supp. 1136 (E.D. Pa. 1990); aff'd, 944 F.2d 897 (3rd Cir. 1991). See, also, Maxwell v. Hapag-Lloyd Aktiengesellschaft, 862 F.2d 767 (9th Cir. 1988); Nissho-Iwai Co. v. Occidental Crude Sales, Ltd., 729 F.2d 1530 (5th Cir. 1984); Soler v. McHenry, 771 F.Supp. 252 (ND Ill. 1991), aff'd, 989 F.2d 251 (7th Cir. 1993); Phillips v. Cameron Tool Corp., 131 F.R.D. 151 (SD Ind. 1990).

Concerning this previously mentioned standard that these aforesaid types of district court items must have been "necessarily obtained for use in the case" to be taxable, there is a recurring theme in 28 U.S.C. §1920 litigation that this standard of necessity is satisfied and the prevailing party may recover such items of costs when the items were necessarily obtained for his counsel's effective preparation, judged in light of the situation existing at the time the costs were incurred, even where the items in question were not used. In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); In Re: Kulicke & Soffa Industries Inc. Securities Litigation, 747 F.Supp. 1136 (E.D.Pa. 1990), aff'd, 944 F.2d 897 (3rd Cir. 1991); ADM Corp. v. Speedmaster Packing Corp., 525 F.2d 662 (3d Cir. 1975); Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992); Raio v. American Airlines, 102 F.R.D. 608 (E.D.Pa. 1984). See, also, Charter Medical Corp. v. Cardin, 127 F.R.D. 111 (D. Maryland 1989); Women's Federal Savings and Loan Association of Cleveland v. Nevada National Bank, 108 F.R.D. 396 (D. Nevada 1985); International Wood Processors v. Power Dry, Inc., 598 F.Supp. 299 (D.S.C. 1984); Morrissey v. County Tower Corp., 568 F.Supp. 178 (E.D.Mo. 1983); Gillam v. A. Shyman, Inc., 31 F.R.D. 271 (D. Alaska 1962). As stated previously, there is a heavy presumption in favor of the automatic taxation of those types of costs listed in the taxation statute, 28 U.S.C. §1920.

b. Copies of Attorney Work Product

It is well established that the Clerk may only tax as district court costs those items specifically listed in the taxation statute, 28 U.S.C. §1920. Crawford Fitting Company v. J. T. Gibbons, Inc., 482 U.S. 437 (1987); Farmer v. Arabian American Oil Co., 379 U.S. 227 (1964); In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3rd Cir. 2000); Institutionalized Juveniles v. Secretary of Public Welfare, 758 F.2d 897 (3d Cir. 1985); Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992). By this standard, attorney fees are clearly not taxable pursuant to 28 U.S.C. §1920. Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992). See, also, U.S. v. Bedford Associates, 548 F.Supp. 748 (S.D.N.Y. 1982); Harrisburg Coalition Against Ruining the Environment v. Volpe, 65 F.R.D. 608 (M.D. Pa. 1974). In addition, costs more closely associated with the routine overhead of running a law firm are not taxable, as they are seen as a "facet" of attorney fees. Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992). Accord, Lachance v. Harrington, 965 F.Supp. 630 (E.D. Pa. 1997); I/H Real Estate, Inc. v. Abramson, 951 F.Supp. 63 (E.D. Pa. 1996). See, also, Di Llano v. North Dakota State University, 951 F.Supp. 168

(D.N.D. 1997); In Re: Glacier Bay, 746 F.Supp. 1379 (D. Alaska 1990). Costs of attorney work product, such as pleadings, motions, memoranda, briefs and routine correspondence, are seen as such “facets,” more closely related to attorney fees than any costs recoverable under 28 U.S.C. §1920. In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); Levin v. Parkhouse, 484 F.Supp. 1091 (E.D. Pa. 1980). See, also, Krouse v. American Sterilizer Co., 928 F.Supp. 543 (W.D. Pa. 1996); Stacy v. Williams, 50 F.R.D. 52 (N.D. Miss. 1970); Bourazak v. North River Insurance Co., 280 F.Supp. 89 (S.D. Ill. 1968). Costs of attorney fees and costs related to attorney work product may be assessed by the assigned Article III judge pursuant to Federal Rule of Civil Procedure 54(d)(2) (but not by the Clerk pursuant to Federal Rule of Civil Procedure 54(d)(1)). Abrams v. Lightolier, Inc., 50 F.3d 1204 (3d Cir. 1995); Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998).

28 U.S.C. §1920(5)

- Docket fees. Docket fees under 28 U.S.C. § 1923 are recoverable pursuant to 28 U.S.C. § 1920(5).

28 U.S.C. §1920(6)

- Expert witness fees. Expert witness fees in excess of the amount set forth in 28 U.S.C. §1821(b) are recoverable only if the expert was court-appointed pursuant to 28 U.S.C. § 1920(6). If the expert witness was not court-appointed, 28 U.S.C. § 1821 acts as a ceiling, limiting the amount recoverable. Crawford Fitting Company v. J. T. Gibbons, Inc., 482 U.S. 437, 445-6 (1987); In re Philadelphia Mortgage Trust, 930 F.2d 306 (3rd Cir. 1990); West Virginia University Hospitals v. Casey, 885 F.2d 11 (3rd Cir. 1989); Dr. Bernard Heller Foundation v. Lee, 847 F.2d 83 (3rd Cir. 1988); Dominic v. Hess Oil V.I. Corp., 841 F.2d 513 (3rd Cir. 1988). (Of course, depending on the unique facts of each lawsuit, a non-court-appointed expert witness may or may not be able to recover fees pursuant to 28 U.S.C. §1821). As stated previously, there is a heavy presumption in favor of the taxation of those types of costs listed in the taxation statute, 28 U.S.C. §1920. The key issue is whether the expert witness was truly court-appointed.

District court costs related to the preparation of an expert's testimony or report are not taxable. Griffith v. Mt. Carmel Medical Center, 157 F.R.D. 499 (D. Kansas 1994).

- Fees for interpreters. These fees and the salaries, expenses, and costs of special

interpretation services under 28 U.S.C. § 1818 are recoverable pursuant to 28 U.S.C. § 1920(6). There is a recurring theme in 28 U.S.C. §1920 litigation that the prevailing party may recover district court costs that were necessary for his counsel's effective preparation, judged in light of the situation existing at the time the costs were incurred. In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); In Re: Kulicke & Soffa Industries Inc. Securities Litigation, 747 F.Supp. 1136 (E.D.Pa. 1990), aff'd, 944 F.2d 897 (3rd Cir. 1991); ADM Corp. v. Speedmaster Packing Corp., 525 F.2d 662 (3d Cir. 1975); Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992); Raio v. American Airlines, 102 F.R.D. 608 (E.D.Pa. 1984). See, also, Charter Medical Corp. v. Cardin, 127 F.R.D. 111 (D. Maryland 1989); Women's Federal Savings and Loan Association of Cleveland v. Nevada National Bank, 108 F.R.D. 396 (D. Nevada 1985); International Wood Processors v. Power Dry, Inc., 598 F.Supp. 299 (D.S.C. 1984); Morrissey v. County Tower Corp., 568 F.Supp. 178 (E.D.Mo. 1983); Gillam v. A. Shyman, Inc., 31 F.R.D. 271 (D. Alaska 1962). As stated previously, there is a heavy presumption in favor of the automatic taxation of those types of costs listed in the taxation statute, 28 U.S.C. §1920.

