NOTICE OF PROCEDURES FOR EVIDENTIARY HEARING BEFORE
UNITED STATES MAGISTRATE JUDGE IN PRISONER CIVIL RIGHTS ACTION

The magistrate judge has been designated to hear the case described in the attached order.

The Magistrates Act, 28 U.S.C. §636(b)(1)(B), authorizes a U.S. district judge to designate a magistrate judge to conduct an evidentiary hearing in a prisoner civil rights action and then to submit findings and recommendations to the district judge for disposition of the action. **This hearing will be a complete hearing of all witnesses and evidence to be presented by all parties to the record.** The magistrate judge's report must be served on the parties who are allowed 14 days to file objections to the report. If objections are filed, the district judge is required to make a de novo determination of the portions of the report to which objection is made. The district judge is not required to hold a new hearing. He may listen to the tape of the hearing before the magistrate judge, read a transcript of the hearing, or read a summary of the testimony. **Therefore, the hearing before the magistrate judge may be the only chance to present the testimony of witnesses or other evidence, and the parties should be prepared to present their full case before the magistrate judge.**

If the plaintiff is proceeding without the assistance of counsel he is advised that since he has brought this suit he has the burden of proving his case and he must present his evidence first. Evidence may consist of the sworn testimony of a party and other witnesses, and papers, documents, photographs and objects. Affidavits and other written statements may not be admitted into evidence except upon agreement of the other party, or if the person who made the statement testified during the hearing and his hearing testimony differs from his affidavit or written statement.

All parties are advised that Rule 45 of the Federal Rules of Civil Procedure must be followed with regard to the subpoenaing of witnesses or documentary evidence to the hearing. **A PARTY CANNOT RELY ON THE OPPOSING PARTY TO HAVE A PARTICULAR WITNESS AT THE HEARING. IF YOU WANT TO BE SURE ANY CERTAIN WITNESS WILL BE PRESENT IN COURT TO TESTIFY, YOU MUST SUBPOENA THAT WITNESS TO THE HEARING.** Whenever a party or attorney so requests, the Clerk of Court will issue a subpoena for the attendance of a witness at the hearing or for the production of documentary evidence, signed and sealed but otherwise in blank, directly to that party or attorney, and that person will then have to fill in the blanks in the subpoena and then obtain service of the subpoena. Upon a showing of good cause in the manner set out in the attachment to this notice, by a plaintiff who is proceeding *in forma pauperis*, I will order that the U.S. Marshal serve a very limited number of subpoenas that such a plaintiff may wish to have served in this matter without prepayment of the cost of such service. Also, a procedure for obtaining attendance at the hearing of witnesses who are incarcerated is set out in the said attachment.

TO: PRO SE LITIGANTS AND ATTORNEYS appearing at an evidentiary hearing in a civil case before Magistrate Judge Kayla D. McClusky in the United States District Court for the Western District of Louisiana

RE: PROCEDURES FOR OBTAINING APPEARANCE OF WITNESSES AT THE HEARING

WITNESSES WHO HAVE NOT BEEN LISTED IN THE PRETRIAL MEMORANDUM WILL NOT BE HEARD IF OBJECTED TO. A PARTY CANNOT RELY ON THE OPPOSING PARTY TO HAVE A PARTICULAR WITNESS AT THE HEARING. IF YOU WANT TO BE SURE ANY CERTAIN WITNESS WILL BE PRESENT IN COURT TO TESTIFY, YOU MUST SUBPOENA THAT WITNESS TO THE HEARING.

A. PROCEDURES FOR OBTAINING ATTENDANCE OF INCARCERATED WITNESSES

An incarcerated witness cannot come to court unless this Court orders the warden or other custodian to permit the witness to be transported to court. This Court will not issue such an order unless it is satisfied that the prospective witness has actual knowledge of relevant facts.

The prospective witness's actual knowledge of relevant facts can be shown in one of two ways:

(a) A party himself or herself can swear by affidavit that the prospective witness has actual knowledge. However, this can be done only if the party has actual first-hand knowledge that the prospective witness was an eye-witness or an ear-witness to the relevant facts. For example, if an incident occurred and, at that time, the party saw that a certain person was present and observed the incident, the party may swear to that person's ability to testify.

OR

(b) The party can serve and file an affidavit sworn to by the prospective witness in which the witness describes the relevant facts to which the prospective witness was an eye-witness or an ear-witness.

Whether the affidavit is made by a party or by the prospective witness, it must be specific about what the incident was, when and where it occurred, who was present, and how the prospective witness happened to be in a position to see or to hear what occurred at the time it occurred.

No later than five (5) weeks before the hearing, a party intending to introduce the testimony of incarcerated witnesses listed in the pretrial memorandum must file a written ex parte motion for a court order requiring that such witnesses be brought to court at the time of the hearing. The motion must:

(a) State the name and address of each such witness; and

(b) Be accompanied by the necessary affidavits showing that each witness has actual knowledge of relevant facts. Copies of such affidavits do not have to be voluntarily provided to opposing parties.

The court will review and rule on the motion, specifying which prospective witnesses must be brought to court. Subsequently, the court will issue the order necessary to cause the witness' custodian to bring the witness to court.

This Court cannot issue such an order to the custodian of a jail or prison outside the State of Louisiana. The testimony of a person incarcerated outside the State of Louisiana will have to be presented to the court by deposition or stipulation.

A. PROCEDURE FOR LITIGANTS PROCEEDING IN FORMA PAUPERIS ("IFP") TO OBTAIN THE ATTENDANCE OF UNINCARCERATED WITNESSES AT THE HEARING

If a prospective witness is not incarcerated, and if you are proceeding IFP and want to have a subpoena served on that witness by a U.S. Marshal, no later than five weeks before the hearing you must prepare a subpoena for service by the Marshal upon the witness, together with a completed Marshal's service form (USM-285) (Blank subpoena forms and Marshal's service forms may be obtained from the Clerk of Court), and file those papers and a written motion in this Court for an order requiring that a U.S. Marshal make service of the subpoena. If such motion is filed, it must be accompanied by an affidavit, such as those previously described, showing that the prospective witness has actual knowledge of relevant facts.

The Court will review each request and determine which, if any, of the subpoenas it will order the Marshal to serve without the party having to advance the costs of service. The court will then order service by the Marshal of a limited number of such qualifying subpoenas without delay. The expense incurred through service by the Marshal shall be added as a cost of court, for which any litigant cast for costs in the final judgment in the case will be required to pay. Any subpoenas found not to qualify for such service by the Marshal shall be returned to the movant who shall be free to have service made by any qualified process server. Of course, any party may obtain service of any subpoena by any qualified process server at any time if they do not wish to move the court to order the subpoena to be served by a U.S. Marshal.

Usually this Court cannot subpoena persons who are outside the State of Louisiana and more than 100 miles from the place of the hearing. The testimony of a person who is beyond the subpoena power of this Court, and will not or cannot voluntarily appear at the hearing, will have to be presented to the Court by deposition or stipulation.