E. Non-allowable Items of Costs

The Clerk of Court may only tax as costs those district court items *specifically* listed in the taxation statute, 28 U.S.C. § 1920. Crawford Fitting Company v. J. T. Gibbons, Inc., 482 U.S. 437 (1987); Farmer v. Arabian American Oil Co., 379 U.S. 227 (1964); In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); Abrams v. Lightolier, Inc., 50 F.3d 1204 (3d Cir. 1995); Institutionalized Juveniles v. Secretary of Public Welfare, 758 F.2d 897 (3d Cir. 1985); Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992). By this standard, attorney fees are clearly not taxable. In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); Abrams v. Lightolier, Inc., 50 F.3d 1204 (3d Cir. 1995); Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992). See, also, U.S. v. Bedford Associates, 548 F.Supp. 748 (S.D.N.Y. 1982); Harrisburg Coalition Against Ruining the Environment v. Volpe, 65 F.R.D. 608 (M.D. Pa. 1974). In addition, litigation costs that are more closely associated with the routine overhead of running a law firm than with the types of costs listed in 28 U.S.C. §1920 are not taxable, as they are seen as a "facet" of attorney fees. Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992). Accord, In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); Abrams v. Lightolier, Inc., 50 F.3d 1204 (3d Cir. 1995); Lachance v. Harrington, 965 F.Supp. 630 (E.D. Pa. 1997); J/H Real Estate, Inc.

v. Abramson, 951 F.Supp. 63 (E.D. Pa. 1996). See, also, Di Llano v. North Dakota State University, 951 F.Supp. 168 (D.N.D. 1997); In Re: Glacier Bay, 746 F.Supp. 1379 (D. Alaska 1990). Such “facets” of attorney fees include the costs of attorney work product, such as pleadings, motions, memoranda and briefs, which are seen as more closely associated with the routine overhead of running a law firm than with those types of costs taxable pursuant to 28 U.S.C. §1920. In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); Levin v. Parkhouse, 484 F.Supp. 1091 (E.D. Pa. 1980). See, also, Krouse v. American Sterilizer Co., 928 F.Supp. 543 (W.D. Pa. 1996); Stacy v. Williams, 50 F.R.D. 52 (N.D. Miss. 1970); Bourazak v. North River Insurance Co., 280 F.Supp. 89 (S.D. Ill. 1968). Costs of attorney fees and costs related to attorney work product may be assessed by the assigned Article III judge pursuant to Federal Rule of Civil Procedure 54(d)(2) (but not by the Clerk pursuant to Federal Rule of Civil Procedure 54(d)(1)). Abrams v. Lightolier, Inc., 50 F.3d 1204 (3d Cir. 1995); Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998).

Normally, the Clerk will tailor his taxation of costs opinion around the items requested and the actual objections raised by the losing party or his counsel, and will not raise issues *sua sponte*; however, as the Clerk's power is strictly limited by 28 U.S.C. §1920, a necessary corollary is that if a requested item is obviously, without any doubt, never authorized by 28 U.S.C. §1920 under any circumstances, the Clerk may not tax that item as a 28 U.S.C. §1920 cost, even where counsel has not raised any objections to the item in question. Andrews v. Suzuki Motor Co., 161 F.R.D. 383 (S.D. Ind. 1995). This is based on the principle that the Clerk may only tax as costs those items *specifically* listed in the taxation statute, 28 U.S.C. §1920. Crawford Fitting Company v. J. T. Gibbons, Inc., 482 U.S. 437 (1987); Farmer v. Arabian American Oil Co., 379 U.S. 227 (1964); In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449 (3d Cir. 2000); Abrams v. Lightolier, Inc., 50 F.3d 1204 (3d Cir. 1995); Institutionalized Juveniles v. Secretary of Public Welfare, 758 F.2d 897 (3d Cir. 1985); Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992). Accord, Di Llano v. North Dakota State University, 951 F.Supp. 168 (D.N.D. 1997); and, In Re: Glacier Bay, 746 F.Supp. 1379 (D. Alaska 1990). As previously stated, such items outside the scope of the statute most typically include costs more closely associated with the routine overhead of running a law firm than with those types of costs taxable pursuant to 28 U.S.C. §1920. One such prohibited item is special master fees. Nelson v. Darragh Co., 120 F.R.D. 517 (W.D. Ark. 1988); Mallonee v. Fahey, 117 F.Supp. 259 (S.D. Cal. 1953). Another prohibited item is attorney travel expenses. Evans v. Fuller, 94 F.R.D. 311, 314 (W.D. Ark. 1982); Neely v. General Electric Co., 90 F.R.D. 627, 630 (N.D. Ga.

1981); United States v. Bexar County, 89 F.R.D. 391, 394 (W.D. Tex. 1981). Legal research costs are also prohibited. Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992); See, also, Di Llano v. North Dakota State University, 951 F.Supp. 168 (D.N.D. 1997); Aloha Towers Associates v. Millenium Aloha, Inc., 938 F. Supp. 646 (D. Hawaii 1996); U.S. v. Bedford Associates, 548 F.Supp. 748, 753 (S.D.N.Y. 1982). Telephone expenses are prohibited. Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992). See, also, Massachusetts Fair Share v. Law Enforcement Assistance Association, 776 F.2d 1066, 1070 (D.C. Cir. 1985); Di Llano v. North Dakota State University, 951 F.Supp. 168 (D.N.D. 1997); General Drivers and Dairy Employees, Local 563 v. Bake Rite Baking Co., 580 F.Supp. 426, 440 (E.D. Wisc. 1984). Secretarial and messenger services are prohibited. Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992); Lachance v. Harrington, 965 F.Supp. 630 (E.D. Pa. 1997); J/H Real Estate, Inc. v. Abramson, 951 F.Supp. 63 (E.D. Pa. 1996). See, also, Di Llano v. North Dakota State University, 951 F.Supp. 168 (D.N.D. 1997); Litton Systems, Inc. v. American Telephone & Telegraph Co., 613 F.Supp. 824, 836 (S.D.N.Y. 1985); Beech Cinema, Inc. v. Twentieth Century Fox Film Corp., 480 F.Supp. 1195, 1198 (S.D.N.Y. 1979), aff'd, 622 F.2d 1106 (2d Cir. 1980). Postage is a prohibited item. In the Matter of Penn Central Transportation Co., 630 F.2d 183 (3d Cir. 1980); Nugget Distributors Cooperative of America v. Mr. Nugget, Inc., 145 F.R.D. 54 (E.D.Pa. 1992).

F. Taxation of Appellate Court Costs by the District Court Clerk

It is well-established that costs may not be imposed in federal district courts except where they are authorized by either a statute or a rule of court. Abrams v. Lightolier, Inc., 50 F.3d 1204 (3d Cir. 1995). Both appellate court costs pursuant to Federal Rule of Appellate Procedure 39, and district court costs pursuant to 28 U.S.C. §1920 and Federal Rule of Civil Procedure 54(d)(1), are taxed by the Clerk of the District Court. (To repeat, district court costs made taxable by Federal Rule of Civil Procedure 68 are taxable only by the presiding district court judge, and not the district clerk of court).

In this section of the manual, we will discuss appellate court costs.

The decision of whether appellate court costs are allowable is dictated by Federal Rule of Appellate Procedure 39, which provides that the issue of the allowance of these costs is decided by the United States Court of Appeals, or by the United States Supreme

Court, which issues a mandate for costs that the District Court Clerk *must* tax, as the Circuit and Supreme Courts have no authority to execute on a judgment (they can only remand to the district court). The district courts are the only courts with authority to execute on a judgment. Pease v. Rathbun-Jones Engineering Co., 243 U.S. 273 (1917). Although it is nearly a century old, the United States Supreme Court's decision in Pease remains vital law to this date. Mandate costs imposed by an appellate court (including the Supreme Court) leave no discretion in the hands of the district court or its Clerk; the Clerk of the district court *must* tax costs as shown on Mandate of a United States Court of Appeals or Mandate of the United States Supreme Court. Briggs v. Pennsylvania Railroad Co., 334 U.S. 304 (1948). Although it is over fifty years old, the United States Supreme Court's decision in Briggs remains vital law to this date. Casey v. Planned Parenthood of Southeastern Pennsylvania, 14 F.3d 848 (3rd Cir. 1994). See, also, United States v. Board of Public Education of the City of Savannah and the County of Chatham, 405 F.2d 925 (5th Cir. 1968).

Mandate costs taxable pursuant to Federal Rule of Appellate Procedure 39 are the costs of:

1. the preparation and transmission of the record;
2. the reporter's transcript, if needed to determine the appeal;
3. premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and
4. the fee for filing the notice of appeal.

Costs taxable by the United States Supreme Court are limited to fees of the Clerk and costs of printing the joint appendix. When costs are allowed in the Supreme Court, the Clerk of the United States Supreme Court shall insert an itemization of the costs in the body of the mandate sent to the court below; once again, these costs are taxable by the Clerk of the District Court as the District Court is the only court with authority to execute on a judgment.

COURTROOM DEPUTY CLERKS

Each judge is assigned a courtroom deputy clerk who is responsible for scheduling and monitoring cases on the judge's calendar. The courtroom deputy clerk acts as a liaison

between the judge and counsel, scheduling dates and times for hearings on motions, pretrial hearings and trials, and conferring with attorneys on any special trial procedures.

A. New Case Procedures

The Eastern District of Pennsylvania operates on an individual calendar system, as opposed to a master calendar system, which means that the assigned judge is responsible for all cases assigned, from filing to disposition.

After a case is filed, the courtroom deputy clerk checks the docket for timely service of process and the filing of an answer. If service has not been made within 90 days, a letter will be sent by the courtroom deputy clerk asking that service be made by the 120th day. If service has been made but the complaint has not been answered, again a letter will be sent by the courtroom deputy requesting counsel to motion for judgment by default. Please do not ignore these notices. If you do, it could result in dismissal of the case for lack of prosecution. [See Federal Rule of Civil Procedure 12(a)].

Counsel may receive a status request form by contacting the courtroom deputy to the judge to whom the case is assigned. This form contains questions relating to the scheduling of the case, such as, length of time needed for discovery and estimated length of time for trial.

B. Pretrial Practices

After a complaint is filed, service has been made, and an answer is filed, an order is prepared which sets forth a discovery schedule. The order will specify a date by which all discovery must be completed and schedules a final pretrial conference, generally four to six weeks after the discovery deadline. Usually the case is put in the civil pool for trial in one month. However, not all judges follow the same pretrial practices. If you have any questions, call the courtroom deputy clerk of the judge to whom the case is assigned, or check the court's website at <http://www.paed.uscourts.gov> for judges' policies and procedures.

C. Scheduling Cases

When discovery has been completed and pretrial conferences have been held, there are three ways in which a case can be scheduled for trial:

1. **Civil Trial Pool** - Most judges have the majority of cases in this pool.
2. **Date Certain** - This is a target date set weeks or months in advance and depends on the judge's calendar and availability of attorneys for the date to be met.
3. **Special Listing** - An agreement exists between the District Court judges and the State Court judges in the nine county area of Bucks, Chester, Delaware, Montgomery, Philadelphia, Berks, Lancaster, Lehigh and Northampton (**Appendix S**). These special listings take precedence over all other trial engagements provided the following requirements are met:
 - the listing is established 30 days in advance by notice to counsel involved and all active judges;
 - all district court judges and the judges in the 9-county area are notified at least 30 days in advance of counsel involved and of probable duration of trial;
 - that not more than one such special listing shall be granted by the same judge to one lawyer in a six-month period, except for good cause.

The notice which is sent to district court judges and to court administrators in other courts must contain the name of the case, the date the case is scheduled, name of counsel, and the approximate amount of time required for trial.

D. Trial List

Each judge maintains a trial list of cases generally ready for trial. The federal trial list is published in the Legal Intelligencer from Monday through Friday. Below is a sample listing:

H. BARTLE III, C.J.

Courtroom 16A

Deputy Clerk: Katherine Gallagher

Phone: 267-299-7389

MON., MARCH 5, 2007

On Trial

Civil Jury Trial

10:00 A.M.

2006-8995 J. Smith

Becker v. ABC Company

M. Doe; J.P. Stewart

Trial Pool

2005-7213 p.p.

Jones v. Friedman

D. Wood

The following notice is published each day in the Legal Intelligencer and explains the policy of the Judges of the United States District Court for listing cases in the Eastern District of Pennsylvania.

1. Counsel shall promptly notify the deputy clerk to each judge before whom he/she has a case listed upon becoming attached for trial in another court. To be accorded recognition, a busy slip, using the designated form, **MUST** be filed in Room 2609 before 1:00 p.m. on the day after counsel becomes attached.
2. Cases in the trial pools do not necessarily appear in the order in which they will be called. Counsel should therefore be ready to begin trial upon receiving telephone call notice, subject to the following:

(a) Counsel whose cases are in the pools will be given 48 hours' notice, if feasible, but not less than 24 hours notice to be ready for trial with witnesses.

(b) It is counsel's responsibility to check with each judge's deputy clerk on the status and movement of criminal and civil cases in that judge's pool.

(c) Counsel will not be required to commence trial less than 24 hours after completing trial of another case.

E. Judicial Schedule of Trials - Automated System Inquiry (JUST-ASK)

The Judicial Schedule of Trials - Automated System Inquiry (JUST-ASK) system provides up-to-date information on the status of trials scheduled in the United States District Court seven days a week, twenty-four hours a day. JUST-ASK is offered free of charge and is accessible to any individual or office with a PC and internet access.

Events, such as verdicts, settlements, and continuances constantly change the status of cases on the Court's trial list. JUST-ASK immediately reflects the daily status of listings as the information becomes available to the Clerk of Court.

All cases scheduled for trial, presently on trial, in the trial pool and special notices from the Court are included on the system. JUST-ASK also provides the capability of viewing a report on the disposition of cases previously listed on the system. For user convenience, all information contained in this system is available by judge, date, case number, party name and/or attorney name. The user may choose the option which is most convenient to view listings. For example, JUST-ASK allows the user to retrieve a list of cases in which a specified attorney is involved, then the information can be printed at the user's computer. If you have any questions on scheduling, please contact the courtroom deputy.

The JUST-ASK system can be accessed through the District Court's website at

F. Lobby Kiosk Information System

An automated informational kiosk system, located in the U.S. Courthouse lobby, includes current information on district court and court of appeals hearings, as well as a directory of judges and court clerks, location of other government agencies and general information. The kiosk provides touch screen technology, as well as mapping techniques to guide visitors to their destinations.

G. Busy Slips

It is important that busy slips (**Appendix T**) be filed promptly so that cases can be properly scheduled. Busy slips can be obtained at the front counter of the Clerk's Office, Room 2609, and should be filed in the Clerk's Office by 1:00 p.m. the day after counsel becomes attached. If a conflict arises before a particular judge, priority is given to the oldest case by date of filing. Please advise the courtroom deputy when the attorney is again available, or if the case was settled.

H. Attachments for Trial

Attorneys can only be attached three business days prior to a date of trial and can only be held for attachment for three business days.

I. Continuances - Criminal Cases

The Speedy Trial Act requires that defendants be brought to trial within a 70-day period after indictment or initial appearance before a judicial officer. This 70-day period can be extended only by a judge for specific reasons set forth in the Speedy Trial Act Plan which is on file and available for inspection in the Clerk's Office.

J. Motions

When filing a motion, please include a proposed order for the judge's signature. Since courtroom deputies are responsible for tracking motions, it is important that a

certificate of service be attached to the motion so that they can calculate the date the response is due. If the parties have reached an agreement, notify us by stipulation. If a motion has been filed and the parties have settled their dispute, let the courtroom deputy know as soon as possible.

K. Exhibits

At the completion of trial, either the courtroom deputy clerk will keep exhibits or the Court will have counsel maintain custody until all appeals are exhausted or the appeal time has expired. If the courtroom deputy clerk has custody, the exhibits will be returned to counsel. If the exhibits are too large or too bulky to mail, the courtroom deputy will send a letter to the attorney requesting that the exhibits be picked up. If the exhibits are not picked up, they will be deemed abandoned and will then be destroyed (see Local Civil Rule 39).

L. Other Duties

Some additional duties performed by courtroom deputy clerks are:

- noting the appearance of counsel in matters before the court;
- impaneling the jury and administering oaths to jurors; providing liaison with the jury clerk as to ordering and canceling of juries; and keeping required records on other jury matters;
- administering oaths to witnesses, interpreters, attorneys on admission, and oaths of allegiance to applicants for citizenship;
- recording proceedings and rulings for minutes of the court; filing, marking, storing, and returning exhibits; and composing minute orders to carry out expressed intention of the judge;

- preparing verdict forms and judgments;
- advising the financial section of the Clerk's Office on matters affecting that section, particularly the imposition of fines and orders of restitution by the judge in criminal cases.

The following charts list the courtroom deputy clerks according to their assigned judge, along with their telephone numbers.

JUDGE	COURTROOM DEPUTY	PHONE NUMBER
Harvey Bartle III, Ch. J.	Katherine Gallagher	267-299-7389
Stewart Dalzell	Eileen Adler	267-299-7399
J. Curtis Joyner	Angela Mickie	267-299-7419
Eduardo C. Robreno	Ronald Vance	267-299-7429
Anita B. Brody	James Scheidt	267-299-7439
Mary A. McLaughlin	Dennis Hartman	267-299-7609
Petrese B. Tucker	Alisa Ross	267-299-7619
Berle M. Schiller	Jean Pennie (Civil) Christopher Campoli (Criminal)	267-299-7621 267-299-7629
R. Barclay Surrick	Michael Finney	267-299-7639
Legrome D. Davis	Constantine Flores	267-299-7659
Cynthia M. Rufe	Velma White (Civil) Erica Pratt (Criminal)	267-299-7491 267-299-7499
Michael M. Baylson	Lynn Meyer (Civil) Lenora Wittje (Criminal)	267-299-7521 267-299-7529
Timothy J. Savage	Harry Grace	267-299-7489
James Knoll Gardner	Cheryl Sinclair (Civil) Jennifer Fitzko (Criminal)	610-434-3457 610-391-7019
Gene E. K. Pratter	Michael Coyle	267-299-7359
Lawrence F. Stengel	Patricia Cardella (Civil) Laura Buenzle (Criminal)	267-299-7761 267-299-7769
Paul S. Diamond	John Stasny	267-299-7739
Juan R. Sánchez	Nancy DeLisle (Civil) Adrienne Mann (Criminal)	267-299-7781 267-299-7789
Thomas M. Golden	Marcie Silfies (Civil) Teri Lefkowitz (Criminal)	610-320-5097 610-320-5030
SENIOR JUDGE		
	COURTROOM DEPUTY	PHONE NUMBER
John P. Fullam	Rosalind Burton-Hoop	267-299-7459
J. William Ditter, Jr.	Dale Ballard-Hill	215-597-9640

Louis H. Pollak	Donna Bozzelli	267-299-7539
Norma L. Shapiro	Madeline Ward	267-299-7549
James T. Giles	Margaret Gallagher	267-299-7309
Thomas N. O'Neill, Jr.	Charles Ervin	267-299-7559
Marvin Katz	Elizabeth Purnell	267-299-7579
Edmund V. Ludwig	Kathryne Crispell	267-299-7589
Robert F. Kelly	Thomas Garrity	267-299-7319
Lowell A. Reed, Jr.	Sharon Hall	215-597-0022
Jan E. DuBois	Andrew Follmer	267-299-7339
Ronald L. Buckwalter	Matthew Higgins	267-299-7369
William H. Yohn, Jr.	Thomas McCann	267-299-7379
John R. Padova	Geraldine Keane (Civil) Jenniffer Cabrera (Criminal)	215-597-1178 267-299-7409
Bruce W. Kauffman	Michael Beck	267-299-7449
MAGISTRATE JUDGE		
COURTROOM DEPUTY		
PHONE NUMBER		
Thomas J. Rueter, Ch. J.	Lisa Tipping	215-597-0048
Carol Sandra Moore Wells	Edward Andrews	215-597-7833
Jacob P. Hart	Deborah Stevenson	215-597-2733
Linda K. Caracappa	Ian Broderick	267-299-7640
Timothy R. Rice	Chavela Settles	267-299-7660
David R. Strawbridge	Lorraine DiSanti	267-299-7790
L. Felipe Restrepo	Juanita Davis	267-299-7690
Henry S. Perkin	Helen Nicholas	610-434-3823
Elizabeth T. Hey	Lara Karlson	267-299-7670
Lynne A. Sitarski	Regina Zarnowski	267-299-7810
Peter B. Scuderi	Maryellen Fox	215-597-2093
Arnold C. Rapoport	Carlene Jones	610-391-7032
M. Faith Angell	Shelli MacElderry	215-597-6079

STANDING ORDER RE: SENTENCING REFORM ACT OF 1984

In accordance with the resolution approved by the Judges of this court on January 19, 1988, a standing order (**Appendix U**) was adopted for use in criminal cases in which sentences are imposed under the Sentencing Reform Act of 1984 (Chapter II of the Comprehensive Crime Control Act, Public Law No. 98473, 98 Stat. 1837, 1976 (enacted October 12, 1984)).

AFTER-HOURS CONTACT FOR EMERGENCY MATTERS

A deputy clerk is on duty in the Clerk's Office each weekday from 8:00 a.m. to 5:30 p.m. Attorneys who wish to contact the United States District Court for the Eastern District of Pennsylvania during the evenings after 5:30 p.m. or on weekends may do so by calling (215) 597-0374 or toll-free number 1-800-525-5726. These numbers connect with the Court Security Office and Federal Protective Service which is staffed 24 hours a day, 7 days a week. Attorneys who call these numbers will be referred to the clerk or a deputy clerk on duty. This service is available for attorneys who have to file an injunction, ship attachment, or other emergency business during non-business hours.

AFTER-HOURS FILING DEPOSITORY

An After-Hours Filing Depository is provided in the lobby of the courthouse past the metal detectors and is able to receive documents for filing after 5:00 p.m. A time recorder is affixed to the depository which enables the person submitting documents for filing to note the time and date the documents are placed in the depository. If the documents are submitted after the doors are locked, access to the building may be gained by activating the buzzer adjacent to the main entrance on Market Street.

OPINIONS/CORRESPONDENCE CLERK

Margaret Stipa is responsible for distributing the judges' opinions and answering general correspondence and can be reached at 267-299-7047.

We maintain civil case files for calendar years 2003 to the present year and criminal case files from 2000 to the present, in addition to all open cases, in the Clerk's Office. Files

for previous years are stored at the Federal Records Center. Send a letter to the attention of the correspondence clerks specifying the case number of the file you need and the documents in which you are interested. They will obtain the file and send you a copy of the papers that you need at a cost of \$.50 per page. There is an additional fee of \$9 for a certified copy.

Any inquiries to search the index for case numbers, judgment, decrees, etc., will be handled by the correspondence clerks. The fee is \$26 per name searched.

Judicial opinions filed in the Eastern District since June 1, 1997, as well as opinions filed in Civil Action Number 96-963, A.C.L.U. et al. v. Janet Reno, Attorney General of the U.S., in Civil Action Number 96-1458, American Library et al. v. U.S. Department of Justice, in Civil Action Number 96-2486, Cyber Promotions, Inc. v. America Online, Inc., and in Civil Action Number 96-5213, America Online, Inc. v. Cyber Promotions, Inc., may be obtained through the opinion section on the Eastern District of Pennsylvania's Internet website at <http://www.paed.uscourts.gov>.

HOW TO FIND A CASE NUMBER

Cases are indexed using the microfiche system, public access computers and PACER (see section on PACER). At the computers located in the Clerk's Office, you will find printed explanations on the procedure to locate a case number in order to find the docket sheet for that case. Every microfiche index is labeled with the filing time frames for each category. Information on cases filed prior to the specified time frames may be obtained from the Records Room.

CLERK'S INDEX FILE BY NATURE OF SUIT

The Clerk's Office makes this service available at no cost. It is an Index to Civil Actions by Subject and is arranged under these main topics: Persons, Property, Contract, Torts & Other Statutes. Subject headings are exactly the same as those specified on the Civil Cover Sheet.

Refer to the Table of Contents under the appropriate main heading and find the page number on which reference is made to civil actions on the desired subject. Copy

down the case number(s) shown and draw the case file jackets or docket sheets to see if the cases listed are helpful.

COPYWORK

Adjacent to Room 2609 is the Reproduction Room. To have copies made, you must complete a request form and prepay the cost either in person or by mail.

It is possible to obtain copywork the same day. However, it depends on the urgency of the request, the quantity of work, and the time constraints of the photocopy operator.

RECORDS ROOM

Adjacent to the Xerox Room is the Records Room where all open case files for civil and criminal cases are maintained. In addition to all open case files, all civil files from 2004 to the present year, and all criminal cases from 2000 to the present year are located in the file room. Individual files and papers may be inspected in this area by the general public. Files are available from the Federal Records Center through our office. There is a \$45 fee for this service. If you have questions, you may contact the records room at 267-299-7082.

CREDIT CARD COLLECTION NETWORK

In September of 1987, the Department of Treasury established a government credit card collection network to enable federal agencies to accept credit cards (Visa, MasterCard, American Express, Discover and Diners Club) for the collection of receipts due the government.

Credit cards are accepted as payment for the following transactions in the Clerk's Office:

- filing fees;
- copywork (docket sheets, opinions, etc.);
- copies of ESR-taped proceedings;
- attorney admission fees;
- searches and certifications;

- retrieval fees for case files maintained at the Federal Records Center.
1. **Counter Transactions.** Submit the charge card at the counter for recording, validating, and imprinting onto a bank charge slip. The amount of the charge, transaction code, date and time appear on the bank charge slip and cash register receipt. The original cash register receipt and bank charge slip are given to the customer, and the copies are kept on file in the Clerk's Office.
 2. **Telephone Requests.** Give your name, credit card number and its expiration date to the Clerk's office receptionist. Your requested work will be returned to you with a cash register receipt and a bank charge slip, which will have the words "TELEPHONE REQUEST" inserted in the signature block.
 3. **Mail Requests.** The following information must be provided in your request letter: credit card number, expiration date, and specified amount to be charged. The letter must be signed by the same person whose signature appears on the credit card. You will receive a cash register receipt and a bank charge slip, which will have the words "MAIL REQUEST" inserted in the signature block.

For those law firms which are concerned with the safekeeping of the actual credit card, the Clerk's Office will issue numbered identification cards bearing the firm's credit card number, expiration date, and the signature of one of the firm's partners. These cards will be issued after completion of an authorization form (**Appendix V**). The courier will simply show this card to the cashier and the transaction will be processed. On the bank charge slip, "AUTHORIZATION ON FILE" would appear in the signature block.

DEPOSITING/WITHDRAWING MONIES

The Fiscal Department is responsible for coordinating all financial transactions involving the district court. All court-related fees are paid and disbursements made through this department. In order to deposit or withdraw monies from the registry, you must submit a proposed order. Please call John Zingo, the Financial Manager, at 267-299-7106 with any questions on this procedure.

A. Deposits

All checks should be made payable to "**Clerk, U.S. District Court**". This is the only form of check that will be accepted. It is recommended that all deposits made into the registry of the court for subsequent disbursement be accomplished by a treasurers' check or a certified check in order to allow for prompt disbursement.

B. Registry Fund, Deposit Fund, Interest-Bearing Accounts

Disbursements are made from the registry fund upon order of the court only. The case docket is reviewed to determine if disbursement is appropriate, then the financial ledger sheet is pulled from the registry binder and compared with the court order. A voucher is prepared by the financial deputy and a check is drawn and mailed to the payee.

As a result of a new appropriation authority approved by the Judicial Conference, a fee in the amount of 10% of the annual interest has been established to cover the costs to the Judiciary for handling registry funds placed in interest-bearing accounts. The fee shall apply to all money and property held in the Court's registry and invested in interest-bearing accounts, except unclaimed monies held in accounts for individuals or persons whose whereabouts are unknown. Assessment of this fee will commence on all case payments (withdrawals) from the registry of the Court made on or after December 1, 1988. However, fees will be assessed only for the holding of funds after September 30, 1988. As to previously existing accounts, September 30 will be considered the original date of deposit with respect to the starting case balance and the number of days held. The fee will be computed at the time of withdrawal from the date of receipt into the registry through the date of withdrawal based on the average daily balance in the account. Payment of the fee will be deducted from the balance on deposit at the time of distribution.

Disbursements from the deposit fund, i.e., court-appointed counsel fees, are accomplished by preparing a voucher and forwarding it to the certifying officer. When the certified voucher is returned, a check is drawn on the voucher and mailed to the payee.

Upon order of the court, an interest-bearing account is closed with the local bank and deposited into the registry fund as a bank transfer. A U.S. Treasury check is drawn and handled the same as a registry disbursement.

FINES

Fine payments received through the mail are checked for the case number. If the individual is on probation, the receipt for payment is processed and sent to the Probation Office to credit the proper account. If the individual is not on probation, the payment is checked against the Case Master File to assure the proper amount is received without any overpayment. Overpayment is discouraged and the Probation Office is made aware of overpayment and asked to have the correct amount resubmitted. When it is impossible to have the check reissued for the correct amount, the overpayment is deposited into the Deposit Fund and disbursed at a later time to the probationer.

After the payments are verified as correct, a receipt is issued. The money is deposited into the U.S. Treasury (General and Special Fund) and postal fines are deposited into the deposit fund and disbursed quarterly. The original receipts are forwarded to the Probation Office.

Fines to be paid in person are sent to the Fiscal Department, where the Fine Case Account is checked. The financial deputy fills out a form indicating the case caption and number, the account number (FUND), and the amount to be paid. The form is given to the individual, who is sent to the cashier for issuance of a receipt.

Fines received from the Probation Office are hand-delivered by probation personnel. If the fine is a first payment, a letter is attached stating the defendant's name, case number, and the amount to be paid. The criminal or magistrate docket is checked to obtain the total amount and a new account is set up on the automated financial system.

If there was a prior payment, the Probation Office attaches a card with the payment, indicating the case number.

CENTRAL VIOLATIONS BUREAU (CVB)

In the district courts, the CVB provides a case management system for petty offenses (and some misdemeanors) which originate with the filing of a violation notice sent by the issuing government agency directly to the CVB. If collateral is forfeited to the CVB within the specified time, the date and amount is entered and the case is closed. In cases which

are not disposed of through forfeiture of collateral, the CVB schedules a hearing before a Magistrate Judge, notifies the defendant, and records the Magistrate Judge's disposition of the case.

BAIL BONDS

Bail is generally set by the court from one of the following categories:

1. **Own Recognizance** - In this instance, the defendant signs an Appearance Bond in the amount fixed by the court without posting any security.

2. **In An Amount Equal to 10% of Total Amount of Bond** - In this instance, the defendant or someone on their behalf deposits 10% of the amount of the bond. If it is the defendant's cash, only the defendant signs the appearance bond. If it is the surety's cash, then both must sign. Local Civil Rule 67.1(a) states that "no attorney, or officer of this court shall be acceptable as surety bail, or security of any kind in any proceeding in this court."

3. **In An Amount with Good Security** - In this instance, both the defendant and the surety must sign the appearance bond with acceptable security being posted. Security may be one of the following:
 - **cash** - only cash, certified or cashiers check, or money order are acceptable;

 - **corporate surety** - with power of attorney;

 - **individual sureties - Real Estate** - explained on sample form "Bail Bond Secured by Property or Real Estate Bail" (**Appendix W**);

 - **securities** - only negotiable securities are acceptable.

ATTORNEY ADMISSIONS

Applications for admission to the bar of our court for those attorneys who are

currently members in good standing of the bar of the Supreme Court of Pennsylvania pursuant to Local Rule of Civil Procedure 83.5(a) may be obtained at the front counter of the Clerk's Office. Admission ceremonies are held once a week. The fee for attorney admission is \$175.00. There is a \$15.00 fee for a duplicate certificate of admission or certificate of good standing. For further information on attorney admissions, call Aida Ayala, the attorney admissions clerk at 267-299-7099.

Pursuant to Local Rule of Civil Procedure 83.5.2(b), for attorneys who are not currently admitted to either the bar of this court or the bar of the Supreme Court of Pennsylvania shall not actively participate in the conduct of any trial or pre-trial or post-trial proceeding before this court unless, upon motion of a member of the bar of this court containing a verified application, leave to do so is granted (**Appendix X**). A \$40 fee is assessed for such admissions.

COURT REPORTING/RECORDING SERVICES

Orders for transcripts produced by court reporters can be accomplished through the Court Reporter Supervisor, Joan Carr (267-299-7104), by means of a Transcript Order Form (**Appendix Y**).

Orders for transcripts produced by electronic sound recording can be accomplished through the Transcript Coordinator, David Hayes (267-299-7041) by means of a Transcript Order Form (**Appendix Y**). Orders for tapes or CDs produced by ESR can be accomplished by means of the Tape Order Form (**Appendix Z**).

ELECTRONIC TRANSCRIPTS OF COURT PROCEEDINGS

With the exception of sealed transcripts which are excluded from electronic filing, effective June 2, 2008 electronic transcripts of court proceedings in the United States District Court, Eastern District of Pennsylvania, will be made available to the public as follows:

- Transcripts of civil court proceedings will be placed on CM/ECF or **PACER** unless the presiding judge otherwise directs.
- Transcripts of criminal court proceedings will not be placed on CM/ECF or

PACER unless the presiding judge otherwise directs after giving the prosecution and defense counsel an opportunity to be heard.

If electronic transcripts are to be made available to the public upon approval of the assigned judge:

- A transcript provided to the court by a court reporter or transcriber will be available at the office of the clerk for inspection for a period of 90 days after it is delivered to the clerk.
- During the 90-day period a copy of the transcript may also be obtained by purchase from the court reporter or transcriber through the office of the clerk. An attorney who obtains the transcript from the office of the clerk will be allowed remote electronic access to the transcript through the court's CM/ECF system.
- After the 90-day period has expired, the filed transcript will be available for inspection and copying in the clerk's office and for download from the court's CM/ECF system through the **PACER** system.

In addition, amendments to the Federal Civil and Criminal Rules of Procedure (Civil Rule 5.2 and Criminal Rule 49.1) require that personal identification information be redacted from documents filed with the court, including Social Security numbers, names of minor children, financial account numbers, dates of birth, and in criminal cases, home addresses.

For more information on electronic transcripts, please contact Joan Carr, Supervisor of Court Reporters (267-299-7104) or Phyllis Frazier, Court Reporter and Recorder Administrator (267-299-7103). (See **Appendix AA**.)

DIGITAL AUDIO FILE ELECTRONIC ACCESS PILOT PROGRAM

During this pilot program digital audio recordings of courtroom proceedings will be publicly available on **PACER** upon the approval of the presiding judge. The project enables **PACER** users to download, in MP3 format, court proceedings that have

been recorded using electronic sound recording technology. (See **Appendix BB.**)

For more information on this pilot project, contact Michael Hearn, Electronic Sound Recording Coordinator, at 267-299-7039.

VIDEOTAPE SERVICES

The Clerk's Office has videotape facilities for the taking of depositions of witnesses. These services are provided at the discretion of the assigned judge. To request videotaping of witnesses, contact Edward Morrissy at 267-299-7044. There is no charge for the use of the videotape service, but counsel is required to supply the necessary videotapes.

Counsel is required to give notice to the opposing party as to their intention to utilize the videotape procedure.

VIDEO TELECONFERENCING

On June 1, 1995 the Eastern District of Pennsylvania started a video teleconferencing pilot program sponsored by the United States Marshal Service and the Federal Bureau of Prisons. This program establishes a closed circuit television link between the United States District Court in Philadelphia and the Federal Correctional Institute at Fairton, New Jersey. In May 1998, this program was expanded to include links between the District Court and State Correctional Institutions, including Graterford, Greene and Camp Hill. The program allows criminal defendants incarcerated at these institutions to fully participate in court appearances, interviews and conferences. The equipment and facilities are also available to the Office of Pretrial Services, the United States Probation Office, the Federal Defender, the United States Attorney, and the defense bar when not in use by the Court. All requests to use the VTC equipment for conferences are to be submitted to the VTC Coordinator who may be reached at 267-299-7039.

The VTC program has not been limited to only cases in which defendants are incarcerated. For visiting judge cases in which judges of this court sit by designation in Middle or Western District Court cases, this program has been successfully utilized to

conduct conferences between this court and counsel from outside districts which are similarly equipped with VTC equipment. For further information on this service, contact the VTC Coordinator.

COURTROOMS OF THE FUTURE

Several courtrooms provide an array of technical components that support evidence presentation, remote site interactions, language interpreting and audio enhancement. The state-of-the-art technologies include assisted listening systems, integrated court interpreting systems, video teleconferencing systems, document/video presentation systems, evidence trolleys, annotation pads, document cameras, as well as connectivity at counsel tables for use with court- or attorney- provided PCs. The court welcomes the bar to make use of these technologies and training is available at the courthouse. For further information, contact Joseph Rodgers at 267-299-7037, Michael Hearn at 267-299-7039, or Edward Morrissy at 267-299-7044.

INTERPRETERS' SERVICES

Effective September 1, 1997, the Clerk's Office became responsible for scheduling interpreters for all criminal proceedings and for all civil cases initiated by the government. The interpreter coordinator, Larry Bowman (267-299-7029) will schedule all interpreters required for court appearances.

Once the need for an interpreter has been established, the courtroom deputy to the assigned judge will be responsible for notifying the interpreter coordinator of all court proceedings requiring the use of an interpreter.

JURY SELECTION

The jury section is responsible for selecting and maintaining a pool of citizens qualified to serve as grand and petit jurors in this district and summoning these individuals for jury service. Jurors are selected pursuant to the Plan of the Random Selection of Grand and Petit Jurors of 1968 for the Eastern District of Pennsylvania. A copy of this plan is available for inspection in the Office of the Clerk of Court. The jury section is also responsible for preparation of vouchers and documentation required to

reimburse jurors for their service.

A. Term of Jury Service

In our district, jurors are called for either a two-day/one trial term of service each Monday or a three-day/one trial term of service on Wednesdays. If selected for a case where the trial extends beyond one week, jurors are required to serve until the completion of the trial.

B. Excuse from Jury Service on Request

In addition to members of groups and occupational classes subject to excuse from jury service pursuant to 28 U.S.C. §§ 1863(b)(5) and (7), any person summoned for jury service may, on request, be excused temporarily by a judge of this court. The person must show undue hardship or extreme inconvenience by reason of great distance, either in miles or travel time, from the place of holding court, grave illness in the family or any other emergency which outweighs in urgency the obligation to serve as a juror when summoned, or any other factor which the court determines to constitute an undue hardship or to create an extreme inconvenience to the juror. Additionally, in situations where it is anticipated that a trial or grand jury proceeding may require more than thirty days of service, the court may consider, as a further basis for temporary excuse, severe economic hardship to an employer which would result from the absence of a key employee during the period of such service.

The period for which such prospective jurors may be excused shall be the period of time which the judge deems necessary under the circumstances, which shall be fixed in the order granting the excuse. At the expiration of the period so fixed, such persons shall be summoned again for jury service within a reasonable time.

C. Payment

Jurors receive \$40 for each day in attendance, plus 50.5 cents per mile as measured from their residence to the courthouse (round trip). The court calculates the computation of this fee. If a juror lives more than 50 miles from the courthouse and remains overnight, the juror will be reimbursed for room and living expenses.

Subsistence allowance is \$213 per night in Philadelphia, \$127 per night in Reading, and \$131 per night in Allentown or Easton. If you have any questions regarding jury matters, you may call 267-299-7299.

INCLEMENT WEATHER

In the event of inclement or otherwise extreme weather conditions, the public is urged to call the court's **Code-A-Phone** line for a special announcement on whether the courthouse will be closed or if trials have been canceled for that day. A recorded message on the toll-free number **1-800-829-0189** will be accessible from about 5:30 a.m. Attorneys and jurors are requested to call this number before leaving their office or residence to attend court. It is also suggested that the public tune into radio and television news stations, which will also broadcast announcements if jury trials have been adjourned or if the courthouse will be closed for that day. If no announcement is made by 6:00 a.m. and there is no special message on the recording, it should be assumed that court will be in session and jurors are to report for jury duty as scheduled.

PACER - PUBLIC ACCESS TO COURT ELECTRONIC RECORDS

The **PACER** system provides improved access to court records for attorneys and other members of the public. This electronic access system allows any member of the public to access information contained in the court's civil/criminal docket database via internet access. The user is able to access a search of information either through a case name or a case number and can request docket reports. The information is either saved on the user's PC or the report is printed during online access.

All civil cases filed since July 1, 1990 and all criminal cases filed since July, 1992 are contained on the **PACER** system. In addition, the **PACER** system will allow an end-user to check recent activity. If there has been no recent activity, the **PACER** system will confirm that fact in seconds.

The **PACER** system is available 24 hours a day, 7 days a week. Electronic case filings and updates to the docket are available for immediate view.

The Eastern District of Pennsylvania **PACER** system is administered by the

PACER Service Center. The center provides all support services as well as billing services for **PACER** access.

Many Eastern District of Pennsylvania **PACER** users are already registered with the **PACER** Service Center for access to **PACER** systems throughout the federal court system. If you are currently registered with the **PACER** Service Center, please call the center at 1-800-676-6856 to add the Eastern District of Pennsylvania to your account.

If you are not registered with the center, complete a **PACER** Registration Form (**Appendix CC**) available on the court's website at <http://www.paed.uscourts.gov> and forward it to the **PACER** Service Center, P.O. Box 780549, San Antonio, TX 78278-0549, or fax it to (201) 301-6441, or a completed application may be submitted via e-mail. The address for **PACER** is <https://ecf.paed.uscourts.gov>. Users may access **PACER** by using their **PACER** login and password. The fee for accessing **PACER** is \$.08 per page.

Should you have any questions concerning **PACER** service or registration, please contact the center at (800) 676-6856.

INTERNET WEBSITE

Information on multiple services and all judicial opinions filed since June 1, 1997 in the United States District Court for the Eastern District of Pennsylvania, as well as e-mail capabilities are available on the Internet at <http://www.paed.uscourts.gov>. The site contains the following:

- Judicial opinions filed since June 1, 1997, including a Recent Opinions section;
- E-mail capabilities with the Office of the Clerk of Court;
- Directory of automated services (**Appendix DD**);
- Local civil, criminal and bankruptcy rules;
- Court notices;
- Electronic Case Filing;
- Forms;
- Report of cases specially listed for U.S. District Court and surrounding county courts;

- Multidistrict litigation information;
- Criminal documents;
- Frequently asked questions;
- Clerk's Office Procedural Handbook containing information on: filing civil actions/documents, general motion practice and pretrial procedures, fees, judicial chambers information (phone numbers, addresses, staff), forms (appendices), Clerk's Office directory, appeals, bill of costs and after hours filing;
- Telephone directory and address information;
- Judicial Schedule of Trials - Automated System Inquiry (JUST-ASK);
- Search capabilities;
- Link to PACER;
- Judicial policies and procedures;
- Juror information;
- Federal holidays;
- Arbitrator and mediator applications.

LOCAL RULES

The local rules of court - civil, criminal, admiralty, and bankruptcy - are available from the Clerk's Office, and also on the Internet at <http://www.paed.uscourts.gov>. Inquiries should be directed to Aida Ayala, 267-299-7099, Room 2625.

CELL PHONES AND PUBLIC TELEPHONE LOCATIONS

Effective May 1, 2003, attorneys are permitted to carry cell phones into the courthouse, but all cell phones will be subject to x-ray and visual inspection by the Court Security Officers at the security screening station. All cell phones must be turned off before entering courtrooms and chambers, unless otherwise authorized by the presiding judge. Failure to follow this restriction may result in sanctions by the judge.

While cell phones are permitted in the courthouse, there are also numerous pay telephones available for use by the public located on every floor of the building, except on the 21st and 22nd floors. A directory of public telephone locations and numbers follows.

DIRECTORY OF PUBLIC TELEPHONE LOCATIONS

U.S. Courthouse

Philadelphia, PA

FLOOR	TELEPHONE #	LOCATION OF PHONE
Lobby	215-922-8886	Hallway adjacent to public elevators
Lobby	215-922-8668	Hallway adjacent to public elevators
Lobby	215-922-8673	Hallway adjacent to public elevators
Lobby	215-922-8683	Hallway adjacent to public elevators
Lobby	215-922-8682	Hallway adjacent to public elevators
Lobby	215-922-8671	Hallway adjacent to public elevators
2nd Floor	215-922-8048	Adjacent to public elevators
3rd Floor	215-922-8690	Hallway adjacent to secured corridor
4th Floor	215-922-8797	Hallway adjacent to secured corridor
4th Floor	215-922-8796	Hallway adjacent to secured corridor
5th Floor	215-922-8798	Hallway adjacent to secured corridor
5th Floor	215-922-8855	Hallway adjacent to secured corridor
6th Floor	215-922-8863	Hallway adjacent to secured corridor
6th Floor	215-922-8860	Hallway adjacent to secured corridor
7th Floor	215-922-8870	Hallway adjacent to secured corridor
7th Floor	215-922-8864	Hallway adjacent to secured corridor
8th Floor	215-922-8874	Hallway adjacent to secured corridor
8th Floor	215-922-8873	Hallway adjacent to secured corridor
9th Floor	215-922-8728	Hallway adjacent to secured corridor
10th Floor	215-922-8987	Hallway adjacent to secured corridor
10th Floor	215-922-8882	Hallway adjacent to secured corridor
11th Floor	215-922-8883	Hallway adjacent to secured corridor
11th Floor	215-925-8884	Hallway adjacent to secured corridor

12th Floor	215-922-9199	Hallway adjacent to secured corridor
12th Floor	215-922-9193	Hallway adjacent to secured corridor
13th Floor	215-922-9222	Hallway adjacent to secured corridor
13th Floor	215-922-9203	Hallway adjacent to secured corridor
14th Floor	215-922-9315	Hallway adjacent to secured corridor
14th Floor	215-922-9335	Hallway adjacent to secured corridor
15th Floor	215-922-9431	Hallway adjacent to secured corridor
15th Floor	215-922-9437	Hallway adjacent to secured corridor
16th Floor	215-922-9459	Hallway adjacent to secured corridor
16th Floor	215-922-9480	Hallway adjacent to secured corridor
17th floor	215-922-9491	Hallway adjacent to secured corridor
17th Floor	215-922-9488	Hallway adjacent to secured corridor
18th Floor	215-922-9335	Hallway adjacent to secured corridor
19th Floor	215-922-9542	South end of hallway
20th Floor	215-922-9551	Hallway adjacent to secured corridor

May 06, 2008

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA
CLERK'S OFFICE EMPLOYEE LIST

INFORMATION DESK - Whitney Gibson-Cooke (215) 597-7704

CLERK OF COURT

Michael E. Kunz 215-597-7704

Miriam Coco, Secretary 267-299-7085

**CASE REASSIGNMENTS/
TAXATION OF COSTS**

Susan Renz 267-299-7086

STAFF ATTORNEY

Ken Wilson 267-299-7088

HUMAN RESOURCES

Human Resources Administrator

Donna L. Diaz 267-299-7089

Human Resources Coordinator

Deana Drobonick 267-299-7091

Personnel Specialist

Frederick Druding, Jr. 267-299-7090

Personnel Assistant

Jamie L. Wilson 267-299-7092

ASSISTANT JUDICIAL SECRETARY

Nancy Held 267-299-7094

PRO SE LAW

HABEAS CORPUS CLERK

Kevin Dunleavy 267-299-7087

PRO SE LAW CLERKS

Elaine Battle 267-299-7034

William Buckley 267-299-7033

MDL 875 LAW CLERK

Bruce Lassman 267-299-7463

OPERATIONS CHIEF DEPUTY

Joseph Rodgers 267-299-7037

**ADMINISTRATIVE SERVICES
MANAGER**

Thomas Clewley 267-299-7036

**ASSISTANT ADMINISTRATIVE
SERVICES MANAGER**

Joseph Hartnett 267-299-7038

**ELECTRONIC SOUND RECORDING
COORDINATOR**

Michael Hearn 267-299-7039

TRANSCRIPTION COORDINATOR

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